Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
October 23, 2018

I. ROLL CALL

Paul Voelckers, Vice Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:00 p.m.

Commissioners present: Paul Voelckers, Vice Chairman; Nathaniel Dye, Percy Frisby, Dan Hickok, Andrew Campbell, Carl Greene, (telephonically) Dan Miller

Commissioners absent: Ben Haight, Chairman; Michael LeVine

Staff present: Jill Maclean, CDD Director; Teri Camery, Senior Planner; Tim Felstead, Planner II; Allison Eddins, Planner II; Amy Liu, Planner I; Robert Palmer, Municipal Attorney

Assembly members: Loren Jones,
Wade Bryson, Assembly Liaison to the Planning Commissio**n**

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

III. APPROVAL OF MINUTES

A. September 11, 2018 Draft Minutes – Regular Planning Commission Meeting

B. September 25, 2018 Draft Minutes – Committee of the Whole Meeting

C. September 25, 2018 Draft Minutes – Planning Commission Regular Meeting

Mr. Voelckers asked that the words "to proceed on a new Comprehensive Plan" be added to the September 11, 2018, Planning Commission minutes, line two, page 11 of 338; "They accepted the recommendation from the Planning Commission *to proceed with a new Comprehensive Plan*" …

MOTION: *by Mr. Dye, to approve the Planning Commission September 11, 2018, regular meeting minutes as amended by Mr. Voelckers, as well as the Committee of the Whole Planning Commission minutes of September 25, 2018, and the Planning Commission regular meeting minutes of September 25, 2018, with any other minor edits by staff or Commission member.*

The motion passed with no objection.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Mr. Voelckers asked Mr. Palmer if there were any reasons why the Commission could not hear the comments of Mr. Jenkins this evening.

After reviewing the item, Mr. Palmer said there was no problem with the Commission listening to the remarks of Mr. Jenkins.

Scott Jenkins, of R&S Construction, said his interpretation of what the Planning Commission decided regarding the Conditional Use Permit for his condominium development on June 26, 2018, and that of City, were different. He said hoped they could resolve the issue and prevent him having to pay another $750.00 to come once again before the Planning Commission.

Mr. Voelckers said the Commission was not in a position to second-guess the issue without a full packet to see what the issue is, and that they could not proceed further on that item this evening.

In a letter to the Commission, Mr. Jenkins stated that he thought it was the intention of the Commission that the vegetative cover required in Condition 2 was eliminated and instead that there would be the strategic placement of maple trees.

Mr. Hickok said he thought this issue had been resolved at that meeting.

Mr. Voelckers said he thought the Commission could take no further action on this item at this time. He said they could read the letter, but that the Commission as a body could not give closure to this item at this meeting.

Mr. Jenkins said he did not think it was right that they should have to proceed with another formal Planning Commission meeting to determine a decision which had already been rendered by the Commission.

V. ITEMS FOR RECONSIDERATION – None

VI. CONSENT AGENDA

Mr. Dye requested that both USE 2018 0013 and USE 2018 0014 be pulled for a brief review by the staff.

USE2018 0013: A Conditional Use Permit for a marijuana retail facility
Applicant: Jamie Letterman
Location: 5310 Commercial Blvd

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a marijuana retail facility.

The approval is subject to the following conditions:

1. One ADA space total is provided on site. CBJ-approved signage shall be posted for the accessible parking space prior to commencement of the proposed use.
2. The vegetative cover areas shown on the plans submitted shall be maintained with live vegetative cover.
3. The applicant must submit a complete copy of the applicant's approved state license application to the department for review prior to operating. If the director determines there are substantive inconsistencies between the state license application and the conditional use permit application, the commission shall review the development for consistency with this title.
4. Conditional use permits issued to marijuana establishments under this chapter shall be subject to review by the commission every five years from the date of issuance. Such review shall be subject to CBJ 49.15.330 except that the commission may only amend or add conditions if necessary to ensure compliance with this title. If an appeal challenging the amendments to a conditional use permit is filed, the new conditions shall be stayed and the existing permit shall govern the operations of the marijuana establishment until the conclusion of the appeal. The scope of review on appeal is restricted solely to the amended conditions.

USE2018 0014: A Conditional Use Permit for a marijuana cultivation facility
Applicant: Jamie Letterman
Location: 5310 Commercial Blvd

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of a marijuana cultivation facility.

The approval is subject to the following condition:

1. One ADA space total is provided on site. CBJ-approved signage shall be posted for the accessible parking space prior to commencement of the proposed use.

2. The vegetative cover areas shown on the plans submitted shall be maintained with live vegetative cover.

3. The applicant must submit a complete copy of the applicant's approved state license application to the department for review prior to operating. If the director determines there are substantive inconsistencies between the state license application and the conditional use permit application, the commission shall review the development for consistency with this title.

Conditional use permits issued to marijuana establishments under this chapter shall be subject to review by the commission every five years from the date of issuance. Such review shall be subject to CBJ 49.15.330 except that the commission may only amend or add conditions if necessary to ensure compliance with this title. If an appeal challenging the amendments to a conditional use permit is filed, the new conditions shall be stayed and the existing permit shall govern the operations of the marijuana establishment until the conclusion of the appeal. The scope of review on appeal is restricted solely to the amended conditions.

Ms. Liu told the Commission that both the marijuana grow facility and the retail facility would be located in Lemon Creek on Commercial Boulevard. She said they have received no comments from the public and that the facilities meet all of the necessary requirements. The products will be prepackaged before leaving the store and they will follow marijuana waste disposal regulations. There will be no visibility into the windows of the facilities, and the parking meets all the requirements for the facility as well as its existing uses, said Ms. Liu. Cameras will cover all exterior doors and the parking area of the facility, said Ms. Liu.

The product will be sold in prepackaged containers so there will be no odor in the commercial side of the facility, said Ms. Liu. The exhaust system will filter odors from the growing side of the operation, she said.

The City Assessor stated that they do not think this operation will have any negative influence on neighboring properties, and that it is consistent with light industrial uses, said Ms. Liu. Adoption of the permits is subject to the conditions that are listed in the information packet before the Commission, said Ms. Liu.

Commission Comments and Questions
Mr. Dye asked what generated the verbiage in Condition 3, since he has never seen it before on any other marijuana applications. He said in the past it has always been tied either to the CBJ issued license for marijuana or a building permit.

Ms. Liu said she thought Mr. Dye was correct and that typically this is tied to either a building permit or a certificate of occupancy. She said at the time, the condition was not tied to a building permit, and that this was an open question that she had not yet answered.

Mr. Dye asked if she thought it would be an issue to tie it directly to the CBJ marijuana license.

Ms. Liu said she would have to give that question some thought before she answered.

Mr. Dye said he appreciated the intent to come up with new language. Mr. Dye said in the future CBJ 49.15.330 will go away, and yet the requirement should remain for marijuana establishments to be subject to review by the Commission every five years from the date of issuance.

Mr. Palmer said Condition 4 is either verbatim or very similar to what is in the code. To alleviate Mr. Dye's concern, Mr. Palmer said the five-year review requirement by the Commission would not go away. He said the Commission could even eliminate this provision and just rely on the code.

Applicant
Jana Weltzen, attorney for Ms. Letterman, the applicant, said the Commission might be able to solve this issue with language by stating that the Conditional Use Permit must follow the code in place at the time of the request. She said the applicant has been a long time Juneau resident, and has raised her family here.

MOTION: *By Mr. Dye, to approve USE2018 0013 and USE2018 0014 with the changes to Condition 3 to tie that to the CBJ issued marijuana license, and with the deletion of Condition 4.*

In support of his motion, Mr. Dye said the code would require the five-year review by the Commission.

Offering a friendly amendment, Mr. Miller suggested leaving the first sentence in Condition Three and removing the rest of the verbiage and supplanting it with the motion made by Mr. Dye.

Mr. Dye accepted Mr. Miller's friendly amendment.

MOTION: *By Mr. Dye, with the friendly amendment of Mr. Miller, to approve USE2018 0013 and USE2018 0014, retaining the first modified sentence of Condition 3. The applicant must submit a complete copy of the applicant's approved state license application to the department for review prior to issuance of the required CBJ license. Condition 4 is deleted.*

The motion passed with no objection.

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

Mr. Voelckers recused himself from the following item as he is working as a consultant on this item.

Mr. Dye said he is a member of the Downtown Business Association board and that he has discussed this with the law department and they feel that this does not create a conflict of interest.

The commission voiced no objection.

AME2018 0007:	Seating of Blueprint Downtown Steering Committee
Applicant:	City & Borough of Juneau
Location:	Downtown Juneau

Staff Recommendation

Staff recommends that the Planning Commission appoint the following 13 applicants to the *Blueprint Downtown* Steering Committee listed below:

1. Betsy Brenneman
2. Kirby Day
3. Daniel Glidmann
4. Michael Heumann
5. Wayne Jensen
6. Laura Martinson
7. Lily Otsea (Youth Representative)
8. Karena Perry
9. Jill Ramiel
10. Meilani Schivens
11. Patricia (Patty) Ware
12. Christine Woll
13. Ricardo Worl

Mr. Felstead told the Commission that although not everyone can be on the steering committee that CDD encourages all those interested to attend the public meetings and steering committee meetings and to stay involved and be an active part of the process. The next Blueprint Downtown public meeting is scheduled for October 30, 2018.

Mr. Felstead told the Commission they tried to pick out people for the steering committee who had an interest in one or more items, and that they tried to pick an evenly distributed group representing business and residents, as well as various age groups. There were a lot of volunteers for this steering committee, noted Mr. Felstead.

He said the downtown area is large and diverse, and it extends from the Rock Dump to Norway Point

Mr. Hickok asked if the applicants were interviewed.

Mr. Felstead said the applicants were not interviewed, but selected by an application process.

Mr. Miller said that while crime is of great concern to the community, the one individual who listed crime as a primary concern on their application was not selected for the steering committee.

Mr. Felstead said that four CDD staff members reviewed the applications. They tried to select a diversity of applicants to cover various community concerns. He said that while it was a subjective process, he felt they had selected a good committee.

Ms. Maclean said they had learned some lessons from their experience with the Auke Bay steering committee. She said it was so large that it was very difficult to reach a consensus.

Mr. Frisby asked if they submitted a resume with the applications.

Mr. Felstead said that no resumes were submitted with the applications.

Mr. Dye asked how the matrix formulated by the staff figured in their selection of the steering committee members. He said some members were selected even though their attributes did not match as many of the boxes as others did.

Mr. Felstead said that it was a subjective process and that no weight was given to any individual box on the matrix. They also attempted to make sure that various ages and interests in the community were represented, he said.

MOTION: *By Mr. Miller, to recommend to the Assembly that they approve AME2018 0007, the seating of the Blueprint Downtown Steering Committee.*

Speaking in favor of motion, Mr. Campbell said he thinks the staff did an excellent job in its selection of applicants.

The motion passed with no objection.

Mr. Voelckers said he has a contractual relationship with the applicant for item USE2018 0016, and so he recused himself from the following item.

USE2018 0016:	A Conditional Use Permit to allow a 32-unit residential condominium development
Applicant:	The Jetty LLC
Location:	11798 Glacier Highway

Staff Recommendation

It is recommended 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 a 32-unit condominium development in the General Commercial zoning district.

The approval is subject to the following conditions:

1. Prior to the issuance of a Building Permit, the applicant will provide a detailed landscape plan for the parking area.

2. Prior to a Certificate of Occupancy being issued for the building, the landscaping must be installed or bonded for.

3. Prior to the issuance of a Certificate of Occupancy, the parking spaces will need to be striped and properly signed.

4. Prior to issuing a Temporary Certificate of Occupancy for the first dwelling, a Homeowners Association Agreement shall be submitted for review and approval by Community Development Department. The HOA agreement shall specify how common facilities such as the parking area and pedestrian walkway and required landscaping and vegetation will be properly maintained.

5. Prior to the issuance of a Building Permit, the applicant shall submit a detailed drainage and snow storage plan.

6. Prior to the issuance of a Building Permit, the applicant shall submit a parking and site circulation plan that has been prepared by a licensed engineer or architect.

This lot is zoned General Commercial and it is located behind the old UAS Bookstore located off of Glacier Highway in Auke Bay, said Ms. Eddins. The condominiums will be built upon a raised foundation of 15-foot pilings and screened with lattice wood work, she said. Parking will be located below the dwellings, she said.

While the lot is fairly flat, the applicant will leave the steeper rear part of the lot undeveloped and will install a retaining wall, said Ms. Eddins.

The total height of the building is 45 feet, said Ms. Eddins. The maximum height in the General Commercial zoning district 55 feet, she said. According to Title 49, the height of the building is

the vertical distance above a referenced datum measured to the highest point of the coping of a flat roof, or to the deck of a mansard roof, or to the average height of a pitched roof, she explained.

An HOA agreement would make sure that vegetation is properly maintained and bonded, said Ms. Eddins. The parking, located under the dwellings, will have 49 spaces. The site will have an additional 15 uncovered parking spaces. Only 58 spaces are required, she said. There will be pedestrian access raised at least six inches above the parking area, and will be five feet wide. It will connect the condominiums to the old UAS bookstore, she said. She noted that other condominiums in the area such as Auke Bay Towers and Spaulding Beach condominiums are both four stories in height like the proposed project.

Staff has received two emails and a letter mentioning concerns about traffic impacts to the area and a negative impact that rental units may have on surrounding property values and views of neighboring properties, said Ms. Eddins. Each unit will generate about 5.86 average daily trips, she said. This is not a high enough number to generate a Traffic Impact Analysis, she said. The Department of Transportation also voiced no concerns about the traffic impact of the development, she said.

While there is some protection in the Auke Bay Area Plan to maintain the views of the bay from public property, there is no such provision for the protection of private property views, said Ms. Eddins.

Commission Comments and Questions
Mr. Miller said it has been his understanding and experience that the CBJ does not normally approve the Home Owners Association (HOA) document. He said this does look similar to what has come out of the Alternative Residential Subdivision (ARS) ordinance. He said he understands why CBJ would be involved in the ARS. He asked why that language was in this particular development condition.

Ms. Maclean said they had required it for a fairly recent development in town for a use permit.

Mr. Palmer said he thinks that Mr. Miller is correct in that state law generally regulates the formation and the operation of a condominium association. The CBJ also regulates condominiums, he said. Not because they are condominiums but because they are developments, he explained. The Commission may alter the Director's proposed permit conditions, said Mr. Palmer. This includes an owner's association, he said.

The CBJ has code authority to regulate common property, said Mr. Palmer. The fourth condition for this condominium development is a little unique in that the department is required to approve the entire agreement, he said. He said maybe the Commission would be more comfortable if the condition stated that the Community Development Department must review

the application to ensure that the common facility such as parking and pedestrian ways and landscaping and vegetation are properly maintained, said Mr. Palmer.

Mr. Campbell said he liked the suggestion of Mr. Palmer. He said he had also had questions about the approval portion of that condition. He said he thought in previous applications the word “review” was used and not “approve”.

Mr. Hickok said in all the meetings he has attended for the Auke Bay Area Plan that protection of the view shed was always mentioned. He asked if that is only applied to existing buildings and not to new developments.

Ms. Eddins said in the Auke Bay Area Plan that there is recognition that it is unique concerning views. The City should play an active role in protecting those views from public property, said Ms. Eddins. The plan does not specify protecting views from private property, she said. The Auke Bay Implementation Subcommittee had discussed the possibility of a developer being provided with a bonus if they worked to protect their neighbors’ views, she said. That has not been adopted, she added.

Mr. Hickok asked if there is a definition of a view shed for Auke Bay.

Ms. Eddins said there is not such a definition.

Mr. Dye asked where in the Auke Bay Area Plan public views are distinguished from private views.

Ms. Eddins said she would find that information for Mr. Dye.

Mr. Hickok asked if anyone knew the height of the adjacent AEL&P building.

Ms. Eddins said she did not know the height of that building.

Mr. Frisby asked how high the property was.

Ms. Eddins said the highest point of the property is approximately 92 feet. There is a 22-foot slope that spans 70 feet, she said. The applicants have decided to leave that portion of the property undeveloped, she said.

Applicant
Applicant Garrett Schoenberger told the Commission that their property is zoned General Commercial, that they are sticking to the height limits and the proposed uses that are cohesive with the Auke Bay Area Plan.

Commission Comments and Questions
Mr. Campbell said he is very supportive of both this condominium development and the condominium development behind it. He said he would like to try to find a solution in which both parties could feel good. He noted that the applicants have a 15-foot height in their parking structure which is very high. He said perhaps that they could lower the height of the parking structure thus lowering the total height of the project, to ease the concerns of the property owners behind them.

Mr. Schoenberger said they have worked through this with the engineer. The piles are driven into bedrock and under-podium parking allows residents covered parking, but elevates the common area amenity. He said they want the highest and best use for the site. He said skimping on the height of the parking garage does not suit the project.

Mr. Miller asked if they are confident they will actually be constructing their condominiums to 10 feet less than the maximum 55 feet allowed.

Mr. Simpson said the condominiums are 55 feet high.

Ms. Eddins said the developer calculates height differently, but Mr. Simpson is correct in that at the lowest grade on the site the building will be 55' above grade. However, the rear of lot at the highest elevation on the site the building will be 40' above grade, and according to the CBJ Land Use Code the height for the entire structure will be 45'.

Public Comment
Mr. Pat Kemp said he is one of the owners of the condominium project behind the proposed development. He said they were told that the Auke Bay Area Plan would deal with their concerns about height, so that they could view the top of the boat launch ramp at Statter Harbor from their development.

He said they had spoken with these developers about their project and were told that their building would not impact their view plane. In early October, the developer had put in a different plan and raised the building height. Mr. Kemp met with the CDD to express their concern about that.

They could come in level with the old Horton's Hardware store building height and save money, and with a sloped roof design along with reducing the height of the garage, it would minimize the project impact on the development behind, he said.

Mr. Campbell asked Mr. Kemp if they had told their buyers that they would have a view of the top of the boat ramp from their condominium.

Mr. Kemp said they did tell their buyers that they would have that view.

Mr. Schoenberger said they are reasonable people who bought a site zoned General Commercial. They paid above the asking price for the site knowing that it had a 55-foot height potential. He said he has empathy for the people behind them, and that they are willing to have discussions, but that they want to make the best use of their property.

Engineer for the project, Travis Arndt, said the fifteen-foot-high parking structure would actually just be providing a net height of ten feet. The beam height added to that comes to fifteen feet, said Mr. Arndt. If they dropped the elevation of their structure to the elevation of the old hardware store, then they would have to excavate further into the hill with the existing slope rise. If they then had to push the retaining wall back, it would have to be 15 feet high, he said. They have to place five feet of rock with the piles, said Mr. Arndt. Dropping down seven feet would affect the uphill side as well as a huge cost increase, he said. He said they moved as far forward with the development as they could, to have parking in the front and under the dwellings. They went with the gabled roof to save height, he said. A gabled roof has a three-foot rise and a sloped roof would be a six-foot rise.

Mr. Miller said the architectural drawings showed the front buildings have flat roofs. He said there could be some savings in elevation if the uppermost unit had a flat roof.

Mr. Arndt said that would be possible, but then they would have to change the roof covering, which would be much more expensive. He said very few people in town can install a membrane roof. A metal roof would probably triple the cost, he said.

Mr. Campbell asked for the elevation of the old hardware store.

Mr. Schoenberger said it is about 24.5 feet high.

Mr. Hickok asked if their development would be higher than the diesel fuel tank on the AELP lot, or if it would be lower than the fuel tank in elevation.

Mr. Schoenberger said he imagines their development would be at a higher elevation than the fuel tank.

Mr. Campbell asked if the applicant had plans on excavating the undeveloped portion of the rear of their property or it would remain undisturbed.

He was told they would excavate to where the retaining wall is going in, and that the rest of the property would remain undisturbed.

Mr. Campbell said it seemed like the applicant could use undisturbed land which would enable them to put in their pathway and lower the elevation a little bit.

Mr. Arndt said the geotechnical report was not positive in that regard, and that he did not think they would want to put it at a two to one slope.

Mr. Campbell asked how wide the pathway would be behind the building.

He was told it would be four to five feet wide.

The Mr. Schoenberger said they have put everything they have into this project. They have done a lot of public outreach and have settled on this design due to the feedback from potential buyers, and from the geotechnical report.

Ms. Eddins told the Commission the verbiage on protecting public view sheds is on page nine and page 63 of the Auke Bay Area Plan.

Mr. Campbell asked if the Commission has the ability to specify the maximum elevation of a lot.

Mr. Palmer said the Commission did have that discretion, but that it had to be tied in to the three primary criteria that it evaluates; will the development more probably than not:

- Materially endanger public health or safety
- Substantially decrease the value of or be out of harmony with property in the neighboring area
- Not be in general conformity with the comprehensive plan, the thoroughfare plan, or other officially adopted plans

Mr. Miller asked if there are any bonus provisions in code that speak to heights, and view sheds, and density.

Ms. Maclean said there is a height bonus if the property is in the MU2 district. Typically, the bonus is for an increase, and the applicant is not looking for an increase, she said. There are no height bonuses in the General Commercial zoning district.

MOTION: *by Mr. Miller, to approve the Conditional Use Permit with the change in condition number 4 in the packet removing the word "approval" and inserting the words suggested by Mr. Palmer, with the advisory condition that would implore the applicant to work with the neighboring development to potentially put in a flat roof instead of a gable and to be willing to work with Mr. Kemp to lower the height as much as possible.*

Mr. Campbell said he feels they should split the difference. Mr. Palmer said the Commission has the ability to impose a height limitation if it is tied to a primary criterion, said Mr. Campbell, which in this case would be that the proposed height of the development would substantially

decrease the value of or be out of harmony with property in the neighboring area. He said the additional cost to the applicant would be to have to core out an additional three feet of material, and that the reduction in the pile length of three feet would help to offset that. There would be the negative impact of the applicant's development to the neighboring property because they had already told their customers that they would be able to view the top of the ramp at Statter Harbor, said Mr. Campbell. He suggested they limit the maximum height of the building to 113.5 feet above elevation 0' as a compromise, and that the compromise be a requirement and not a suggestion.

Mr. Dye said he is intrigued by Mr. Campbell's suggestion. Mr. Dye said he is not typically in favor of advisory conditions that are not enforceable. Mr. Dye said he is not in favor of that aspect of Mr. Miller's motion. He said he would like to hear from the other commissioners regarding their opinion of Mr. Campbell's possible amendment to the main motion by Mr. Miller.

Mr. Miller said the current height as drawn is considered a 45-foot-tall building. That is the height they are considering for a lot of property in the Auke Bay area. It is the legal height for Light Commercial zoned properties, and it is already lower than the maximum height by 10 feet, said Mr. Miller. He said in his opinion the applicant has already compromised by building ten feet under the allowable height for that zoning district.

Mr. Frisby said if they stick to this height recommendation, if it would be following the current direction the Auke Bay Steering Committee in terms of maximum heights for the area.

Ms. Eddins said the Auke Bay Steering Committee is currently discussing the idea of establishing a new zoning district with a maximum height of approximately 45 feet. There has also been discussion of a maximum height of 35 feet with bonus points edging the height up to 55 feet, said Ms. Eddins.

This proposal was evaluated to be in compliance with the adopted Auke Bay Area Plan, said Ms. Eddins. It is also in line with the current discussions regarding zoning district proposals, she said.

Mr. Miller said Mr. Campbell's suggestion of 113.5 feet in height above elevation 0 is 3.5 feet lower than the current design with a gabled roof. He said he thought that it should be fairly easy for the applicant to attain. Mr. Miller said he would accept the height suggested by Mr. Campbell as a friendly amendment to his motion. He said he is still in favor of his advisory condition.

Mr. Campbell said he foresaw a future in the Auke Bay area where the height of a future development may be limited due to harm experienced by neighboring properties.

Mr. Miller said the Auke Bay committee's direction of a height of 35 feet with very strong bonuses given for the lower height, and the upper limit of a height of 55 feet for properties that are not impinging upon the view shed.

Mr. Campbell asked if there was some bonus they could give to the applicant in exchange for the 3.5 feet height reduction for their development.

Ms. Eddins said that there is not such a bonus for this available at this time.

Mr. Campbell said he proposed the friendly amendment that they add condition number seven limiting the maximum elevation of the proposed structure to 113.5 feet.

Mr. Miller accepted Mr. Campbell's friendly amendment.

Speaking in favor of the motion, Mr. Dye said that trying to maintain neighborhood harmony is not always a simple thing, especially considering the long Auke Bay process in terms of the neighborhood plan. He added that changes are afoot.

Mr. Greene said he was in favor of the motion.

MOTION: *by Mr. Miller, with a friendly amendment of Mr. Campbell, to approve USE2018 0016 with the change in condition number four in the packet removing the word "approval" and inserting the words suggested by Mr. Palmer (the Community Development Department must review the application to ensure that the common facilities such as parking and pedestrian ways and landscaping and vegetation are properly maintained), with the added condition that the applicant be implored to work with the neighboring development to potentially put in a flat roof instead of a gable and that the maximum height of the structure be 113.5 feet, and to be willing to work with Mr. Kemp to lower the height as much as possible.*

Roll Call Vote:

Yeas: Greene, Hickok, Miller, Campbell, Dye,

Nays: Frisby

The motion passes.

Mr. Miller stated that he lives in the area under consideration for item AME2018 0013, but that he feels that he can be impartial.

Neither the Commission nor the public voiced any objection to Mr. Miller remaining on the panel.

AME2018 0013: A rezone of five acres of land from Industrial to Light Commercial
Applicant: Sherwood Lane Development LLC
Location: Sherwood Lane

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and **DENY** the proposed rezone request to change five acres from Industrial to Light Commercial, located at 2500 Sherwood Lane.

Ms. Camery told the Commission this rezone request is for five acres currently zoned industrial located at 2500 Sherwood Lane off Glacier Highway. The Comprehensive Plan land designation for this property is Heavy Industrial, she said. The existing use of the land is a contractor storage yard, she said. This is the site of a former asphalt plant which is no longer permitted, said Ms. Camery.

Land must be at least two acres for a rezone, said Ms. Camery. A rezone should only be approved upon a finding that the land is in substantial conformance with the zoning district and the uses allowed are in substantial conformance with the land use maps of the Comprehensive Plan, she said. The Comprehensive Plan is a guiding document, and failure of the proposal to conform to one particular policy does not mean that it is automatically inappropriate, said Ms. Camery. The Commission does have some discretion to change some findings on conformance with policies as well as land use maps, she said.

Light Commercial zoned land can be next to existing residential areas, said Ms. Camery. There are more height and setback requirements for Light Commercial zoned land, she said. Thirty residential units per acre are allowed on Light Commercial zoned land, she added.

If the Commission makes findings that rezoning to Light Commercial is in substantial conformance with the maps and policies of the Comprehensive Plan, staff recommends that additional properties be evaluated as well. Staff would contact the property owners and public notice, a staff analysis, and a Commission hearing would be required.

Ms. Camery told the Commission that Industrial zoned land carries higher impacts, while a Light Commercial zoned property is usually adjacent to existing residential areas. The applicant has identified that the rezone to Light Commercial could be a useful buffer between Industrial and adjacent residential areas, she said.

There are policies in the Comprehensive Plan that support both the importance of Industrial zoned land, as well as policies supporting the need for residential and commercial areas, said Ms. Camery.

Capital City Fire and Rescue sent letters to the CBJ objecting to the rezone request, since the fire-training center is near this property. It felt that an area with a Light Commercial designation could compromise their training procedures, said Ms. Camery. The fire training center is zoned Industrial, she noted.

The Alaska Department of Environmental Conservation did not foresee any restrictions on the fire training center should the land be rezoned to Light Commercial, said Ms. Camery.

CDD held a neighborhood meeting about the rezone request and no one attended, said Ms. Camery.

The Industrial zone's primary distinction from Light Commercial zoned land is that it does not allow residential uses except for a caretaker unit, said Ms. Camery. Industrial uses often produce fumes and odors which negatively affect residential areas, she said.

Commission Comments and Questions
Mr. Dye asked if Ms. Camery was suggesting that if the Commission found this rezone to Light Commercial to be appropriate, if she was suggesting the rezone be stalled until the staff put together a larger block of land zoned Light Commercial with surrounding property owners.

Ms. Camery said that is what the staff recommends.

Mr. Miller said he did not understand what would be gained by looking at adjacent properties to rezone to Light Commercial. He said this property already acts as a well-placed buffer, and he does not see how rezoning other properties could be more beneficial. Mr. Miller said he does not see why holding up this application would be necessary when this parcel already does the job of acting as a buffer.

Mr. Dye asked if there had been any thought to rezone the property to General Commercial putting it in more alignment with industrial zones.

Ms. Camery said that staff did not evaluate General Commercial as an option, because the number of allowed residential units is higher in a General Commercial zone and could further exacerbate the activities at the fire training center, said Ms. Camery.

Ms. Maclean said the staff is considering bringing in adjacent properties because there are currently legally nonconforming structures on those properties, she said, extending to Glacier Highway.

Mr. Frisby asked why the staff is looking for a way to expand the buffer from the existing rezone request.

Mr. Voelckers said the staff recommends denial of the rezone, but that if the Commission wants to approve the rezone the staff recommends that a few other nonconforming uses be cleaned up.

Applicant
Applicant Jesse Pollard told the Commission that the Light Commercial zone would keep a buffer between Industrial zoned land and residential areas. He said since there is a salmon spawning stream on the property, they would only be using about half of the land for development. He said they had tried to utilize their land as Industrial, but that there was no interest. Their land is no closer to the fire training center than the highway, the doctor's office or the vet clinic, he said.

Mr. Voelckers asked if the additional vehicular traffic generated by the Light Commercial property would have a negative impact on the fire training center.

MOTION: *by Mr. Miller, to move AME2018 0013 to the Assembly and approve the rezone from Industrial to Light Commercial.*

In support of his motion, Mr. Miller said the distance of this property from the fire training center is no less than other properties that are not zoned Industrial, and that the chance of complaints is minimal compared to other adjacent neighbors. He said he thinks this property is in a perfect location to act as a buffer between the Industrial and residential areas. Mr. Miller said he would not want to hold up an applicant to try to get a few other properties rezoned at the same time. He said he also wanted to note that while there are some noxious odors coming from the fire training center, that it is not onerous.

Mr. Voelckers asked if the Commission were to approve the rezone if it would be exceeding its power by being out of alignment with the Comprehensive Plan.

Mr. Dye asked if the rezone would require a Comprehensive Plan land map designation amendment to reflect the change.

Mr. Palmer said to justify the motion of Mr. Miller, the Commission would need to provide findings to justify why the Light Commercial designation conforms to the Heavy Industrial designation on the land use map.

Mr. Voelckers asked if they could have a parallel Comprehensive Plan amendment.

Mr. Palmer said that could be an option, but due to timing issues it would not be something that could be settled this evening.

Mr. Miller said he did not necessarily agree with the statements that the Comprehensive Plan had to be amended. He said they have been taught that the borders on the Comprehensive Plan are "fuzzy lines" that are not perfectly drawn per lot. He said this is a perfect example, that if the line had been accurately drawn, that it would have been Mixed Use Residential on one side of the road and the other side of the road would have been Industrial.

Mr. Miller said when the Comprehensive Plan land use maps were drawn up ten years ago or so, that the individual parcels of land were not scrutinized this closely.

Mr. Voelckers said in this case they are changing a zone, not moving a line between properties. He said there have been similar cases where the Comprehensive Plan itself was deemed to be incorrect.

Mr. Palmer said he agreed with Mr. Voelcker's statement. If the Commission determines that the Industrial zone does not substantially conform to the Heavy Industrial district then the Comprehensive Plan amendment would need to be done first, and then do the subsequent rezone, he said.

In answer to a question of Mr. Voelckers, Mr. Palmer said it could not be done this evening, as the Comprehensive Plan amendment is a completely separate process.

Mr. Voelckers said this is not an easy issue, but like Mr. Miller, he was impressed by the graphic that illustrated the physical distance of this property from the fire training center. He added he does think this is more than a trivial line adjustment, that this item should be tabled until they can perform a Comprehensive Plan amendment.

Mr. Campbell said he supports the motion of Mr. Miller. He said he does appreciate the value of the work that goes on at the fire training center, but that he hates to deny an application based upon a hypothetical situation. He said he is familiar with the property and the path taken by the stream. That area will have no development, he said. He said he appreciates the concern of the fire training center, but that future development could be addressed that time.

Mr. Dye said he found this rezone request to be very straightforward. A buffer in the form of the rezone makes perfect sense, said Mr. Dye, especially when considering the anadromous stream. He said he does not think the argument posed by the fire training center is extraordinary enough to prevent the rezone. He asked if the applicant was made aware that a Comprehensive Plan amendment would be needed for the rezone.

Mr. Voelckers said there appears to be the consensus on the part of the Planning Commission that a rezone of the property to Light Commercial would be favorable. He said he wanted to be careful that the Commission did something that was procedurally sound.

Mr. Miller said on page 200 of the staff report it states that it must be in substantial conformance with the land use maps of the Comprehensive Plan and that this means the proposed zoning district needs to substantially conform to the land use land use designation which is Heavy Industrial. This means the proposed zoning district may deviate slightly from the Comprehensive Plan land use map designation but must be materially the same.

This zoning request is materially the same as the portion of the zone it is near. They are on the same side of Sherwood Lane as this property, and it would act as a buffer to neighboring residential zones, said Mr. Miller. Mr. Miller said when viewing the actual land and what is on the ground, that the property does substantially conform.

Mr. Voelckers asked the staff how long it would take to come up with a Comprehensive Plan land use map change.

Ms. Maclean said she felt it is important to keep in mind not just what is on the ground today, but what it will be like in 20 years. Light Commercial zoning could provide a good buffer, she said, if it conforms to the Comprehensive Plan land use designations, but substantially conforming to what is on the ground today may look very different in 20 years, she said.

Ms. Maclean said she felt the staff could come back to the Commission with a companion Comprehensive land use amendment in four weeks.

Mr. Dye asked if the applicant was aware that the Comprehensive Plan would need to be amended for the rezone.

Ms. Camery said this was not discussed with the applicant.

Mr. Voelckers said this is not something that the staff would discuss typically with an applicant. He said he felt there has been concern in the past about spot Comprehensive Plan land use amendments.

Mr. Dye said the land as it is zoned Industrial could be divided up into numerous lots, each with its own allowable caretaker residence, which would indeed be in substantial conformance with Light Commercial zoning.

Mr. Campbell asked if there is a legal definition of “substantial conformance”.

Mr. Palmer said the staff report provides most of the context for “substantial conformance”. It is also available on pages 249, 252 and 253.

Mr. Campbell noted that referring to the table on page 215, that 10 out of 16 cases have similar uses for the zones. He said to him that is a pretty good argument that they are in substantial conformance.

Mr. Miller said that the comment of Mr. Dye is true. There could be 40 lots, each with a caretaker's unit. The Table of Permissible Uses also provides a good example, he said.

Mr. Hickok said he supports the rezone.

Mr. Greene said it made sense to him to rezone the property.

Roll Call Vote:

Yeas: Miller, Greene, Dye, Frisby, Campbell

Nays: Voelckers

The motion passes.

Mr. Campbell called for notice of reconsideration of item USE2018 0016.

This Conditional Use Permit case will come before the Commission at its next public meeting for a vote regarding whether or not to reconsider.

IX. BOARD OF ADJUSTMENT - None

X. OTHER BUSINESS - None

XI. STAFF REPORTS

A. Director's Report: FY 2020-2025 Capital Improvement Program

Mr. Felstead told the Commission that the Capital Improvement Program will be before the Commission at its next regular meeting on November 13, 2018, when the Director of Engineering and Public Works will be present to answer questions. The staff has also produced a summary of potential CIP projects in plans that have either been adopted into the land use code, or relate to past priority policies identified by the Planning Commission. These include the Housing Action Plan, the Climate Action Implementation Plan and the Renewable Energy Strategy, said Mr. Felstead.

Mr. Dye asked if there is a reason the CDD does not make its own recommendation for the CIP.

Ms. MacLean said this is how it has been done in the past, and due to timing, there will be no changes in the procedure for this CIP. She said this is something they can work on in the future, if this is of interest to the Commission.

Mr. Voelckers said a small subcommittee could draft a letter of recommendation for the CIP from the Planning Commission as it did last year. Subcommittee members will be named at a later date.

XII. COMMITTEE REPORTS

Mr. Dye said the appeal for which he is the presiding officer is moving forward by a joint stipulation of the parties.

The Auke Bay Steering Committee meets November 6, 2018.

XIII. LIAISON REPORTS

Assembly Liaison to the Planning Commission Wade Bryson said the Assembly has been discussing the Alternative Residential Subdivision ordinance.

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XVI. EXECUTIVE SESSION - None

XVII. ADJOURNMENT

The meeting was adjourned at 10:45 p.m.