

**Planning Commission**  
**REGULAR MEETING**  
CITY AND BOROUGH OF JUNEAU  
*Ben Haight, Chairman*  
November 30, 2016

**I. ROLL CALL**

Ben Haight, 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 7:01 p.m.

**Commissioners present:** Ben Haight, Chairman; Paul Voelckers, Vice-Chair; Bill Peters, Clerk; Percy Frisby; Matthew Bell; Michael Levine, Vice-Clerk; Nathaniel Dye

**Commissioners absent:** Carl Greene, Kirsten Shelton-Walker

**Staff present:** Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Jonathan Lange, Planner II; Eric Feldt, Planner II; Robert Palmer, Assistant Municipal Attorney

**Assembly Members:** Jerry Nankervis

**II. APPROVAL OF MINUTES - None**

**III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None**

**IV. PLANNING COMMISSION LIAISON REPORT**

Mr. Nankervis attended the meeting in place of Assembly liaison Debbie White.

Mr. Nankervis said the Assembly made a motion to adopt the Housing Action Plan at their November 28, 2016 meeting via a resolution and not an ordinance, which means that it would not be included into the Comprehensive Plan. This will come back before the Assembly at their next meeting.

The Assembly authorized the City Manager to negotiate a sale to the Juneau Housing Trust for one of lots in the Renninger Subdivision. They also passed an ordinance authorizing the Manage to negotiate a sale of the Second Street and Franklin lot to Eagle Rock Ventures, for workforce housing.

There is an Assembly retreat on Saturday, December 3, beginning at 8 am. This is an open meeting and the public is invited to attend. There is a meeting planned with the Planning Commission and the Committee of the Whole on January 30, 2017, after the new members are seated.

Mr. Levine asked why the motion for the Juneau Housing Plan was by resolution. Mr. Nankervis said Ms. Becker made the motion, and there were a number of concerns about particular items that were in the

Plan that, if they went into the Comprehensive Plan, would be policy. This caused hesitation, he said, for some people.

**V. RECONSIDERATION OF THE FOLLOWING ITEMS - None**

**VI. CONSENT AGENDA**

- A. USE2016 0029:** A Conditional Use Permit request for a new outdoor seasonal restaurant in a landslide and avalanche zone  
**Applicant:** James Bibb  
**Location:** 406 South Franklin Street

**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 outdoor restaurant uses within a mapped landslide hazard zone.

**MOTION:** *by Mr. Peters to move Item A on the Consent Agenda to Item D on the regular agenda, given the relationship between the consent agenda item and the board of adjustment item.*

***The motion was approved with no objection.***

**VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None**

**VIII. UNFINISHED BUSINESS - None**

**IX. REGULAR AGENDA**

- A. CSP2016 0011:** A City Project Review of the Downtown Street Improvements Project  
**Applicant:** City and Borough of Juneau  
**Location:** Downtown Juneau

**Staff Recommendation**

Staff recommends that the Planning Commission recommend to the Assembly that CSP2016 0011, a City Project Review of the Downtown Street Improvements Project, which is consistent with the 2013 Comprehensive Plan, Title 49, and other CBJ plans, be approved with the following amendments:

1. Installation of pedestrian-scale lighting having a maximum height of 15';
2. Pedestrian-scale lighting will be a "full cut-off" design;
3. Pedestrian-scale lighting will be LED or other highly efficient light;
4. Pedestrian-scale lighting posts will accommodate hanging baskets and/or banners;
5. Provide covered bicycle parking through the project area.

Mr. Haight stepped down from this item as he is involved with the project. Mr. Voelkers took over the discussion. Mr. Dye put on the record that his wife has done work on this project, facilitating public

outreach. He has talked to the city and believes there is not a conflict. Mr. Voelckers asked if any Commissioners had a problem with Mr. Dye's involvement with the item, but there was no objection.

Jonathan Lange presented a PowerPoint of the item, a city project review of what has been called the Front and Franklin project. This includes improvements to the streetscape, sidewalks, curbs, gutters and travel way in the downtown core. Also proposed are improvements to lighting and to street amenities like benches and planters. The CBJ Engineering Department has organized the project into three phases, with construction to begin in 2017. Streets included are sections of Franklin Street, the entire length of Front Street, Admiral Way, Ferry Way, Municipal Way and Shattuck Way, and the southern part of Seward Street as well as a portion of First Street.

The public has been involved with the project for quite some time. There have been four neighborhood meetings, the first in April of 2015. It was an informational item to the Planning Commission at a prior meeting, in the form of a Director's update. The community has made comments. The Engineering Department has really reached out to the business owners and community members in the downtown core and involved them in the process. There has been a website on Juneau.org to supply information and to receive comments.

#### *Commission Comments and Questions*

Mr. Levine said he was confused where the Planning Commission is in the process. Where did the conditions come from? What exactly it is that they are supposed to be approving? He said he read the documents and did not see any specificity about what is going to happen. Is Michele going to add more specifics as those would be helpful to him, he said. Are we approving all three phases or just the first phase?

Mr. Lange said the recommendation would be for approval of all three phases. This is a city project review, so the Commission is reviewing the project to conformity with these plans in order to make a recommendation to the Assembly. The conditions came from staff and are standard recommendations staff has used in the past for CSP review on street improvement projects. The covered bicycle parking area recommendation follows along with the consistency of the Non-Motorized Transportation Plan.

Mr. Dye asked for clarification about if these are recommendations or conditions. Mr. Lange responded that these are recommendations to the Assembly for the project.

Mr. Voelckers said these are marked as 65% complete plans, so the department is at the two-thirds point. He thinks several of the commissioners have questions about if they are approving a completed set of documents or giving direction to a plan that continues to evolve. Perhaps when Ms. Elfers presents, some of these questions will be answered.

#### *CBJ Engineering Department Presentation*

Michele Elfers of the CBJ Engineering Department followed with a PowerPoint presentation which, she said, would provide more detail and specificity.

She said the project started with a group of community members who came to the Assembly asking for the project to be done. In response, the Assembly appropriated \$100,000 to start a planning process. Since then the community has been integral to the process of visioning and development. All of the

information about these meetings and their results is on the website in great detail. With all of the feedback, the Engineering Department developed a final recommendation report.

At this stage, the project area scheduled to begin work in the spring of 2017 is at 100% project design, but the rest of the project area is still at 35% schematic design.

In 2016, they went into budget process and requested money to further the Phase I project design and construction, which was received in July, 2016. There was a fourth community meeting in September, 2016. They showed 65% design drawings to the community and received feedback which led to 100% design. Phase I of the project went to bid and was awarded to Arete Construction.

Mr. Voelckers asked if they would expect to see the same detailing in Phase II and III as they would see and approve now at the Phase I level, i.e. same curb cuts, lighting, so that there would be a visual consistency.

Yes, that is the plan, said Ms. Elfers, especially in lighting. She then continued to provide details of the proposed design and features of the project.

One thing to note, she said, was as they move through design development they are looking at possibly changing Phase II to be Front Street and Ferry Way because of phasing and vehicular movements it may make more sense.

Funding sources for Phase I are a combination of marine passenger fees, area-wide sales tax and a small amount of water funding. Future phases are not funded at present, and they will have to go through the budget cycle two more times for each phase of the project.

The contractor plans on starting construction in February, 2017, weather dependent with completion in June 2017. If the project is funded for Phase II and III, the project schedule will look very similar to Phase I. There will also be public meetings in the fall for each of the future phases.

The contractor will be allowed to complete one side of the street at a time. They are also required to complete the project by blocks and to provide pedestrian ramps. There are quite a few requirements on providing access to businesses and residences during construction.

They have planned an intensive communication and outreach program during the course of the project. They will keep the project website updated, will have weekly face-to-face check ins for locals to learn what happening and to ask questions or share concerns. Also staff is always available via email and phone. The project manager is Lori Sowa with the support of Ms. Elfers.

#### *Commission Comments and Questions*

Mr. Voelckers asked for more specifics about lighting as he believed the design hits the majority of the conditions that were in the CDD planning report. Ms. Elfers reviewed the list and determined that all the lighting recommendations were addressed already in the design.

What about bicycles asked Mr. Voelckers? Are these addressed in the current construction documents? Ms. Elfers explained that they worked with the Juneau Riders Group, who provided them with a map of

recommended bike parking locations which they are using in their planning process. There is a location under the canopy along the Marine View Building that is a CBJ right-of-way that they hope to use but they don't at this point have other plans for location, simply because they have not gotten into design development although it is understood through public process that this is desirable. However, they need to be careful about having unintended consequences as a result of covered areas.

Mr. Frisby asks if staff recommends approval of all three phases. Yes that is correct, said Mr. Lange. Do we normally follow that process to approve if a project is not fully designed? Ms. Elfers said it is common practice to come for approval at 35 to 65% design.

Mr. Frisby asked if funding for Phases II and III was yet to be identified. That is correct, said Ms. Elfers. They anticipate requesting a similar combination of funds of marine passenger fees and area-wide sales tax.

Mr. Levine asked if the conditions, with the exception of the bicycle parking one, are already specified in Engineering's plan. Would it be redundant to have the Planning Commission add them to their recommendation? Yes, having consistent lighting has been a goal of the project from the beginning, said Ms. Elfers.

Mr. Voelckers asked about the conversation regarding permanent benches in front of drugstore in the Valentine Building. How did that resolve in the 100% documents? Ms. Elfers said that Phase I doesn't include that area. This topic of benches has been an on-going topic and needs to be discussed in further public meetings.

Mr. Voelckers invited members of the public to comment. There was no response.

**MOTION:** *by Mr. Peters, to approve CSP2016 0011 accepting the staff's analysis and findings and adopt it with the recommendations from staff.*

Mr. Levine said he supports the motion. He is glad for all the public process that went into the project and looks forward to the three phases coming to completion.

***The motion passed with unanimous support.***

**B. USE2016 0026:** A Conditional Use Permit for Marijuana retail use along Front Street in downtown Juneau

**Applicant:** Fireweed Factory LLC

**Location:** 237 Front Street

**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 business in downtown Juneau. The approval is subject to the following conditions:

1. Prior to issuing Certificate of Occupancy, the applicant shall submit to CDD a state of Alaska license that permits the use of marijuana retail at the subject site that matches subject plans and operations described in the subject Conditional Use permit.
2. The applicant shall ensure that no obstruction onto a public right-of-way is created by the business.
3. Prior to issuance of a building permit, the applicant shall submit detailed drawings of the proposed door to ensure retention of the building's historic integrity.

Eric Feldt made a presentation to the commission on the project, summarizing the project. His presentation included information about the new Title 49 Land Use Marijuana Conditional Use permit items 49.65.1245(a). This is new to many of the commissioners as well as the general public and business owners, he said.

Mr. Feldt clarified the permits and licenses required for marijuana businesses. They must get an issued license from the state; the applicant must obtain an approved Conditional Use Permit and then a city license. In order for any type of marijuana facility to operate they must have all three of these in place.

CBJ 49.65.1250 discusses the permissible hours of operation for a marijuana facility. Mr. Feldt explained that marijuana may be retailed between 8:01 am and 12:50 am, Monday through Sunday however the applicant at present plans to have the shop open 10 am to 7 pm, with the flexibility to be open additional hours for special events. Mr. Feldt pointed out that his report determines that there would not be detriment to neighborhood public safety or property values if the applicant's hours of operation were extended to what is allowed under code. If the Planning Commission finds that the permit shall be approved, they will be approving the project's hours of operation to what is allowable in code.

Another new aspect of a marijuana facility is the required signage for inside the establishment, CBJ 49.65.1255. These signs relate to health, minimum consumption age and transportation restrictions. They are also required to post the municipal marijuana establishment license.

CBJ 49.65.1260 is another new piece of code which requires them to utilize a system prohibiting detection of noxious odors from outside the licensed premises. Mr. Feldt's PowerPoint explained how the applicant plans to conform to this requirement.

Mr. Feldt reviewed his analysis of the adopted CBJ plans as relates to this permit. He noted that the Comprehensive Plan has not yet been updated to address marijuana businesses, but there are some policies relating to the diverse economy, entrepreneurship, noise levels and so forth that do apply to a Conditional Use permit for a new business in the downtown area, which he addressed in his staff report and summarized in his PowerPoint. Under staff's finding, he concluded that the proposal does conform to adopted plans and it will not decrease property value or neighborhood harmony. The proposed business will be located in a mixed-use zoning district which is appropriate, and there are many restrictions on the state and city levels that limit the marijuana business as a whole and these restrictions are greater than other food and beverage businesses.

Staff also finds that there is no decrease to health and safety. Staff received comments from the public opposing the project. There is concern that the project could increase levels of inebriation and crime given that the facility is to be located in an area of homelessness and a vulnerable population. It is also close to children-oriented businesses, which is also of concern to those opposing the project. The

comments suggest that neighborhood harmony could be upset by adding more adult-oriented businesses on Front Street. However staff finds that these issues will not be increased by the approval of the permit.

Mr. Feldt reviewed the recommended conditions and added his comments. Regarding the first condition, the applicant has submitted his application to the state, and it is under review. The second condition insures that obstruction will not be occurring on the public right-of-way. Last week the first marijuana retail business opened up and there were long lines on the sidewalk, so this condition will address that element. The third condition insures that the new door to the facility will be consistent with historic design guidelines.

#### *Commission Comments and Questions*

Mr. Voelckers asked about intent regarding the second condition. Is the intent that pedestrians don't build up on the sidewalk or is it a physical impediment built into the sidewalk? Mr. Feldt replied that it is mainly an issue of pedestrians lining up to enter the building. There will be a controlled access into the facility and the square footage of the business is very small. Therefore, the condition states that shoppers waiting to enter the building cannot block entrances of adjacent buildings, parking spaces or the road nor can they impact travel on the sidewalk.

Mr. Voelckers asked if there is a similar condition for other businesses like the movie theatre. It seems to him a bit of a slippery slope to say one use only cannot block a sidewalk. Mr. Feldt said he was not sure but that staff can research the question. Mr. Voelckers asked if we have used this type of limitation on other businesses lately. Ms. McKibben recalled some years ago when a new coffee window opened onto the street and there were issues with people queuing up for a coffee and blocking people walking on the sidewalk. This had to be addressed through enforcement.

Mr. Levine asked what authority the applicant will have to move people off the sidewalk. Mr. Feldt said the applicant is responsible for their customers. The city's zoning and compliance officer can enforce this condition through complaints, but that is reactive not proactive. It is hard to pinpoint exactly how this will be done, but the condition gives our department leeway for enforcement in case obstructions do occur. Ms. McKibben said as an alternative, this could be an advisory condition to keep the applicant on notice that they need to try to keep the sidewalk from being blocked by their customers.

Mr. Levine said that the location of the project is not connected to city water. In light of the street reconstruction project plans, which will not address Front Street until Phase II provided there is funding, he wonders if there is a requirement for this type of business that there be running water for facility. Mr. Feldt said staff can give a better response after consultation with the building department.

Mr. Dye asked a question regarding the third condition. Changing the exterior of a building in the historic district means that they have to go through Historic Resources Advisory Committee, correct? Yes, said Mr. Feldt. So the applicant will need to make the door consistent with historic guidelines whether or not that condition is part of the Conditional Use permit? Yes, said Mr. Feldt.

*Mr. Paul V. Disdier, applicant for the permit and manager of Fireweed Factory LLC came forward to answer questions.*

Regarding the water question, he said that they are required by law to have a bathroom facility with hot water. The city has asked them to make sure they have a Department of Environmental Conservation (DEC) permit to use an incinerator toilet and a portable hand washing device, similar to those used by the food carts around town. DEC classifies this location as a convenience store because they are planning to bring all the product pre-packaged for sale on the site. There will be no handling of any product other than what is in a childproof, opaque, labeled package. Though it is legal in Alaska to have jars of marijuana sitting on the counter, this particular location is such that with if the door is opened, all of the products in the interior would be visible to someone walking by. This does not work in the applicant's situation, hence the decision to keep prepackaged items only in the store. DEC has no objection with incinerator toilets and hand washing devices. There is an internal water heater, and the store employees will bring water every day to the site from their cultivation facility out by airport. Grey water will be taken back to that facility and entered into the CBJ sewer system. The city has agreed to let them use this system as long as they have DEC approval, which they have. They have already received a food handlers' permit, which is required by the State Marijuana Control Board in order to have a marijuana retail store.

Mr. Levine asked if it is the applicant's intent to connect to city water if becomes available? Yes, said Mr. Disdier. They would love to have running water and a bathroom as soon as this is possible. However it is his understanding that it is the city's responsibility to bring the water line to the property line. When the city is ready to do that, they are ready to hook up.

Mr. Voelckers asked given the store's tiny frontage, does the required signage fit? Mr. Disdier replied that the signage required by the city is not that large; it could fit on a door. Mr. Feldt clarified that the signage required by the city must be posted inside the establishment. Outside signage desired by the applicant has to meet city requirements for historic district signage.

Mr. Levine said he understands the concerns that led to Condition 2. What does the applicant think they will do meet this condition? Mr. Disdier said they have given a lot of thought to this, especially as they are likely to only be allowed to have about 10 people inside the building at one time. Legal retail marijuana is new thing in Alaska and so the long lines that occurred at the first opening are likely to mellow out by time they open their store. However should it occur at their opening, they intend to have an employee outside, managing the crowd in a non-abrasive manner telling people to not block entry doors and to keep folks in a line. In the summertime if this were to occur, they plan to deal with it in the same way.

#### *Public Testimony*

Mike Adams, owner of the old Red Dog building next to the Alaskan Hotel, asked if the bathroom will be ADA compliant. Or does it need to be? Mr. Haight said the applicant will reply to the question after public testimony is finished.

Kenneth Solomon Gross, owner of Gross Alaska Theater across the street from the proposed establishment, wanted to know more about the hours of operation. Is the applicant only going to be open from 10 to 7, or until 1:00 in the morning? Mr. Feldt said they plan to keep open to 7 pm but they want the flexibility to keep open longer for special events. Staff recommended approval of the hours permissible by the state so that the applicant will not need to come back before the Planning Commission should they discover different hours would work better for their business. Mr. Gross asked

if they will be open as late as 1:00 in the morning. Mr. Feldt reiterated that they must be closed between 1:00 am and 8:00 am. Mr. Gross asked what would constitute a special event. Mr. Feldt deferred the question to the applicant.

Mr. Frisby asked if the applicant will need to come back to the commission and amend the permit if he wants to stay open beyond 7 pm. No, said Mr. Feldt, these are just example hours.

Mr. Bell asked why Mr. Gross is concerned about the hours of operation. Mr. Gross said because his business attracts families and kids. He is concerned that parents might be concerned if people are buying marijuana across street when their children are in line for the movies. Mr. Dye asked if this is also a concern for the bars in that area. Absolutely, said Mr. Gross. This has been an ongoing concern for the last 120 years. So this is just one more concern added onto their plate.

Fred Wiley, owner of the Ben Franklin Store, said that his business strives to be a family oriented store. His concern is similar to that of Mr. Gross. He is concerned about children seeing and asking questions about the activity at this store. He asked what happens next after tonight. Is this it if the permit is approved? Mr. Feldt explained that if approval is given tonight, the application will not be required to come back to a public hearing. Next the applicant will file a building permit, start construction and inspections will be done by CBJ inspectors and by CBJ planners to make sure of compliance with building and permitting requirements. At some point the State will issue their license. When construction is finished, the applicant will gain a Certificate of Occupancy from the city. Then the city will issue a business license and the store will be free to open and sell their product. Mr. Wiley asked if there will be any more opportunity for public input. This is the public hearing here, said Mr. Haight.

Mr. Dye said he believes there may be an opportunity for public input through state license process.

Mr. Levine asked if other adult businesses like bars have had a negative impact on Mr. Wiley's place of business. Mr. Wiley says this is a new venture while those other businesses preceded his. He asked if the city has a cap on these types of businesses in one area. His opinion is that somebody in the city should come up with a good idea of how many businesses there should be.

Mr. Wiley asked about windows in the historic district. Will there just be a plain opaque front? Also, it bothers him that if it does go through there is a 5-year permit, is that correct? Mr. Feldt clarified that every 5 years of an approved marijuana facility, the project has to come back before the commission to ensure that everything is in place that meets all applicable regulations. Another timing trigger is the city license. This has an active period of one year. Applicants must file for a new license each year; this is brand new to development in Juneau. There are required inspections for renewal. Mr. Wiley asked if this permit before the commission is the 5-year one. Mr. Feldt responded that the permit does not expire, but the 5-year timing trigger is to insure that everything is in place. If they are not, if conditions are outstanding, the city will coordinate with the applicant to bring those issues into satisfactory condition.

Mr. Wiley asked if this business is sold and purchased by another entity and retains the same time of business, can this go on and on? Mr. Feldt said once the Conditional Use permit is approved, there is no expiration date. However if the use of the building changes, for example if it changes to a restaurant, then the marijuana CUP is no longer active at that site. If in the future a different business entity wants

to acquire the building and establish a marijuana retail business, they need to obtain their own CUP for that endeavor.

Mr. Wiley wondered how many people will be on the sidewalk. He is concerned that the customer line will come his way, as his store is right next to the marijuana shop. He asked about his liability if someone gets pushed and goes through his window, if things get out of hand.

Mr. Dye asked for clarification about the 5-year mark, will there be another public hearing to assess if any new conditions need to be put in place? Also is he correct in understanding that the Conditional Use permit is severed from the land and tied to the applicant and someone else could not move in and start a marijuana business without starting all over? Staff confirmed that both of these are correct.

Mr. Wiley suggested that the 5-year mark is too long, since this is such a new area. Ms. McKibben said this could be address through the annual inspection that is required for the renewal of the marijuana business license.

Mike Wiley, one of the owners of Ben Franklin, came forward to speak. He said he thinks this has gone on so fast, there has to be real thought about how the city moves forward with this. In the main part of downtown where there are the most problems with alcoholics, drug addicts, homeless he gets fed up. This contributes to the situation we are trying to remedy with street improvements and so forth. This is just like another bar. He said it is heartbreaking to see how things have gone downhill. Another thing of concern is the amount of space on the frontage of this particular establishment. He is not willing to have people line up in front of his windows, which are 90% of his advertising. What kind of precedent are we setting for tourists if we have eight different marijuana dispensaries all around town? He does not agree with this particular location and thinks a lot of thought needs to be put into each location. He asked why there are no retail spots in the Valley.

Tracy LeBarge, business owner downtown, spoke in support of Fireweed Factory. She said she understands the fears of what might happen. She thinks the opening of Rainforest Farms went well. People in this industry are serious about it not getting out of control, she said. Fireweed has done a good job getting through the rigorous process.

Mr. Disdier stepped forward to answer more questions. Concerning the ADA requirements, they had a pre-application meeting with city officials, which is required for a CUP. He learned that if a building requires so much renovation in order to put an ADA bathroom in, it is not required. The building has been there since 1899 and has been a retail outlet for most of those years. It would be impractical to install an ADA bathroom given the size and age of the building, so it is not required. There will only be two employees regularly on site, and it is not a public bathroom. That was the conclusion from the pre-application meeting.

Mr. Haight asked for clarification of the hours of operation. Mr. Disdier said the hours would only change for special events such as First Friday or Gallery Walk at Christmas time when they might go until 9:00 at night when things wind down. Since the city allows them to operate until 1:00 in morning, he does not think they would need a condition for that sort of operation.

As to the number of people allowed to be in the store, Mr. Disdier said it is yet to be determined. It is their intention to limit the numbers so as to avoid confusion inside and to avoid any security issues. Mr. Voelckers asked if the fire department will make this determination of safe carrying load. Mr. Steedle said yes, the fire marshal will do so.

Mr. Voelckers asked what the sidewalk width is and will it increase with the reconstruction. Mr. Steedle said there is no plan to widen the sidewalk on Front Street.

Mr. Disdier said they have received a state license for the facility already. What they need now is approval of the Conditional Use permit and the building permit from the CBJ.

*Commission discussion:*

Mr. Voelckers moved the motion USE2016 0026 and proposed a modification to Recommendation 2. He is concerned it would be tricky to enforce with an absolute statement about no obstructions. He proposes language to consider, "The applicant is encouraged to take steps to minimize pedestrian conflicts in the public right-of-way, created by the business."

Mr. Voelckers said the applicant has shown intent to address this concern, therefore phrasing it as a strong aspirational intent is the best way to go since the applicant does not have legal control of what happens on the sidewalk.

Mr. Dye suggested a friendly amendment to make this an advisory condition.

Mr. Levine concurred with Mr. Voelckers but thinks there needs to be some tweaking to the end of the condition so that it is clear that it is the obstruction caused by the business, not the right-of-way created by the business: "The applicant is encouraged to take steps to insure that no obstruction is caused by the business onto a public right of way."

Mr. Haight asked if this is taken as a friendly amendment. Yes, that's sounds great, said Mr. Voelckers. And it is an advisory amendment? Correct, Mr. Voelckers said.

Mr. Dye makes a friendly amendment to strike Condition 3 since it is already in play anyway.

Mr. Voelckers accepted the amendment.

Mr. Levine said he has come to the conclusion, after Mr. Disdier's testimony, that if DEC is satisfied with the incinerator toilet and the hot water being carted back and forth, then the Planning Commission doesn't need to add a condition that the applicant connect to city water. He asked if everyone was okay with that before that passed.

Mr. Haight noted there was consensus.

Mr. Peter spoke in favor of the motion. He said he sat on the marijuana commission and, while he empathized with some of the concerns raised at this hearing, he felt the business discussion was missed at that time. When the marijuana commission was meeting and talking about regulations, that was the time to bring these concerns forward. Another opportunity was when the Planning Commission brought

to the forefront the regulation and the ordinance that went to the Assembly, which was another opportunity for businesses to get involved and speak to that. He agreed with Ms. LeBarge; many cannabis owners participated in those discussions and have been in front of the Commission, striving hard to be productive business clients within the community. The fact of the matter is 52% of Alaskans voted to pass marijuana.

**MOTION:** *by Mr. Voelckers, to approve USE2016 0026 accepting the staff's analysis and findings with the striking of condition 3 and the rewrite of condition 2 to read, "The applicant is encouraged to take steps to insure that no obstruction is caused by the business onto a public right of way."*

***The motion passed unanimously via a voice vote.***

- C. AME2016 0018:** A proposed Comprehensive Plan Map Amendment of a vacant lot near the end of St. Ann's Avenue in downtown Douglas from Natural Area Park to Medium Density Residential  
**Applicant:** City and Borough of Juneau  
**Location:** St. Ann's Avenue

Mr. Feldt said the map amendment comes on heels of rezone proposal before the commission recently. The commission concluded the rezone was consistent with the Comprehensive Plan and thereby provided a favorable recommendation to the Assembly to make the change. More recently staff concluded that the existing land use designation was inappropriate enough to the degree that it needed to be changed for general housekeeping purposes and to facilitate the rezone project that the commission took action on a few months prior.

Mr. Feldt summarized from the Comprehensive Plan, page 230. "The Planning Commission may make recommendations to the Assembly to amend the Comprehensive Plan as necessary to reflect changing conditions and needs." This is essentially why we are here today, said Mr. Feldt.

Mr. Feldt presented a PowerPoint with maps of the recommended map change for two lots on St. Ann's Avenue, from Natural Area Park to Medium Density Residential. The Comprehensive Plan land use designation gives direction for future rezone proposals. When such a proposal is presented to the commission, they and staff have to find whether or not the rezone is consistent with the maps of the Comprehensive Plan. What is being done tonight is a little backwards, said Mr. Feldt, because it has already been determined that Natural Area Park is inappropriate for these two lots and a change has to happen. The change that staff is recommending will realign the land use designation with the rezone proposal that the commission took action on.

Staff recommends that the Planning Commission recommend to the Assembly to take the rezone proposal and the Comprehensive Plan land use map change as one package and approve it as such. This is a different approach than has been done in the past.

Mr. Levine asked for clarification that the previous rezone recommendation concerns only one property while the map change concerns two properties. Mr. Feldt said that was correct. The property with the triplex is already zoned D18. However the map change affects the property with the triplex and the vacant property.

Public testimony – none.

**MOTION:** *by Mr. Levine, to approve AME2016 0018 accepting the staff's analysis and findings.*

Mr. Frisby seconded the motion.

***The motion passed with no objection.***

Mr. Haight recessed the body as a Planning Commission and took up business as the Board of Adjustment at 9:15 pm.

**X. BOARD OF ADJUSTMENT**

- A. FZE2016 0001:** A Flood Zone Exception to allow new restaurant buildings to be built on a dock seaward of the man high tide in a Velocity flood zone.

**Applicant:** James Bibb

**Location:** 406 South Franklin Street

**Staff Recommendation**

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Flood Zone Exception, FZE2016-0001.

If the Board of Adjustment makes findings to grant the applicant's project, staff recommends the following conditions:

1. Prior to issuance of a Building permit, the applicant shall submit plans showing how improvements to the deck will be made, consistent with the attached 2016 engineer's letter.
2. Prior to issuance of a building permit the applicant shall submit plans showing that the existing footings on the beach will be improved to withstand forces from a 100-year storm event.
3. Prior to issuance of a Certificate of Temporary Occupancy, the applicant shall make improvements consistent with Conditions 1 & 2.

Mr. Feldt explained that the proposal before the commission is similar to a variance but is not through the land use code. Rather it is a variance of the flood zone regulations.

The reason why the flood zone exception is brought to the commission at this time is that the structures of the previous restaurant on this deck were smaller and substantially different from the new proposed structures. This requires a new flood zone exception to be filed, reviewed and taken action upon.

The focal point of the review was that the proposed buildings are located on an area seaward of mean high tide and the property is in a velocity flood zone, which means that during a 100-year storm event the shoreline would experience either a combination of three-foot tall waves or higher or a wave of lesser height that, when it hits the shoreline, has a high wave run up. There are more stringent building

regulations in such an area to withstand the greater wave force as compared to a building located near a river.

Mr. Feldt presented a PowerPoint of the project and staff's findings. He noted that there were three findings in the flood zone exception of the land use code that were found to be unmet. One of these would be met automatically if the other two were found to be met. There are 11 items to consider under CBJ 49.70.410(b). Staff found items 4 and 5 unmet:

- (4) The importance of the services provided by the proposed facility to the community
- (5) The necessity to the facility of a waterfront location, where applicable

Because of these unmet conditions, staff recommends denial. But if the Board of Adjustment makes findings to grant the applicant's proposal, staff recommends three conditions. Staff reviewed these conditions with the applicant, who in turn had a conversation with their clients, and they found it would be viable to meet conditions 1 and 2.

*Board of Adjustment questions and comments:*

Mr. Voelckers remembers seeing this exemption a few years ago and recollects one of the reasons there was favorable sympathy to the applicant in granting this was because there had not been FEMA loading criteria established yet for how strong a dock had to be to survive a 100-year event. Has this been clarified any more, he asked?

Mr. Feldt said the FEMA regulations were in place in 2014 when the exception was heard. In order for the community to have flood insurance for business owners and property owners, the city has to adopt very specific flood regulations through FEMA to participate in the national flood insurance program. The program is the tool where flood insurance is enabled for the local community. When a mortgage is issued or when a property is involved with a lender, the lender is the mechanism that triggers flood insurance. FEMA regulations that are in CBJ's land use code were established well before 2014. There were different findings to get to the approval of the flood zone exception by the previous Board of Adjustment instead of being explained by FEMA regulations being flexible.

Mr. Voelckers asked if Mr. Feldt could describe how the features being added are treated as a building. Would they remain permanently on the dock? Mr. Feldt said the structures are enclosed areas, but he deferred the question to the applicant.

Mr. Voelckers said he does not understand the logic regarding Criteria 6, which the staff report said had been met in the review. There is a burden on proving that there is not an alternative location for the proposed use which is not subject to flooding or erosion damage. The conclusion in the report is that it is non-applicable because the restaurant is sitting on top of dock, above the high water mark. He said it seems like faulty logic because of the vulnerability of a dock to wave action below. Mr. Feldt said once the fact that the deck will be able to withstand a 100-year storm force, there will likely be some degree of erosion and damage, but structurally the deck will be intact because of the conditions on the permit, if the flood zone exception is approved.

Mr. Levine asked if the intent of the criterion is more narrowly focused. Mr. Feldt said staff's focus was on the improvement seaward of mean high tide. Once structural integrity is established, strong enough to withstand a 100-year storm force, anything on top would not be damaged. Furthermore, the decking and the lowest horizontal members of the deck itself are above the base foot elevation, meaning that if a 100-year storm event were to impact the property it would only surround the piers, the waves would not impact the deck itself.

Mr. Levine asked if the natural extension of this logic would be that they don't need the flood zone exception at all. Mr. Feldt said the origin of the requirement to not build seaward of mean high tide is along more open shore lines and where fill is brought in to raise the starting point of the foundation, which could erode away in a storm event. Juneau's South Franklin development does not have that amount of fill projecting out into the channel. There are piers instead. There are shoreline areas consisting of fill that is decades old and have withstood a lot of storm force.

Mr. Voelckers said there was some narrative about the new 16-B dock adding greater buffering. He wonders if this is considered; does FEMA make this sort of subjective determinations? Mr. Feldt said the second dock will create some buffering. The process to prove to FEMA to change the maps behind the loading dock will have to go through a map amendment. Staff can pursue this with FEMA and work with Docks & Harbors and their engineers, etc. Mr. Voelckers said he doesn't understand how FEMA could allow one to make subjective judgements about whether an area was more or less dangerous. He thought it was just a question of vertical height. Mr. Feldt said they do draw the line which they say that the community has some given flexibility through a flood zone exception, so long as all the findings are met. Certainly you have to build above the base foot elevation, but along a velocity flood zone, it also adds another limitation above and behind the mean high tide line.

Mr. Haight said it seems we have come to a technical review of what we think the velocity condition might present to the site in determining this exception. That is correct, said Mr. Feldt.

Mr. James Bibb of Northwind Architects, the applicant representing his client who is the restaurant owner, came forward to speak along with Kate Nichols of Numan Development, the design consultant on the project specifically the container portion of the project.

Mr. Bibb said that the engineer on the project was not present but can answer questions and follow up as necessary. Mr. Bibb said he wanted to follow up regarding the two unmet criteria on the exception and address these similarly to how they were addressed two years ago when Northwind Architects represented the previous client/restaurant owner and the board ruled in favor. The question is for the community, where does Juneau see the waterfront going? A goal for the city is to become more pedestrian-oriented along the waterfront, as evidenced by the development of the sea walk and the long-range waterfront plan. Therefore, development along that edge is critical to economic success and needs to be done in a manner according to the Comprehensive Plan, building codes, and so forth. This project is a verification of that.

Mr. Bibb shared a handout to commission members that included his bullet points. His points go to the question of why waterfront development is taking place and why that is critical in supporting Juneau's visitation industry. The growth of this industry puts some pressure on us to make sure that amenities along the sea walk, specifically along South Franklin Street, are encouraged.

The reason why this project is critical in this location is because that is the success or failure of businesses. A seafood restaurant marketing local product has to be near the waterfront, that makes sense and the market itself, the private sector, is making that determination. Location is critical for this, said Mr. Bibb.

Regarding number 5, Mr. Bibb said the reason why two years ago they proposed the dock had a lot to do with the operation of the restaurant. There are very few locations with dock waterfront south-facing venues and that character and atmosphere. Also, he said, one would not expect fresh, local seafood to be served internally; the success of that is the ability to go out on deck and have that connection to the waterfront. This is how you market the main asset.

Mr. Bibb pulled up the graphic he had handed out, which compared the previous restaurant layout to the proposed one. He noted that for the most part, they tried to pull the structures back from the flood zone line but their final plan reflects the best way that a restaurant operates. They also had a structural engineer do an assessment of the existing dock. Upgrades were done to the dock two years ago and so they leveraged the existing qualities of the dock itself, finding the best places that make the most structural sense. This gets to the idea that the dock is going to maintain a design that supports the resistance for the loading criteria based on a 100-year flood zone or seismic occurrence. This is similar to the criteria that they had to meet last time, and they were successful in arguing these points then.

Kate Nichols spoke and stated that she is an engineer by education and has been involved in all of the discussion with Bruce Berryhill regarding this project. She spoke to comments regarding the 100-year flood concern and the mean tide issue. It has been determined that the criteria can be met for the pier to withstand a 100-year storm which means that since the mean tide is beneath the pier that anything above the pier would be safe. She believes this is the key requirement being looked at for the FEMA requirement. Also if trying to elevate the waterfront to a world class status, she said she has yet to be in a place better suited for a marriage of this method of architecture and an environment. Structurally and operationally the modules that are beyond the mean high-tide line need to be there. The combination of the fact that the pier can withstand a 100-year storm event, that no one is being put in harm's way and that it is required for the project to proceed successfully and capitalize on the magnificent nature of Juneau's waterfront are key points.

Mr. Voelckers asked if the intent is that the structures would not move seasonally. Ms. Nichols said although they could be moved, the intent is not to move them seasonally. Are they heavier than what was there before, asked Mr. Voelckers? Yes, said Ms. Nichols, but those lateral loads and their effects come more into play in a seismic situation than in a storm situation. They will be adequately addressed in the building permit process. There should be no concern there.

Public testimony – none.

*Commission Comments and Questions:*

Mr. Voelckers said he had staff questions, perhaps best directed to law staff. He said he buys the focus on a vital waterfront but he was having trouble reconciling the criteria the board is supposed to review. He wondered who takes the liability from what might happen from this decision.

Mr. Palmer took the floor. He referred the board to CBJ 49.75.10(J). There is a wording and disclaimer of liability specifically in code, “This article shall not create liability on the part of the city and borough or in the office thereof or the Federal Insurance Administration.” Hopefully that resolves the question about liability. Liability, if it exists, is with the users and/or owners of the property. Mr. Voelckers asked if the lender is satisfied that the applicant has made appropriate corrections to take this design load then everybody is cool. On the private market side, yes, said Mr. Palmer. Mr. Voelckers asked if there was any cautionary in terms of precedent setting, similar to issues raised with variances about making sure all of the readings can be justified because of further legal consequences or the potential of something being overturned. There could be, said Mr. Palmer. The general guidance is what is specific about this application as evaluated by the criteria. He said that Mr. Feldt has provided one set of proposed analysis, but the board can make a change if they believe there is something else that is more unique or that needs to be emphasized.

Mr. Levine said he was also conflicted about this application. He wondered how previous findings of this body which granted the exemption two years ago might bind this board. And, if so, what were those conclusions? Mr. Palmer said they are not bound by the previous approval; however they can look to those conclusions for precedential value. One of the inherent reasons why this applicant came before the board is because staff determined that this application is significantly different from the prior application. If the board wants to address that finding tonight, and if the board articulates that this applicant is not so significantly different, then the board might determine that the presumption in the staff report that a prior land use permit goes with the land, not the applicant, does not apply here. The board might determine that this application is so similar to the past that there is no need for this application tonight.

Mr. Levine asked Mr. Feldt how this application is different. Mr. Feldt said the differences lie in the amount of enclosed versus un-enclosed structures and there are more enclosed structures seaward of mean high tide than other project. These are the two primary differences that led to staff’s conclusion. Mr. Levine asked if the board decides the projects are substantially similar, then would they eliminate the obligation to address the Conditional Use permit that is also before the other body of the Planning Commission.

Mr. Palmer said the answer is yes. The Community Development Department has focused on the use above the dock. The board might also consider whether the use below the dock has changed and whether or not that is the focal point for this application or if it may also be the focal point for the CUP.

Mr. Voelckers said it seems the fundamental difference is that the last project did not involve wholesale dock strengthening and additional lateral and seismic upgrades while this one does.

Mr. Feldt spoke to the Conditional Use permit. He said that regardless of the similarity to the previous restaurant, this is new development and new structures which trigger the need for obtaining a new CUP for development in a mapped landslide and avalanche hazard zone.

Mr. Levine said he just heard two different answers to the question. Ms. McKibben said that Mr. Feldt explained the rationale for the CUP application. You are not evaluating the use; you are evaluating the development within the hazard area, which is required. She said that what Mr. Palmer said, and which she agrees with, is if it is determined that the use is substantially similar and the flood exception evaluation is substantially the same, then the same would be true for the development within the hazard area.

**MOTION:** *Mr. Peters moved to adopt the Director's analysis and findings and deny the requested Flood Zone Exception, FZE2016-0001, recognizing that criteria B, 4 & 5 are not met. Looking at the plans before the board, the use has substantially changed in design and elements on the deck.*

Mr. Haight said that he felt the applicant has proposed modifications and upgrades to the dock to offset the increased loading to the dock in a manner that would bring it back into a compliance to meet that exception. In that manner, he opposed Mr. Peters' motion.

Mr. Levine said he remains conflicted. He said he thinks there ought to be a restaurant in this location but he finds himself beholden to the criteria and is still not fully confident that this satisfies the criteria. He also feels beholden to the previous grant of the exception. Therefore, he will vote reluctantly in favor of Mr. Peters' motion.

Mr. Dye asked to clarify that the two items not met are not regarding the structural aspects of the dock. Items 4 and 5 are about land use, correct? He asked Mr. Haight if he had any language for 4 and 5 to find in the affirmative. Mr. Haight said with regard to 4, the economics and use of the area would be broadened with more diversity of market that brings and holds visitors in that area. He said that if the city is reliant on singular types of stores then he thinks the people will move on through. In this respect it becomes an important service to that part of the community. The necessity of being on the waterfront falls into the same argument. We want to hold visitors to this area. The other part of it, as the applicant has brought forward, is that the project works well with the sea walk that the city is promoting. Mr. Haight said that from his perspective those two criterion are met.

Mr. Voelckers said that he is conflicted but will oppose the motion and agree with the chair. This is a good use with the city's new, revitalized sea walk and would add pedestrian usage to this area. He did not think item 6 and maybe item 10 are technically met, however he took satisfaction from Mr. Palmer's remarks that imply that this is not the same level of rigorous point-of-the-knife issue that the board might have in some other type of variance. There is a little bit of figuring out relative to FEMA

regulations which, he thinks, have been structured too oppressively. He is satisfied that the dock itself is going to be taken care of.

Mr. Bell stated he was also torn trying to justify supporting this application. He said he sees economic value in the rejuvenation of the area. The dock is a critical issue, he said. It is a substantial investment on the community's part. It has the opportunity to create a pleasant atmosphere for the area, yet all criteria are not met.

Mr. Steedle asked a technical question of Mr. Palmer. Are these to be treated as criteria all of which must be met or does the board simply have to consider each of them and if the general intent is met, would that be sufficient? Mr. Palmer read the introductory language and said ultimately it is a question for the board. "In passing upon such application, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article and then it lists the eleven criteria and they are in the conjunctive with the 'and' between 10 and 11." Mr. Palmer said that if the board wants to say all must be met to pass, there is basis for that. If the board wants to go to a different conclusion, there may be a basis for that but the board would have to articulate it.

Mr. Levine said Mr. Steedle's question changes the way the board might think about this. He paraphrased what Mr. Palmer read and asked if his understanding was correct. He said that the way he read the staff report, it has been treated the way a variance criteria works, where the applicant has to meet all 5 of the things or a variance cannot be granted. He believes Mr. Palmer is suggesting that if the board wants to interpret the code, the board could interpret their obligation to consider the 10 or 11 factors and make their own determination based on a consideration of those factors. Mr. Palmer said that is a fair representation. He emphasized that there is an easier basis for him to say that the board has to bind all 11 to be found in the positive. If the board wants to articulate some reason that means there is an 'or', it is for this body to do so.

Mr. Frisby said he would disagree with the motion on the floor for the same reasons that Mr. Levine agreed. He wondered if the board could table this as he feels they are talking about issues that they don't really have answers to regarding load and structural integrity. He said he thinks the board needs more information. He said he feels they would be making a decision with insufficient information.

Mr. Peters made a point of order in terms of precedence. His question to staff was what is the past history in terms of looking at these 11 criteria? He said he believes in the past all 11 had to be met. He raised the issue that they will be setting precedent moving forward as to how the board considers these criteria.

Mr. Feldt explained that in the past they have treated it very similar to a variance and have put variance findings in addition to the flood zone exception findings in the same report. This is the first one that staff has not done this because of the different interpretation staff has made recently about the use of variances. Ultimately staff concluded to remove the variance findings and depart from past practices

and, now, only has the flood exception findings in this report. The two are very different even though they sound kind of similar.

Mr. Haight restated that there was a motion on the floor.

Mr. Bell asked if the board would consider tabling this for further evaluation. Mr. Haight said yes if the board is looking for additional information. If so, what is that information that we would hand to the staff to bring back to the board.

Mr. Voelckers said the board has had information from Mr. Palmer and staff that this is different from the normal variance that is explicit that the board has to find in the affirmative for all criteria. He said in the language that a couple of times it talks about 'upon consideration' which implies that this is different.

Ms. McKibben pointed out some other language that she felt might provide guidance. She directed the board's attention to 49.70.410(d): *Upon consideration of the factors of subsection (b) of this section and the purposes of this article, the board may deny or grant the application and may attach such conditions to the grant of an exception as it deems necessary to further the purposes of this article.*

She directed the board's attention to 49.70.400(a) *Purpose. The purpose of this article is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas. Other purposes are to:*

*2) Prevent the erection of structures in areas unfit for human usage by reason of danger from flooding, unsanitary conditions, or other hazards;*

*(3) Minimize danger to public health by protecting the water supply and promoting safe and sanitary drainage;*

*4) Reduce the financial burdens imposed on the community, its governmental units, and its individuals by frequent and periodic floods and overflow of lands;*

*(6) Ensure that potential buyers are notified that property is in a special flood hazard area; and*

*(7) Ensure that those who occupy the special flood hazard area assume financial responsibility for their development.*

Ms. McKibben said this section is followed by a whole section on interpretation the board might want to read. She quoted from 49.70.400(b); 1) . . . *provisions shall be considered as the minimum requirements and shall be liberally construed in favor of the governing body.* She quoted other points in this section of the code regarding the purposed of the chapter.

Mr. Haight said that there was still have a motion on the floor. He asked for a roll call vote.

| Yes Votes  | No Votes      |
|------------|---------------|
| Mr. Dye    | Mr. Levine    |
| Mr. Peters | Mr. Frisby    |
|            | Mr. Voelckers |
|            | Mr. Bell      |
|            | Mr. Haight    |

The motion failed.

**MOTION:** *Mr. Levine moved as follows: The Board of Adjustment has considered all relevant factors including those set forth in 49.70.410(b). Upon such consideration, the board grants FZE2016 0001 and includes staff's recommended conditions:*

- 1. Prior to issuance of a Building permit, the applicant shall submit plans showing how improvements to the deck will be made, consistent with the attached 2016 engineer's letter.*
- 2. Prior to issuance of a building permit the applicant shall submit plans showing that the existing footings on the beach will be improved to withstand forces from a 100-year storm event.*
- 3. Prior to issuance of a Certificate of Temporary Occupancy, the applicant shall make improvements consistent with Conditions 1 & 2.*

Mr. Levine said he now reads the provision of the language as allowing the board to award this exception upon fully considering all of those factors and, when alleviated of the responsibility of having to find that all of them were affirmatively met, he concurs that this project is one that ought to go forward. He said he is satisfied that it qualifies for the flood zone exception.

Mr. Dye asked for clarification that the board will not find different findings for 4 or 5 or try and fix 6 or 10. No, said Mr. Levine.

Mr. Frisby seconded the motion.

Mr. Voelckers spoke in favor of the motion. He said it was a well-phrased way to finesse the problem where it gets away from trying to look at the 11 issues individually but, on balance, the board believes public safety and welfare and the general good of community has been met.

Mr. Peters wanted to renew his concern and acknowledge that not 11 items under (b) have been met. He was concerned that the board would pass this, acknowledging that comments have been put in the record that 6 and 10 may or may not be met. He said he will oppose the motion.

Mr. Levine said that he agrees that not all criteria have been strictly met, but it is his reading that they do not need to be.

Mr. Dye asked if this decision will carry over to the board's on-going struggles with variances and their interpretation or are we leaving that well enough alone. Mr. Palmer responded that if this motion passes with the analysis that was done in this case, it could be used for persuasive authority in similar cases in the future.

Mr. Voelckers asked Mr. Palmer if he was talking about a FEMA determination, not broadly in other land use categories. Mr. Palmer said specific to the analysis and requirements of 49.70.410.

Mr. Haight called the motion with a roll call vote.

| Yes Votes     | No Votes   |
|---------------|------------|
| Mr. Levine    | Mr. Peters |
| Mr. Frisby    |            |
| Mr. Voelckers |            |
| Mr. Bell      |            |
| Mr. Haight    |            |
| Mr. Dye       |            |

The motion passed.

Mr. Haight adjourned the Board of Adjustment at 10:24 pm and reconvened the body as the Planning Commission.

- A. USE2016 0029:** A Conditional Use Permit request for a new outdoor seasonal restaurant in a landslide and avalanche zone  
**Applicant:** James Bibb  
**Location:** 406 South Franklin Street

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 outdoor restaurant uses within a mapped landslide hazard zone.

Mr. Feldt said he did not prepare a presentation but was happy to go over the findings. He asked if the commission wished for staff to provide a presentation but the commissioners did not want this.

Mr. Haight asked for questions from commissioners for staff or for the applicant. There were none.

Public comments – none.

**MOTION:** *by Mr. Voelckers to approve USE2016 0029 accepting the staff's analysis and findings and asked for unanimous consent.*

The motion passed with no objection.

**XI. OTHER BUSINESS**

Mr. Voelckers said that they are on track with the CIP Ad Hoc Committee meeting at 5:30 on December 1 in Assembly Chambers. Mr. Steedle said that Mr. Healy and Mr. Watt will be present at that meeting. If that meeting is brief, Mr. Steedle said there will be time to make it to the Lemon Creek Steering Committee meeting at 6:00 at Gruening Park Community Hall.

Mr. Voelckers said a draft letter was begun at last week's meeting which raises four or five general categories that the commission thought should be looked at. Things like downtown parking structures or recreational facilities in Lemon Creek were emphasized but phrased as generalities that should be looked at as a strategic goal.

Mr. Haight stated that the CIP committee is comprised of Mr. Bell, Mr. Voelckers and Mr. Levine.

**XII. DIRECTOR'S REPORT – None**

**XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES - None**

**XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS**

Mr. Dye reported that three commissioners went to the American Planning Association conference and it was very helpful. He recommends that other commissioners go next year. Mr. Haight echoed this sentiment and said that the first day which was specifically for commissioners was enlightening and it was good to collaborate with others from around the state. Mr. Voelckers said he thought it was unusually content rich, and it was inspiring to take the role as a Planning Commissioner seriously.

Ms. McKibben noted that Mr. Dye won two medals in the Planners Olympics.

**XV. ADJOURNMENT**

Mr. Haight adjourned the meeting at 10:30 pm.