Agenda

Planning Commission - Regular Meeting
City and Borough of Juneau
Ben Haight, Chair

September 13, 2016
Assembly Chambers
7:00 PM

I. ROLL CALL

II. APPROVAL OF MINUTES

A. August 23, 2016 Minutes - Regular Planning Commission

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

IV. PLANNING COMMISSION LIAISON REPORT

V. RECONSIDERATION OF THE FOLLOWING ITEMS

VI. CONSENT AGENDA

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

VIII. UNFINISHED BUSINESS

IX. REGULAR AGENDA

A. AME2016 0011 A proposed rezone of a vacant lot near the end of St. Ann's in Downtown Douglas from D-5 to D-18 zoning district.

X. BOARD OF ADJUSTMENT

XI. OTHER BUSINESS

A. Information Item: 8/10/16 Decision on Haven House appeal

XII. DIRECTOR'S REPORT

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

XV. ADJOURNMENT

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
August 23, 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 7:02 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Bill Peters, (telephonically); Michael LeVine, Percy Frisby, Nathaniel Dye, Matthew Bell, Kirsten Shelton-Walker, Carl Greene

Staff: Beth McKibben, Planning Manager; Teri Camery, Senior Planner; Jonathan Lang, Planner II; Tim Felstead, Planner II; Greg Chaney, Lands and Resources Manager; Dan Bleidorn, Deputy Land Manager; Alec Venechuk, CBJ Engineer

Commissioners absent:

Assembly Members: Debbie White, Jerry Nankervis, Loren Jones

II. APPROVAL OF MINUTES

- July 12, 2016 Regular Planning Commission Meeting
- July 26, 2016 Regular Planning Commission Meeting
- July 12, 2016 Planning Commission Committee of the Whole

MOTION: *by Mr. LeVine, to approve the minutes of the July 12, 2016, and July 26, 2016 Regular Planning Commission meetings and the July 12, 2016 Committee of the Whole meeting, with any minor changes by staff or Commission member.*

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Douglas resident Kristine Cadigan Mcadoo asked the Commission what the process was for addressing the issue of parking in downtown Douglas. The ordinance currently does not count street parking as qualified parking for businesses, thus limiting the development of downtown

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businesses in Douglas, she said. There is plenty of adequate street parking, she said. Currently there is not a lot of commercial parking in Douglas, nor is there available land to place a parking lot on, she said.

Chairman Haight said they momentarily discussed her letter on this topic at the end of the last Commission meeting.

Ms. McKibben said the process is already in place on this issue and that there will be a neighborhood meeting on this topic in Douglas in September to discuss this issue.

Ms. Cadigan asked if there would be staff available at the meeting to advise interested parties on what they should do to further this issue in the process.

Ms. McKibben said that process is already in place, and that the September neighborhood meeting in Douglas is a part of that process.

Mr. Voelckers said that at a Title 49 Committee meeting held several weeks ago, that they were told by Mr. Steedle that the process is underway for this issue and that there may be provisions made for parking in Douglas such as the provisions for downtown Juneau.

IV. PLANNING COMMISSION LIAISON REPORT

Douglas Parking
Borough Assembly Liaison to the Planning Commission Debbie White said at the previous Assembly meeting prior to last night's Assembly meeting that the process has been started for parking provisions in Douglas and that she would find out the date of the September meeting and provide it to Ms. Cadigan.

Reninger Subdivision Lots
At last night's Assembly meeting, she said, the Assembly gave the City Manager approval to complete the negotiation for the sale of Reninger Subdivision lots Six and Seven to the Alaska Housing Development Corporation.

Equal Rights Ordinance
The Assembly passed the Equal Rights Ordinance at last night's meeting, said Ms. White.

Senate Bill 91
The Assembly also passed an ordinance which changes a lot of the criminal offenses and penalties due to Senate Bill 91, said Ms. White.

Doggie Dos Appeal
The Assembly also accepted an appeal from Mr. Nestler of Doggie Dos, she said.

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Statter Harbor Trees
Residents in Auke Bay overlooking the Statter Boat Harbor have expressed concern over the number of trees being planted on that site due to their concern about the trees blocking their views of the water, said Ms. White.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA - None

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

A. SGE2016 0001: A Conditional Use Permit for an extension to year 2026 and expansion of blast size and area of rock quarry operations for Stabler Point Quarry.
Applicant: City & Borough of Juneau, Lands Division
Location: 13010 Glacier Highway

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 extension to year 2026 and expansion of blast size and area of rock quarry operations for Stabler Point Quarry. The approval is subject to the following conditions:

1. All vehicle loads shall be contained. Vehicles hauling from the site shall be operated with tailgates, covers or other similarly effective methods. The use of exhaust brakes on trucks entering or leaving the quarry shall not be used, unless required for safety reasons.
2. Public notification warning signs shall be erected a minimum of 24 hours prior to blasting. Written notification shall be given to Juneau Flight Services, Juneau Police Department and Capital City Fire / Rescue a minimum of 24 hours prior to blasting.
3. The hours, days, and dates of operation shall be 8am - 4:30pm, Monday through Friday, all year except State holidays.
4. Blasting operation shall be scheduled to occur between 10am - 12pm and 1pm - 3pm, Monday through Friday.
5. This quarry permit shall expire 10 years after the date of approval.
6. Each quarry operator shall submit an individual mining plan that is in conformance with this Conditional Use permit and is approved by the quarry manager prior to performing any work in the quarry. Each mining plan shall be prepared by a civil engineer or other authorized professional.

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7. The operator is required to comply with the requirements of CBJ Standard Specifications 02090 Blasting Controls. A quarry operator shall submit a blast plan, reviewed by an independent blast consultant, to the CBJ Engineering Department/Quarry Manager for approval prior to each blast.
8. Quarry operators shall comply with the existing DOT/ PF approved Stabler Traffic Control Plan(s) for blasting operations, quarry access, and work within the DOT/ PF ROW.
9. Explosives shall not be stored on site, except for that which is immediately necessary for the next blast.
10. The applicant shall comply with DEC regulations governing stormwater discharges from the quarry site, with particular attention paid to protecting Auke Nu Creek.
11. The applicant shall (or shall cause to) reclaim the quarry site with finished faces and established benches, and remove loose rock during the period between projects, even if the entire quantity of rock has not been removed.
12. The applicant shall (or cause to) control dust caused by excavation, truck hauling, rock crushing, or other aspects of the operation.
13. The applicant shall (or cause to) repair any damage to Glacier Highway as a result of the quarry operation. If there is visible damage to the roadway due to hauling or mining operations, the roadway shall be repaired in cooperation with DOT/ PF.
14. The applicant shall require the posting of a bond (or equivalent if project based) from all quarry operators to ensure spilled or tracked material are removed from public roads. The applicant shall (or cause to) remove all spilled materials immediately from public roadway and ensure that mud and debris tracked onto roads be cleaned daily, with the City having the ability to allow less frequency on a case by case basis as warranted. DOT/ PF reserves the right to request sweeping at any time it sees a problem or complaint.
15. The applicant shall ensure that lighting (if any) does not glare onto adjacent roadways.
16. The applicant shall (or cause to) operate the quarry according to the application proposal, including attachments and drawings, except that all conditions contained herein shall take precedence.
17. The applicant shall ensure that the rock extraction is consistent with the recommendations of the US Fish & Wildlife Service for the protection of nesting eagles according to the past approved variances (VAR96-52, VAR2000-37, VAR2001-17, & VAR2008-6).
18. The applicant shall maintain a lockable security gate at the quarry entrance.
19. The applicant shall (or cause to) retain a natural buffer at the western end of the quarry similar to that at the eastern end for a visual and noise barrier. This buffer may be pierced to create the new western entrance roadway (Attachment C). Additionally, and when feasible, the buffer shall be retained during all quarry operations throughout the site for noise and visual buffering.
20. Prior to extracting the southwestern cliff face of the quarry, a qualified expert in geophysical hazard shall evaluate the site and recommend guidelines for its

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development. Further, these guidelines shall be made part of any approved mining plans for these areas and written notification given to all operators.

21. The recommended noise levels (excluding blasting) as measured at the nearest property lines shall not exceed 65 dBA.
22. Rock crushers shall be operated on the lower quarry levels. Stockpiles shall be located in a way to provide additional noise screening barriers whenever possible.
23. The applicant shall have all operators of the quarry conduct their activities in accordance with all requirements of the noise management plan, blasting and noise controls, and temporary environmental controls.
24. The site clearing shall be consistent with needs to retain sound and visual barriers for the quarry operation. Prior to removal of substantial vegetation, the clearing limits shall be flagged and reviewed for approval by the Community Development Department.
25. Individual blasts shall be limited to a maximum of 25,000 cubic yards.

Advisory Conditions

26. The pull out area adjacent to the quarry entrance drive near Glacier Highway is to be used for equipment transfer only. There shall not be temporary or long term parking on the pull out area. Transfer operations shall occur outside of the roadway clear zone. Access into the pull out area shall be limited to right in and right out turns.
27. A strip of land at the existing topographic level not less than 15 feet in width shall be retained at the periphery of the site wherever the site abuts a public way. This periphery strip shall not be altered except as authorized for access points. This section does not alter the applicant's duty to maintain subjacent support.
28. If the bank of any extraction area within the permit area is above the high water line or water table, it shall be left upon termination of associated extraction operations, with a slope no greater than the angle of repose for unconsolidated material of the kind composing it, or such other angle as the Commission may prescribe. If extraction operations cause ponding or retained water in the excavated area, the slope of the submerged working face shall not exceed a slope of 3:1 from the edge of the usual water line to a water depth of seven feet. This slope ratio may not be exceeded during extraction operations unless casual or easy access to the site is prevented by a fence, natural barriers, or both.

Mr. Lange told the Commission that this item is a request for a Conditional Use Permit for the extension and expansion of Stabler Point quarry. This quarry belongs to the City and Borough of Juneau, is located in Auke Bay, and the City contracts out at this time to three different construction companies who mine the quarry. As the applicant, the City and Borough of Juneau Lands division wants to expand the area of rock quarry operations, to extend the operational life to the year 2026, and to increase the maximum blast size to 25,000 cubic yards.

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The existing quarry site is approximately 16 acres, said Mr. Lange. The City is requesting the addition of 24 acres, said Mr. Lange. They want to go from a 6,000 cubic footage of material in each blast to 25,000 cubic feet of material, he added. The site would expand up the hill. If this expansion request is not granted, said Mr. Lange, the mine operation would need to proceed much deeper into the mountain.

There has been correspondence from the public against the expansion, said Mr. Lange. Regarding the current operation of the quarry, said Mr. Lange, the community has expressed concern about the noise emanating from the operation, the blasting, and also the trucking and hauling of the material, and the noise caused by the crushing of the rock.

This project conforms to Title 49 of the Land Use Code, he said, which pertains to sand and gravel extraction. The vibrations from the operation are below the required maximum vibration limit, said Mr. Lange. Residents in the area have also expressed concern about truck traffic generated from the operation, said Mr. Lange. Concerns have been expressed about the speed of the trucks and debris left by the trucks on Glacier Highway. The City works closely with the contractors who use the gravel pit, regarding any traffic or use violations, he said.

Mr. Lange then went over the conditions of approval (above) outlined by the staff for granting the Conditional Use Permit. He said these conditions are very similar to the conditions under which the pit currently operates, with a few small changes. To condition number one, the staff added, "The use of exhaust brakes on trucks entering or leaving the quarry shall not be used, unless required for safety reasons", said Mr. Lange. This is to reduce noise emanating from the trucks, he added.

Mr. LeVine said that condition 14 is different from the original condition. He asked why this condition was changed.

Mr. Lange said he thought it was just a change in the wording of the condition.

Commission Comments and Questions
Mr. LeVine said the former condition 14 stated in parentheses that it had been "edited by the Planning Commission". He asked which version is accurate; the current version or the previous version.

Mr. Lange said the verbiage for condition 14 was unintentionally changed, and that condition 14 would be changed back to the original version which incorporates the Planning Commission edits.

Conditions 26 through 28 are advisory conditions, said Mr. Lange. Conditions 27 and 28 are required in Title 49 for sand and gravel extraction, he said. The Department of Transportation (DOT) did not feel that additional safety installations were necessary such as a traffic safety

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light.

Commission Comments and Questions
Mr. Voelckers asked if the staff could expand upon the regulatory process. He stated that the City owns the quarry, and that it has employed staff to manage the operation which is carried out by contractors. There are 25 requirements in place and it appears that those requirements are not necessarily followed to the satisfaction of the public, said Mr. Voelckers. He said while the blast limit is set at 6,000 cubic yards, there is evidence that over the past couple of years it has been up to four times bigger than the limit. He asked how the City enforced the conditions.

Mr. Lange said the City has hired a quarry manager whose job it is to make sure the contractors are abiding by all of the conditions in the existing permit. When there are complaints from residents such as rocks on the road, the City steps in and notifies the contractors that this has been occurring and that it is not an allowed practice. The quarry manager oversees compliance with the conditions, he added. A study on the operation has indicated that even with the increase in blast size that the vibrations and noise level did not increase in concurrence with the blast size.

Mr. Voelckers said it appears that if the Conditional Use Permit were to be granted that the operation would proceed up the hillside thus exposing it to more visibility from below. He asked if this was the case or if it proceeded in such a way that increased visibility would not be created.

Mr. Lange said it would become more visible, but that it should not be a pronounced difference from what exists now in terms of being visible from the road.

Mr. Bell commented that this request would result in a tremendous cut into the hillside. He asked what would be done with the overburden resulting from the proposed expansion.

Mr. Voelckers asked if the proposed conditions conform to the existing conditions already in place. He said the diagram displayed does not leave a buffer in place for the westerly portion of the operation.

Mr. Lange said he believed that they were in compliance, and that the Engineering Department could expand on that.

Mr. Haight asked if these conditions were in place for the requested permit, if the prior conditions would become void.

Mr. Lange said the previous conditions would be supplanted by the conditions before the Commission this evening

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Mr. Haight asked if there have been he any changes in Title 49 in reference to rock quarries since the existing Conditional Use Permit for this operation was granted.

Mr. Lange responded that he did not believe there have been any changes in Title 49 since the existing Conditional Use Permit was granted.

Applicant (CBJ Lands Division)
Mr. Chaney said the City has changed its strategy regarding management of the quarry and has employed its own manager instead of relying on various contract managers to oversee the quarry operation. Although there are a lot of conditions, said Mr. Chaney, they are only changing three items within the existing conditions. They are asking to expand the lateral dimensions of the quarry, and to extend the life of the quarry by ten years. While staying within safe limits, they are requesting an increase in blast size up to 25,000 cubic yards.

According to a recent study, said Mr. Chaney, there is not a direct correlation between blast size and impacts. It is more the direction and depth of the blast which affect the impacts, said Mr. Chaney. Mr. Chaney showed the Commission a brief video displaying the existing quarry site. The land is fairly level at the proposed expansion site so that little of the expanded gravel operation would be visible from the road more than the existing operation, said Mr. Chaney. He said as they work the quarry that the topsoil is stored off to the side which can be used upon reclamation of the quarry.

Mr. LeVine asked if the noise increases as the blast size increases.

Mr. Chaney said it is his understanding that there is not a direct linear correlation between blast size and noise.

Mr. Venechuk said that he is a mine engineer by trade and that he has been with the CBJ Engineering Department since May. He said that he would hate to speculate on the correlation between blast size and noise. He said any blasts to date have been well below a dangerous threshold.

Mr. LeVine asked if the blast size is increased fourfold if this would result in less blasts being necessary.

Mr. Venechuk replied that it would result in a reduction in the frequency of the blasts.

Mr. Voelckers said the two largest test blasts have been the loudest as well. He added that maybe it would be beneficial to have fewer blasts even though they may result in a bit more noise.

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Mr. Voelckers asked why they are actually requesting an enlargement of the blasts. He asked if this was done to reduce the frequency of the blasts in the area to avoid more road closures. He said he did not think the request was due to an increased need for the rock.

Mr. Chaney answered that it is not to increase the volume of material.

Mr. Frisby asked how thick the rock face was on the west side of the operation.

Mr. Venechuk responded that the operation will be viewed more laterally but that little of the expansion would be viewed vertically.

Mr. Frisby asked what was done with the timber resulting from the pit expansion.

The timber would probably be part of the agreement with the contractor, said Mr. Venechuk. The contractor would dispose of the timber as they saw fit, he said.

Mr. LeVine asked how the proposed expansion of the quarry had been developed.

Mr. Chaney said that is basically the only way they could expand with steep cliffs on one side and a stream on the other side. They were also curtailed in their choices because the property line to the property the City owns extends only so far in one direction.

Mr. LeVine asked why no one had requested the total area for the permit to begin with.

Mr. Chaney responded they did not expect the demand for the material to be so high. This quarry has become the preferred source of hard rock material in town, he added. Once a quarry is in place it is much easier to expand the existing site rather than develop a new, additional site.

Mr. Frisby asked if there was an estimate on the total value of rock to be derived from the quarry.

To carry the expansion to the current pit floor the total value of rock is estimated at two to 2.5 million tons, said Mr. Venechuk. Two million tons have been mined since the quarry's inception, he added.

Mr. Voelckers asked Mr. Chaney if he could address how notices regarding blasting were distributed, and if electronic notification to those affected by the blast would be possible.

Mr. Chaney said any complaints about rocks on the road and providing adequate notice are several of the reasons why they are working on improving the operation of the quarry.

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Mr. Venechuk said they are working with a local company to install what are basically cattle guards on the access road so that rocks would fall there instead of on the road. Cattle guards are an industry standard for removing the possibility of rocks on the road, said Mr. Venechuk. Addressing the issue of larger stones falling out of the bed of the trucks, it is a constant battle to remind the contractors to be very careful about rocks falling onto the road, he said.

A 24 hour notice is posted prior to a blast and those notices are posted around the Spaulding Beach area and also at the beginning of Fritz Cove Road. He said he felt some residents were surprised by the blast if they had not left their house in a few days to notice the posted blasting notification.

Mr. Greene asked if there is a long-term plan for the quarry site after the mining has been completed.

Mr. Chaney said that is a ways down the road, but the City would probably develop the area as a residential site. Ultimate use of the site may also be applied to straightening out the existing road, he said. If the contractor is a repeat offender and does not watch its loads their permission to use the quarry can be withdrawn by the City, said Mr. Chaney.

Mr. LeVine asked if the City was responsible for posting the blasting notices or if this was a responsibility of the contractor.

The contractor is responsible for posting the notices, said Mr. Venechuk.

Mr. LeVine asked if there was to be electronic notice provided either through text or emails if this would also fall under the purview of the contractor. He asked if the City could be responsible for electronic notification if that is something upon which the Commission decided.

Mr. Venechuk responded that this would be no problem.

Mr. LeVine asked if this Conditional Use Permit were to be granted if this would result in an increase in the truck traffic within the area.

The truck frequencies are a direct result from projects going on within the community, said Mr. Venechuk. It depends upon what projects are currently underway, he said.

Mr. Frisby asked if this request were to be denied how long the ongoing project would last.

They have a permit to operate for six more years, said Mr. Chaney. If they do not receive a permit to expand laterally, said Mr. Chaney, then they would need to dig deeper within the existing gravel pit.

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Mr. Bell asked who would be managing the storm water runoff from the operation.

That falls under the purview of the City and Borough of Juneau, said Mr. Venechuk. That is managed through the Department of Environmental Conservation (DEC), he said, and the EPA (Environmental Protection Agency).

Mr. Bell asked if the road was part of the gravel pit operation.

Mr. Venechuk said it is the access road for the gravel pit operation.

Mr. Bell asked if it could be considered to place a switchback road to the site so the trucks would not need to break so harshly making the decline safer and less noisy.

Mr. Venechuk said they could definitely consider that option but that it would be at very high cost to the community. They could also lose the visual buffer if a road were constructed where Mr. Bell had indicated, he added.

Public Comment

Area resident Juanita McCallum said that truckers can get canvases to install on their vehicles to prevent rocks falling on the road. She said that she babysits her grandchildren after school, and that as they get off the bus from Auke Bay School, she said she is concerned every day about their safety due to the truck traffic on the road. She said she is also very concerned about the potential damage the blasts could cause to her home through ground vibration. She asked who would be responsible for the damage to their homes.

Mr. Voelckers asked Ms. McCallum if she has noticed any damage to her home. Reading through the comments, he said it did not seem like there are any manifest examples of damage.

Ms. McCallum said that she has not inspected her home yet for damage.

Resident Mike Allen said he lives about one block away from the entrance to the quarry. He said he does not really have a problem with the expansion of the gravel pit. He said he did believe there should be a second access road to the quarry to alleviate some of the congestion. He said since living in the area he has noticed that different conditions engender different types of blasts. It depends on which way the wind blows and how low the overcast is in the area, and how far up the hill they shoot, he said.

Mr. Voelckers asked Mr. Allen if he had a personal choice between fewer blasts or a little bit more noise which he would choose.

It would be hard to say, said Mr. Allen, but said he personally would like them to get the biggest chunk out of the way that they could.

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Resident Don Kubely said that he drives past Stabler's Point several times every day. He said he feels that the truckers are very courteous and careful, and that he has never had a problem with any of them. Without places like this gravel pit there can be no further development for many of the projects in Juneau, said Mr. Kubely.

Mr. Chaney said it was important to mention that if there was to be covered loads for trucks in Juneau that it would be a City-wide issue to which all truckers in Juneau would then have to comply. They are hoping to improve the situation so there will be less of an impact in the future, he noted. They have carefully monitored the maximum allowed blasts not to cause damage to homes, and they are well below that amount, he said. The second access road is already listed within the permit and it comes with a big trade-off, said Mr. Chaney. If they build the second road access then there is less of a buffer between the quarry and the community, he said. It would project more noise to the Auke Bay Ferry Terminal area, he said.

Mr. Frisby asked how much congestion arose when three contractors were all utilizing the quarry at the same time.

It is busy, said Mr. Venechuk, and it takes constant vigilance.

Mr. Frisby said if they had another access road in place there could be an entrance and exit for the trucks.

Mr. Voelckers said perhaps they could explore upgrading the single road access that is currently available to make it safer for the trucks, and to perhaps handle more than one truck at a time.

Mr. Voelckers said he is generally in favor of the Conditional Use Permit and that good conditions accompany it. He said he also likes the fact that the City has taken positive direction and implemented direct management of the quarry. To accompany condition two regarding public notice, Mr. Voelckers stated that it may be effective to add electronic notification to this condition.

Mr. LeVine said that he agreed with Mr. Voelckers, and worked on some language to amend that condition, stating, "The applicant shall issue an email notification no less than 24 hours in advance of blasting to anyone who requests it". Mr. LeVine said it seemed to him that this should alleviate the concern for those who for some reason do not drive by and view the signs posted regarding the blasting times.

The placement of the above verbiage offered by Mr. LeVine regarding email notifications was approved by the Commission with no objections.

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Mr. LeVine suggested that the word "recommended" be taken out of condition 21. He said he did not see a need for that word.

The Commission agreed to withdraw the word "recommended" from condition 21 because it is irrelevant.

Mr. LeVine asked if the "Noise Management Plan" listed in condition number 23 is a new Noise Management Plan or if it is the old Noise Management Plan.

The staff informed Mr. LeVine that there has been no change to the existing Noise Management Plan.

Mr. LeVine said at a previous meeting the Commission had some debate over the usefulness of advisory conditions, since they are unenforceable. He said if items 27 and 28 are part of Title 49, he questioned why they were listed at all. Mr. LeVine asked if there is a reason why condition 26 is an advisory condition and not a regular condition.

Mr. Lange said there is no reason for item 26 to be an advisory condition, and that they could add it to the list of regular conditions. He added that conditions 27 and 28 could also be added to the regular conditions.

The Commission agreed with no objection to make conditions 26, 27 and 28 regular conditions instead of advisory conditions.

Mr. LeVine requested that condition 14 revert to its original state and not the new verbiage in this Conditional Use Permit.

Mr. Voelckers asked Mr. LeVine what the difference was again that he had noted in the two versions. Mr. Voelckers added that he thought this was a better rendering of the condition than the previous one. This version removed the arbitrary 200 yard impact area. What if the spill was 220 yards down the road, said Mr. Voelckers.

Mr. Bell said that he concurred with Mr. Voelckers.

Mr. LeVine withdrew his suggestion.

Mr. Dye asked if the specified distance is removed, what the rationale was to require such a large area that is undefined.

Mr. Voelckers said he felt the lack of stipulations in the condition were useful because it is still the responsibility of the trucker regardless of where the rock would drop onto the road.
The Commission voiced no objection to leaving condition 14 as it is written.

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MOTION: *by Mr. LeVine, to approve SGE2016 0001 with the staff findings, analysis and recommendations subject to the minor alterations made by the Commission.*

The motion passed with no objection.

B. USE2016 0021: A Conditional Use Permit for the Sweetheart Lake Hydroelectric Project.
Applicant: Juneau Hydropower Inc.
Location: Lower Sweetheart Lake, 38 miles south of downtown Juneau.

Staff Recommendation
Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit for the Sweetheart Lake Hydroelectric Project, with the following condition:

1. Prior to issuance of a building permit, the applicant shall submit a lighting plan illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed and located to minimize offsite glare.

Mr. Voelckers noted for the record that he has been involved in an indirect way with some of the individuals involved with this proposal. He said he was part of a Juneau delegation to go visit Denmark and Norway to visit heating plants and see water heat recovery and some other sites which the project may be involved with in the future.

The Commission voiced no objection to Mr. Voelckers remaining on the panel for this Conditional Use Permit request.

Ms. Camery said this item is on the regular agenda because of its size. The staff felt that it deserved a full hearing, said Ms. Camery. There has been no public opposition against this project and the applicant is in agreement with the one condition stipulated for this project, said Ms. Camery.

The applicant requests a Conditional Use Permit for the development of the Sweetheart Lake Hydroelectric Project, located approximately 33 miles southeast of Juneau near Port Snettisham, said Ms. Camery.

The site is zoned Rural Reserve, and the Comprehensive Plan designation is Resource Development, explained Ms. Camery. The development will include a 280 foot wide, 111 foot high concrete dam to be constructed at the existing natural outlet of lower Sweetheart Lake, with a 125 foot wide overflow spillway at the crest elevation of 636 feet, explained Ms. Camery.

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The project includes a reservoir tunnel, a powerhouse and a 4,400 foot coastal road and trail from the powerhouse to the dock landing site, said Ms. Camery. A caretakers facility will be constructed near the dock, said Ms. Camery.

The site is surrounded by vacant U.S. Forest Service land and Department of Natural Resources (DNR) tidelands. There will be no negative impact to property value, said Ms. Camery. The project includes a scenic management plan to reduce visual impacts. This is a very detailed plan, noted Ms. Camery. The project also includes a recreation management plan. Regarding habitat, Ms. Camery explained that the project meets the exemption criteria for the city's stream and lake setback ordinance. She said that the project has adopted the habitat recommendations from the U.S. Forest Service and the National Marine Fisheries Service. The project meets the goals of the CBJ Climate Action Plan and complies with the CBJ Draft Energy Plan, said Ms. Camery. This Sweetheart Lake Project is specifically mentioned in the Comprehensive Plan text, noted Ms. Camery.

The staff finds that this application is complete, and is an appropriate use for the Rural Reserve area, she said. They did expand the breadth of the public notice for this project, said Ms. Camery. Public notice is also posted at the site, she said, as well as at Douglas, Harris, Aurora, and Statter Harbors. The project also complies with the other relevant Title 49 regulations and policies, said Ms. Camery. There is no evidence that the project would endanger public health or safety or that it would be out of harmony with the other properties in the area, nor would it decrease their value, she said. Staff recommends in favor of the project with the standard condition on lighting.

Applicant
Managing Director of Juneau Hydropower Duff Mitchell said they have been working on this project for six years, since 2010, and that the estimate for a project of this nature is 10 years. He said they are ahead at this point. They are here to serve Juneau with low cost renewable energy, said Mr. Mitchell. The dam will have a capacity of 19.8 megawatts and a generation of 116 megawatts annually, he explained. Juneau's electrical output is about 400 megawatt hours annually, said Mr. Mitchell. This project will add about 20 to 25 percent new generation for the community, he said.

This site has been earmarked as a Juneau resource for many decades, noted Mr. Mitchell. Sweetheart Lake is located on the southern end of Juneau's territorial limits, he explained. There is no road to the lake, said Mr. Mitchell. Access will be provided by a tunnel for moving employees and equipment to the lake, he said.

They have 40 years of water data for this area, noted Mr. Mitchell. In 1929 the project received a federal water site classification which means that in essence the only development allowed for the lake is utilizing it for hydropower, he said. They received the license to begin the application process in 2010, said Mr. Mitchell.

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The final Environmental Impact Statement (EIS) was issued in May of this year, noted Mr. Mitchell. They expect to receive their license any day now, he added. They hope to begin construction later this year, said Mr. Mitchell. These studies represent a lot of local labor and millions of dollars' worth of investment, he said. They have tried to hire local labor whenever possible, he added, to do all of their cultural, environmental, engineering and surveying work.

Public input is mandatory for every phase of the project, said Mr. Mitchell. They have maintained transcripts from every public meeting, he said, and filmed each meeting as well. There are thousands of pages of study documents, said Mr. Mitchell, not including the meeting transcripts.

They will utilize a tunnel for access, said Mr. Mitchell. The rock that comes out of the tunnel will be put back into the dam as part of the project, he said, resulting in full utilization of the available resources. There will be an electrical cable to the dam site for power and operations, said Mr. Mitchell. The tunnel will be used for water when the project is complete, he said. There will be no access to the dam except by plane after construction is finished, he said.

They also have been working with DIPAC which puts half a million fry in the lake every year, said Mr. Mitchell. Out of that half a million fry, between 50 to 80 percent die because the way back to the lake is so difficult and arduous, said Mr. Mitchell. They have worked with DIPAC to reduce that mortality so they expect to see an increase in the number of sockeye returning to the community, said Mr. Mitchell.

There will be no leaks from this dam which is often experienced in other dams, said Mr. Mitchell. They reduced the height of the powerhouse so that it will not be visible for those who are recreating in the area, he said. They have submitted 25 preliminary plans which is not usually accomplished until later in the licensure process, said Mr. Mitchell. This is the first FERC (Federal Energy Regulatory Commission) license to do so, said Mr. Mitchell. They sent a 14 page survey to all users of Sweetheart Lake for the past three years, said Mr. Mitchell. They built their recreational and fisheries enhancement plan based upon the input received from those surveys, he said.

They also interviewed every commercial fisherman that uses the area, said Mr. Mitchell. Their meetings, documents and videos are online for those who could not make it to the meeting or had interest in looking over the information for the project, said Mr. Mitchell. They have a resolution of support from the City and Borough of Juneau written earlier in the year for the hydropower project and for the Juneau district heating, said Mr. Mitchell. He read the resolution for the Commission.

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They will hire locally, increasing job security for the community as much as possible, said Mr. Mitchell. This project has been funded with all private funds, said Mr. Mitchell. Hydropower is a renewable resource, he added.

Commission Comments and Questions
This was an impressive and complete report, said Mr. Voelckers. There is an annual cost for the construction of transmission power poles to conform to guidelines utilizing the best practice for the avian protection. It carries an annual cost of almost $30,000, noted Mr. Voelckers. He said he could not understand why avian protection would have a reccurring annual cost.

Mr. Mitchell said this process was self-imposed. Lines must be constructed so that they do not present a harm to eagles, geese and ducks who may fly into them. Every year they must monitor those lines, he said. One of the reasons there are power outages is because a bird flew into the line, he added. They are using the best management practices possible in which to eliminate the possibility of a bird flying into the line, he said. The $30,000 annual figure is for monitoring the lines and adaptive management, he said.

Mr. Voelckers asked who would be reviewing the final structural design.

This is a FERC licensed project, said Mr. Mitchell. Once they receive the license their project is turned over to the FERC Portland office, he explained. The project will be reviewed by a board of five consultants, he said, before the application can be submitted for FERC final approval, he said.

Mr. Frisby asked if they had communicated yet with other entities regarding power sales agreements. Kensington has testified in front of the State that they have an agreement, answered Mr. Mitchell. Juneau district heating could consume the balance of the power, said Mr. Mitchell.

Mr. Frisby asked what the charge would be for connecting with Snettisham.

They asked for the fair rate, said Mr. Mitchell. Since it is state-owned and since there is a 6.8 cent power contract from Snettisham that includes the transmission he asked them for the fair rate, he said.

Mr. Haight asked if there was further information on how the connection would be made to the Snettisham line. They are going to set up their switch yard at the powerhouse, said Mr. Mitchell, to result in less resistance and less wear and tear on the Snettisham line.

Public Comment
Juneau resident Corey Baxter said he is the district representative for the Operating Engineers

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Local 302 union. He read a letter in support of this project. It mentioned the economic development and recreational opportunities the project would bring to the community. It urged the Planning Commission to approve this project.

Dick Hand, president of Alaska Seafood Company based in Juneau, said they are in support of this hydro project. He said Juneau residents really enjoy recreational fishing at Sweetheart Lake. Fish from that lake are processed by Jerry's Meats and the Alaska Seafood Company, he said. It appears that this project will increase the fishery in that area resulting in more fishing opportunities for the community, he said.

Applicant
Mr. Mitchell said he wanted to thank the state and federal agencies and the public to help them make this a better project.

MOTION: *by Mr. Frisby, to approve USE2016 0021 and accept the staff's findings, analysis and recommendations.*

The motion was approved with no objection.

X. BOARD OF ADJUSTMENT

The Commission was adjourned as the Planning Commission and convened as the Board of Adjustment.

B. Case continued from 6/14/2016 Planning Commission Meeting
VAR2016 0004: A Variance request for a reduction of the front yard setback for an addition to an existing building.
Applicant: Hollis Handler
Location: 9831 Nine Mile Creek Road

Both Mr. LeVine and Ms. Shelton-Walker stated that they are acquaintances of the applicant and Mr. LeVine said he has had some business dealings with them in the past, and that they felt they could provide a fair assessment on this issue.

The Commission voiced no objection to their participation in this variance request.

Staff Recommendation
Despite the additional material, the Director's analysis and findings remain unchanged and it is recommended that the application be denied.

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Mr. Felstead told the Commission they have inserted an item in the Commission's blue folder concerning the staff's findings on criterion one for this variance request. The finding for that particular criterion is still "no" said Mr. Felstead.

The staff's findings pay particular attention to the other locations on the lot in question where the potential addition could be located, said Mr. Felstead. The staff finds that criteria one, five and six have not been met, said Mr. Felstead.

Applicant

Ms. Handler told the Commission they are trying to provide more room for their kitchen. If they attempted to expand their kitchen in one direction it would be unsafe, according to their builder, said Ms. Handler. The staff proposes that they could construct a kitchen with an addition on the other side of the house, said Ms. Handler. That side of the house is not connected to their kitchen so they could not expand the kitchen in that direction, she said. It would require the construction of an entirely new kitchen. To build on the other side they would be required to demolish the bathroom. Ms. Handler said the builder didn't even bother to do a quote for that option since it would be so exorbitant in price.

The builder has estimated that the cost of construction would either double or more than double should they build the kitchen on one side of the home because the construction of a retaining wall would be necessary, said Ms. Handler.

Ms. Handler said she felt it was an impossible standard to meet when the only way to get a variance under this criterion is for other structures in the neighborhood to exceed the setback. She said it she felt it would be more consistent with justice to their neighbors not to be using the shared driveway during the construction process.

Mr. Voelckers asked why constructing on the side would impact the shared driveway.

Ms. Handler replied that to build a retaining wall they would have to utilize some of the driveway area.

Mr. Frisby asked what the cost estimate was from the builder for the various options.

The cost of the project for the retaining wall option would at least double, said Ms. Handler, quoting the builder.

Mr. Frisby noted that if they follow the staff's recommendation the kitchen would be on the opposite side of the house from where it currently resides.

It would be an extension of the kitchen located on the opposite side of the house from the kitchen, acknowledged Ms. Handler.

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Ms. Handler said they felt that criterion 5(C) was applicable to their property. Criterion 5(C) states that it must not be "unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive". Compliance with the existing standards would be unnecessarily burdensome because of the steep slope which would render the project unreasonably expensive, said Ms. Handler. It would also be unreasonably expensive for them to tear out their bathroom to then construct a kitchen, she said. There is no way for them to reasonably construct the kitchen addition without going over the setback line, said Ms. Handler.

Mr. LeVine asked for a breakdown of the standard costs for the construction of the kitchen versus the alternate methods.

The current estimate is approximately $54,000 for their preferred location. The builder estimates it would be approximately $108,000 to construct the kitchen extension on the side of the structure where a retaining wall would be required due to the steep slope, said Ms. Handler.

Mr. LeVine asked for the meaning of the numbers that are in the additional materials.

Ms. Handler said those numbers are for material, labor allowances, excavation, electricity and plumbing.

Ms. Handler said they feel that they have met criterion 6 which reads that a grant of the variance would result in more benefits than detriments to the neighborhood. There have been no objections by any of their neighbors, explained Ms. Handler. There have been no detriments to the project described by the staff other than going over the variance line, she said.

Elsewhere in this staff report it is stated that the retaining wall could be a possible hardship to the neighbors because of its unsightliness, said Ms. Handler. It is hard to say that the detriments outweigh the benefits when no detriments have actually been identified, she added.

They request that the Commission consider the extra expense that would be entailed without going over the setback line, said Ms. Handler. If they were to encroach seven feet over the line it still would not be visible to most people from the road, and there would still be a significant difference between the road and their property, said Ms. Handler. There should be no negative impacts on the neighborhood or the neighbors, she added.

Commission Comments and Questions
Mr. LeVine asked the staff to help him understand the finding for 5(C) of the staff report.

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Mr. Felstead said the physical feature being considered in this application is the embankment which rises from the driveway to the flat buildable area. If it is found that building in that location or other locations is unnecessarily expensive then it could be that the Planning Commission could find a positive affirmation for that criteria, said Ms. Mr. Felstead.

The staff asserts that there are other locations where the applicant could build which are not unnecessarily expensive, said Mr. Felstead, so that unique physical feature would not come into play, he stated.

Mr. LeVine clarified that it has nothing to do with the amount of money but the unique physical feature.

It is the feature which is causing the additional expense, said Mr. Felstead. If that feature is not relevant to the argument, then it is difficult for the staff to actually say that the unique physical feature comes into play, he said.

MOTION: *by Mr. Frisby, that the Commission approves VAR2016 0004.*

To approve that motion they need to find in favor of the findings which the staff has deemed not met by the applicant, said Chairman Haight. They would have to have affirmative findings for criterion one, five and six, said Chairman Haight.

Mr. Dye asked if the staff feels the unique physical feature of the steep bank cannot be counted because there is another building site on the other side of the home.

That is the staff's logic, responded Mr. Felstead.

Ms. Handler said the builder has evaluated the site and finds that a retaining wall would be necessary for construction in that location. They have seen that the staff does not think it is necessary that they build in their requested site but they have not been told why, said Ms. Handler. Ms. Handler urged the Commission to take the word of their contractor who has actually been on the site.

Mr. LeVine asked the staff if they not are not allowed to factor in the excessive costs should the applicant follow their recommendation, since the applicant would have to destroy their bathroom in order to build on the other side of their building.

Mr. Felstead said it has been brought to his attention by the applicant that this would be inconvenient for them. Mr. Felstead said he had been led to believe that the addition was for a dining area. There are options to build within the setbacks and add a dining area, said Mr. Felstead.

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In order to follow the staff recommendation they would have to tear out an entire bathroom, said Mr. Frisby, which is a very significant expense. The kitchen would be split in to, said Mr. Frisby, should the applicant build on the recommended site. Mr. Frisby said he is seeking the fairest decision for this issue, and that if the resolution of this is to have the applicant build several feet beyond the lot line than that should be considered. Mr. Frisby said the staff is asking the applicant to totally remodel their house so that they can construct a kitchen addition, said Mr. Frisby. That would be very expensive, he added.

Mr. Voelckers said he is going to reluctantly vote against the variance. He said the Law Department has reiterated to them a number of times that variances need to be based on a unique geographic feature particular to the site which is compelling enough for these standards to be relaxed. It is also explicit that an economic advantage is not enough in itself for a variance to be granted, said Mr. Voelckers. They have to be very careful because every variance that they grant establishes a precedent, said Mr. Voelckers.

Chairman Haight reminded the Commission they still do not have a motion on the floor unless they identify positive findings for those findings denied by the staff.

The applicant has now provided financial information which was the missing piece the last time the applicant was before the Commission, said Mr. Peters.

Speaking for a reason to meet criterion one, Mr. Peters said the deck already exists in the preferred location and the addition of a few feet and walls for the addition to the kitchen makes sense. He is not seeing any pushback from neighbors regarding this variance, he said. Mr. Peters said he feels that criterion one has been met.

Chairman Haight said a lesser relaxation would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
That would be based on the fact that this addition would be positioned over what is currently the deck of the structure, he added.

Mr. Peters said that he accepted the recommendation from the applicant that 5(C) has been met in that it would be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive.

Chairman Haight asked if the Commission finds it unreasonable for the applicant to build within the setback.

Ms. McKibben reminded the Commission that the unique physical features are more the basis which must be considered rather than the cost to the applicant.

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The Commission needs to look at criterion six which is that a grant of the variance would result in more benefits than detriments to the neighborhood, stated Chairman Haight.

Mr. LeVine said it appeared to him that no detriments to the neighborhood would occur as a result of this variance.

Going back to criterion five, Mr. Frisby said the unique physical feature of this property is that a retaining wall would have to be constructed rendering compliance with the standards unreasonably expensive.

Answering a question from Mr. Frisby, Ms. Handler stated that the house had been situated near the front of the lot and close to a steep embankment when they purchased it.

If the retaining wall is constructed theoretically they would no longer have a shared driveway, said Mr. Frisby, thus negatively affecting the neighbors.

Mr. Haight said it is his understanding that the shared driveway would only be affected during construction, and it would not affect the neighbors negatively after construction.

Ms. Handler said in the staff report it mentions that the retaining wall would be less attractive to the neighbors than the existing vegetation.

Mr. LeVine said the affirmative compliance with the standard does unreasonably prevent the owner from using the property in a manner which is consistent to the scale, amenities, appearance or features, with existing development in the neighborhood of the subject property because the existing standard would either require the owner to build a retaining wall which would impact the neighborhood or preclude the owner from improving their home in a manner consistent with the rest of the neighborhood.

R**oll Call Vote:** *(to the motion, by Mr. Frisby, that the Commission approve VAR2016 0004 with positive findings by the Commission for criterion 1, 5 and 6).*

Speaking against the motion, Mr. Dye said he felt the Commission was grasping at straws in its attempt to approve the variance. He said they are setting precedent, and that a variance is basically permission to go against the law.

Yeas: Peters, Frisby,

Nays: Voelckers, LeVine, Bell, Dye, Greene, Shelton-Walker, Haight

The motion fails.

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MOTION: *by Mr. Voelckers, to deny the request for VAR2016 0004 and accept staff's findings, analysis and recommendations to deny the variance.*

Roll Call Vote:

Yeas: Dye, Bell, Voelckers, Shelton-Walker, Greene, Haight

Nays: Frisby, LeVine, Peters

The motion passed.

B. VAR2016 0009: A Variance Request to the front yard setback, for a garage with an accessory apartment.
Applicant: Mike Piling
Location: 14329 Otter Way

Staff Recommendation
Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2016 0009.

Mr. Lange told the Commission this variance is for a front yard setback for a proposed garage with an accessory apartment for a home located on Otter Way. The applicant would like to build a garage with an apartment at the front yard setback, he said. The lot is zoned D3, said Mr. Lange, and the setback at issue is the 25 foot front yard setback. There are also 10 foot side yard setbacks and a 0 foot rear yard setback since it is an oceanfront property, he said. The parcel exceeds the required property size for a D3 zoning district, said Mr. Lange. Currently the home owner uses the Otter Way right-of-way to park vehicles, said Mr. Lange. The applicant wants to build a garage with an accessory apartment. This would be constructed at the front property line and would allow for off-street parking, he said. The right-of-way on Otter Way is a DOT right-of-way, said Mr. Lange. There are several homes in the area where the property line crosses through the home, he noted. Three variances have been granted to property on Otter Way; one for a home with a five foot setback, he said, and one variance allowing a garage to be constructed one foot from the property line and one home had a variance for a front yard setback, said Mr. Lange.

The home was built below the right-of-way on a sloping lot, said Mr. Lange. A garage with an accessory apartment would need to have a setback of 25 feet, said Mr. Lange. The applicant has chosen this site for the construction of the garage because it would be out of the view shed of

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the neighbors, he said. This would create parking on site in the garage and next to the garage, said Mr. Lange.

There are exceptions in Title 49 for items such as garages for a minimum setback of five feet from the property line if the topography of the lot makes construction a hardship, said Mr. Lange. The carport or garage could not exceed a maximum height of 17 feet with a gross floor area of no more than 600 square feet, he said. The applicant seeks a variance for a structure that is taller than 17 feet and larger than the 600 square feet, said Mr. Lange.

Staff found that criterion 1 was not met in that the requested variance was not consistent with justice to other property owners in the area who were only allowed a 5 foot or 1 foot setback. The staff also found that criterion 2 was not met in that the requested variance did not meet the intent of Title 49 in regards to front yard setbacks. Staff found that criterion 3 was met because the requested variance would not injure nearby property, and that criterion 4 was met because the variance does not authorize uses not allowed in the zoning district. The staff found that criterion 5(D) was not met because the pre-existing nonconformity does not prohibit conformity with the front yard setback requirement, said Mr. Lange. However, because criterion of 5(C) is met, the finding for five overall could be met, said Mr. Lange. The criterion for number 6, that a grant of the variance would result in more benefits than detriments to the neighborhood was met, said Mr. Lange. The accessory apartment would provide more housing for the community and the neighbor's view would not be disturbed, and also there would be the addition of on-site parking, said Mr. Lange.

The variance did not meet the criteria because criterion 1 and 2 were not met, said Mr. Lange.

Mr. Voelckers asked why the property line was drawn in the area so that it went through existing homes.

Mr. Lange said he did not know why DOT created the line that it did so that it cut through existing homes.

Mr. Dye asked how criterion 5(C) was met in this case.

Mr. Lange said the lot is sloping.

Mr. Dye said the lot slopes at the proposed location as well.

Mr. Lange acknowledged that the lot did slope at the proposed location.

Mr. Lange added that expense is an issue as well.

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Mr. Dye said that as in the previous case before the Commission this evening, that expense was not an issue if there was an existing geographic area that did not require the expense.

Ms. McKibben responded that she felt that Mr. Dye was correct in his analysis. There is an area on the site that is more flat but it would require a substantial amount of fill to make the garage at the same height of the roadway which is required to be accessible, she said. This particular structure would require additional expense on whatever location it was built, she said. She said had the staff had more time to consider this they may be bringing a different report before the Commission, but they did not have more time.

Chairman Haight said that part of this variance request is to have a second story for an accessory apartment put on top of the garage which is not within the confines of Title 49.

Applicant

Mr. Mike Piling said if he can construct the garage where he wants to construct it, that it will be much less costly to construct, the closer to the road the garage is situated. At his chosen location, the two-story garage will not obstruct anyone's view, he added. Because of the curve in the road, he would only be coming close to the right-of-way in one spot, said Mr. Piling. He did not want to construct the garage in the alternate locations because they would interfere with his neighbor's view, said Mr. Piling. They would be helping the housing market whenever he finished the construction of the apartment which he said may meet criterion number two.

Mr. LeVine said if he made his garage a little bit smaller than he could construct within five feet of the road. He asked Mr. Piling if he had considered that option.

If he selected that option the garage would have to be right up against the house, said Mr. Piling. The current plan would provide a buffer between the home and the garage, he said.

Chairman Haight asked if there had been any discussion with DOT to vacate a portion of the right-of-way to the applicant's advantage.

Mr. Piling said he has been to the Legislature and the City regarding the Otter Way right-of-way. The state cannot do anything to that right-of-way even though it cuts through houses because it was federal money utilized to build Glacier Highway.

Ms. Shelton-Walker asked if the applicant was asking for a one foot setback under criterion 1 if that criterion would be met since a previous one foot setback had been granted to another property owner in the area.

Mr. Lange said that a variance had been granted to a residence in 1996 for a garage, but not for a garage with a second floor.

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Ms. Shelton-Walker said to her it seemed compelling enough that the Commission reconsider criterion one, which the staff had stated was not met.

MOTION: *by Mr. Voelckers, that the Commission approve VAR2016 0009 with one change, which is to approve it based upon a one foot setback.*

Speaking in support of his motion, Mr. Voelckers said he felt the State's positioning of property lines has placed the applicant in an untenable position. This is not an unreasonable solution considering neighborhood harmony. He said he did not see any negative aspects to the variance being granted with a one foot setback.

Criterion 1 could be met because it would give substantial relief and would be consistent since there have already been several variances already granted along the street, said Mr. Voelckers. Criterion 2 could be met because he felt that the public safety and welfare is preserved in this case.

Speaking against the motion, Mr. Dye said the previous example was for a one story garage with a one foot setback. The applicant has stated he may not complete the accessory apartment right away so the construction would not be contributing to the current housing in Juneau, said Mr. Dye.

Mr. LeVine said he is sympathetic to this variance request, as he was to the previous variance request on the agenda this evening. He said he felt that both of these applicants should be able to construct their respective dwellings where they can best construct them, but that he could not reconcile the inconsistency on criterion 5(C). Therefore, he said, he would have to vote against the motion, much as he does not want to do that.

Mr. Peters said he echoed the concerns expressed by Mr. LeVine and that he could not get around the inconsistencies in 5(C) as it relates to this variance request. He said that he would also be voting against the motion.

Ms. Shelton-Walker said she felt in this instance that the applicant was dealing with a unique physical feature and that she did not see another option for this applicant.

Roll Call Vote:

Yeas: Shelton-Walker, Haight

Nays: Dye, Frisby, Greene, Bell, LeVine, Peters, Voelckers

The motion failed.

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MOTION: *by Mr. Peters, that the Commission accept the staff's findings, analysis and recommendations, and deny VAR2016 0009.*

Mr. LeVine offered the friendly amendment to the main motion to change the finding on 5(C) to find that criterion 5(C) is not met.

In support of his amendment, Mr. LeVine said the unique physical features of the property do not render this accommodation unreasonably expensive.

Mr. Peters accepted the friendly amendment.

Roll Call Vote:

Yeas: Peters, LeVine, Bell, Dye, Frisby, Greene, Voelckers

Nays: Shelton-Walker, Haight

The motion passed.

The Commission adjourned as the Board of Adjustment and reconvened as the Planning Commission.

XII. OTHER BUSINESS - None

XIII. DIRECTOR'S REPORT

Ms. McKibben said the Landscape Alaska and the Yankee appeal will be heard at the Supreme Court on September 15, 2016. The court decision confirmed the Planning Commission and Assembly decisions on Haven House, she added.

Ms. McKibben urged the members to attend the board training session if they have not attended in the past.

There is a Committee of the Whole meeting scheduled for September 13, said Ms. McKibben. The Director of Public Works and Engineering Roger Healy will talk to the Commission about the CIP process, said Ms. McKibben. They may potentially have the Energy Plan, but if access and frontage are discussed then there would not be time for the Energy Plan, said Ms. McKibben.

XIV. REPORT OF REGULAR AND SPECIAL COMMITTEES

Title 49 Committee

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Mr. LeVine reported that the Title 49 Committee met and discussed variances and eagle tree protection.

Rules Committee
Mr. Voelckers reported that the Rules Committee has yet to obtain a quorum.

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XVI. ADJOURNMENT

The meeting was adjourned at 10:52 p.m.

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Community Development

City & Borough of Juneau • Community Development
155 S. Seward Street • Juneau, AK 99801
(907) 586-0715 Phone • (907) 586-4529 Fax

DATE: August 31, 2016

TO: Planning Commission

FROM: Eric Feldt, Planner
Community Development Department

FILE NO.: AME2016 0011

PROPOSAL: A proposed rezone of a vacant lot near the end of St. Ann's in downtown Douglas from D-5 to D-18 zoning district.

Applicant: R&M Engineering

Legal Description: Southeast Fraction of USMS 164

Parcel Code No.: 2-D04-0-T48-001-1

Site Size: 13,366 Square Feet (0.3 acres)

Comprehensive Plan Designation: Natural Park Area (NP)

Zoning: D-5

Utilities: CBJ Water & Sewer

Access: St. Ann's Avenue

Existing Land Use: Vacant

Surrounding Land Use: North - CBJ Historic Treadwell Park; RR & D-18
South - Single family Dwelling; Treadwell St.; D-5
East - CBJ Historic Treadwell Park; RR
West - Multifamily Residential; St. Ann's Ave.; D-18

Vicinity Map

ATTACHMENTS

Attachment A	Rezone Application
Attachment B	Development Permit Application
Attachment C	Current Zoning Map
Attachment D	Proposed Zoning Map

The City and Borough of Juneau Code states in CBJ 49.10.170(d) that the Commission shall make recommendations to the Assembly on all proposed amendments to this title, zonings, and re-zonings indicating compliance with the provisions of this title and the Comprehensive Plan.

PROPOSAL

The applicant seeks to rezone a vacant 0.3 acre property located near the end of St. Ann's Avenue in downtown Douglas from D-5 to D-18 so as to build housing in the future. If approved, the owner desires to subdivide the property into three lots and build a single family home on each lot, for a total of three homes. However, the approval of the rezone does not give approval to the subsequent housing development. Further, if the rezone is approved, the owners may revise their development plans and may have up to six units on the site if all other land use requirements are met such as parking, yard setbacks, etc. Also, any use allowed in the zoning district could be permissible if the rezone is approved.

The rezone and development permit applications are provided in Attachments A and B. The current and proposed zoning maps are provided in Attachments C and D.

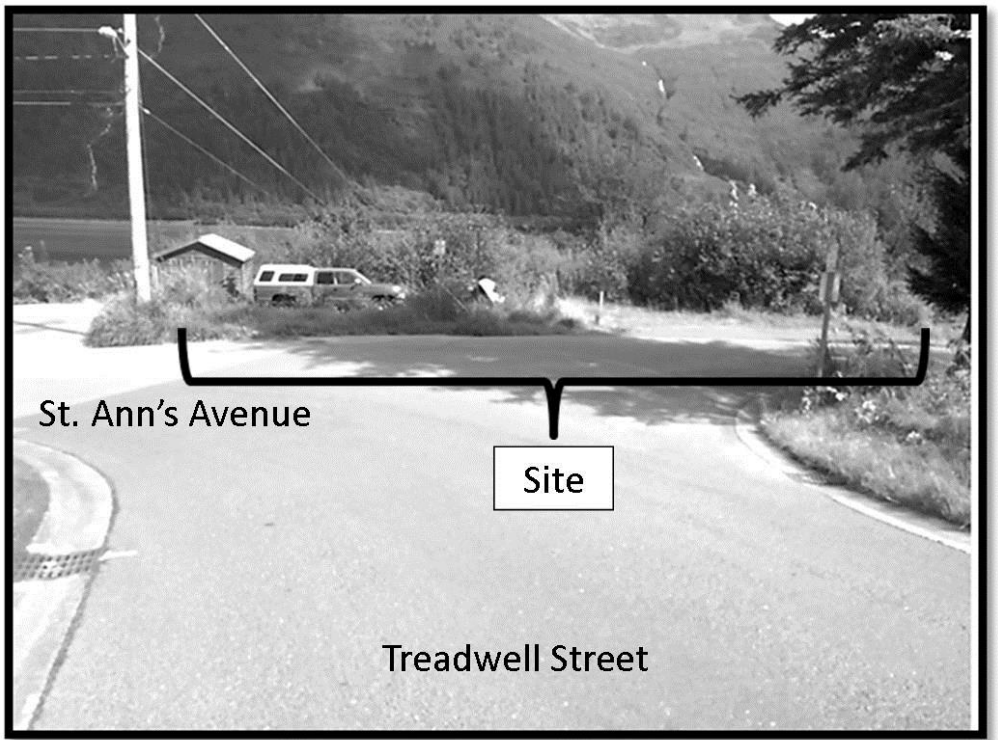


Figure 1: Looking at the subject site from Treadwell Street. Dead end of St. Ann's Avenue is to the right, beyond the picture. Photograph taken by CDD staff 8/17/16.

BACKGROUND

The subject site (Southeast Fraction of USMS 164) was established through the platting of the abutting lots to the north and south in 1966 and 1996, respectively. Ownership of the site transferred from AJ Industries Inc. to the current owner in 1966, according to staff's records.

The site is vacant. Most of the site is on a steep hillside. Pictures of the site are provided in Figures 1 and 2.

Much of the neighborhood between St. Ann's Avenue and 5th Street has been developed with single-family homes along with a few dispersed accessory apartments. Apartment and condominium complexes exist in the neighborhood and are found along the downhill side of St. Ann's Avenue, due to higher density zoning. Growth in the area has been slow since the neighborhood is nearly fully developed. The most recent change in development was the re-routing of a CBJ transit bus line from St. Ann's Avenue to Savikko Road. Therefore, bus service is no longer provided along St. Ann's Avenue.

Public Comment

CBJ staff held a neighborhood meeting to discuss this proposal with downtown Douglas property owners. The meeting was held at the Douglas Library on Wednesday, August 17 from 6 pm to 8 pm. Although only five members of the neighborhood attended, staff received many comments about the project such as effects on traffic, parking, and views from homes across St. Ann's Avenue. Also, questions came up about how the frequently overflow of cars parking at the trailhead at the end of St. Ann's Avenue could be effected by the rezone (or vice versa). Staff has addressed these comments at the end of the memorandum.

Since the meeting, staff has not received any additional public comments pertaining to the proposal.

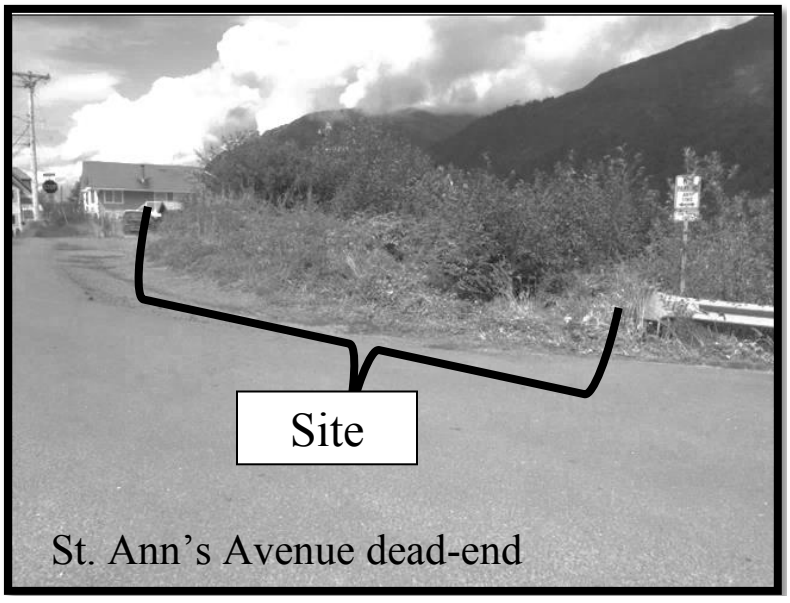


Figure 2: Looking toward the site from the dead of St. Ann's Avenue. The picture depicts the steep angle of the site as it slopes downhill to the CBJ Treadwell Historic Park. Photograph taken by CDD staff 8/17/16.

ANALYSIS

REZONE PROCEDURE

The Title 49 Land Use Code establishes the following process for rezones:

> **CBJ 49.75.110 - Initiation.**
> **A rezoning may be initiated by the director, the commission, or the assembly at any time during the year. A developer or property owner may initiate a request for rezoning in January or July only. Adequate public notice shall be provided by the director to inform the public that a rezoning has been initiated. (Emphasis added)**
>
> The rezone proposal was initiated on July 13, 2015. Public notices were mailed to property owners within 500 feet of the subject properties on August 9, 2016 and printed in the newspaper on September 2 and 12, 2016.
>
> **CBJ 49.75.120 - Restrictions on rezonings.**
> **Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected within the previous 12 months shall not be considered. A rezoning shall only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the land use maps of the comprehensive plan. (Emphasis added)**
>
> The rezone request involves the expansion of the nearby D-18 zoning district boundary.
>
> Staff's review of whether or not the rezone request substantially conforms to the land use maps of the Comprehensive Map and uses allowed in the D-18 district is provided under FINDINGS.

Compliance with Comprehensive Plan

As discussed above, the proposed zoning district and the uses allowed therein must be found to be in substantial conformance with the land use maps of the comprehensive plan. "Substantial" is commonly defined as: essentially, without material qualifications, in the main, in substance, materially, in a substantial manner.

2013 Comprehensive Plan

In Chapter 11, the Comprehensive Plan Land Use Maps offer the following guidance in regard to rezoning:

> In considering a re-zoning request, the Planning Commission and Assembly should aim to promote the highest and best use of the land under consideration: in some cases, the highest and best use may be increased density or more intensive use of the land; in other cases, the highest and best use may be preservation in an undisturbed state for purposes of habitat preservation, flood control, or providing a buffer between development and areas subject to natural hazards.

In Chapter 1, the Comprehensive Plan further supports the flexibility of the plan but emphasizes that said flexibility should be used when considering community growth, along with other current information.

In Chapter 18, Implementation and Administration, additional guidance is provided as follows:

> The Comprehensive Plan as a Guiding Planning Document
>
> "The Comprehensive Plan provides a rational and consistent policy basis for guiding all future CBJ government growth and development decisions. This requires that each land use decision, from the most minor variance to the development of a New Growth Area, be evaluated for its compliance with the policies, guidelines, standards and criteria established in the Plan. To ensure this, procedures must be followed to require that routine consultation of the Plan is an integral part of the land use decision making process."
>
> "The Plan contains 123 Policies, each of which may have an associated "Standard Operating Procedure," "Development Guideline," and/or "Implementing Action," which are directives for how to carry out the policy. As a preliminary matter, the reviewer must determine which Policies are relevant to the subject at hand. Of course, the writers of the Plan cannot envision every sort of proposal that might one day be conceived and analyzed against the Policies. In that vein, such analyses are not conducted on an absolute basis. That is, failure of a proposal to conform to one particular Policy in the Plan does not automatically mean that it is inappropriate if conformance is shown with other policies of the Plan. Thus, the analysis is one of balancing the many relevant policies and looking holistically at the particular situation, site and its environs." (Emphasis added)

When considering this request, it is important to understand what the Comprehensive Plan intends when describing land use designations. The plan states that land use categories are intended to describe the overall character of development and are not intended to be firm or restrictive definitions, such as zoning districts or Conditional Uses. The categories are to be used to guide the formation of zoning regulations, and their allowed uses reflect cultural values and economic and societal needs. Over time, the Comprehensive Plan descriptions of land use

categories will change to reflect changing values and circumstances. The Comprehensive Plan Map for this area is shown Figure 3.

The site is designated 'NP', CBJ Natural Park Area. This designation is defined below. In summary, this designation is for CBJ-owned lands used for open space or recreation. This designation is unusual for the subject site since it is privately owned and is zoned to permit housing under the current D-5 district. Also unusual is that NP also covers the adjacent privately-owned triplex (3-unit building) to the northwest. The land downhill of the subject parcel is also designated NP, which is the CBJ Historic Treadwell Park.

Subject Site's Land Use Designation

> **Natural Area Park (NP) [page 145]**
> Natural Area Parks are **CBJ-owned lands** characterized by areas of natural quality designed to serve the entire community by providing fish and wildlife habitat, open space/natural areas, access to water, and opportunities for passive and dispersed recreation activities. **No development should be permitted other than structures, roads and trails necessary for the maintenance and protection of the resources or for managed public access for education and passive recreation purposes**; this may include parking areas, educational kiosks, cabins, rest stations and similar convenience services for the recreational enthusiast. These lands should be zoned to prevent residential, commercial, and industrial development, as well as resource extraction activities. The CBJ should retain ownership of these lands. **[Emphasis added]**

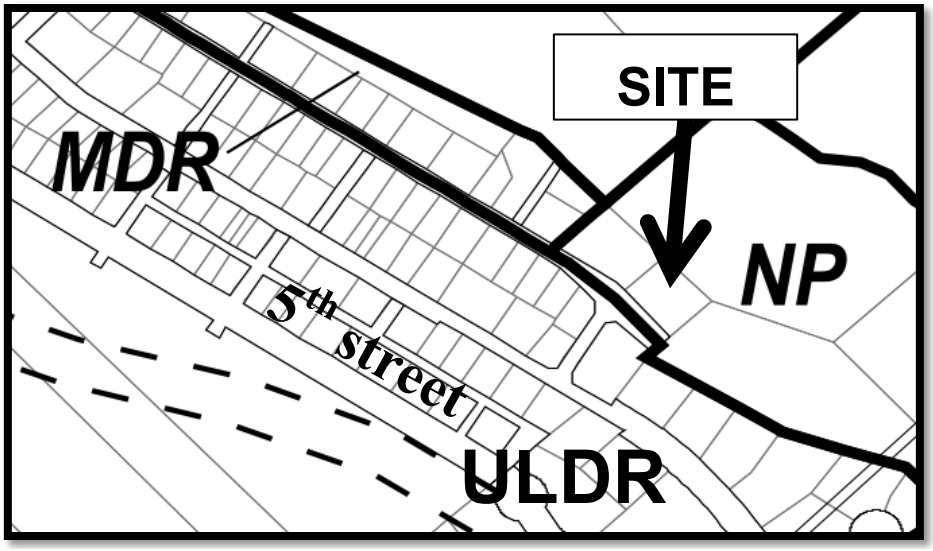


Figure 3: Comprehensive Plan land use map of downtown Douglas. Magnified image of Map 'P', page 166 of Comprehensive Plan.

The area uphill of St. Ann's Avenue is designated ULDR, Urban/ Low Density Residential; see definition below. This designation recommends single family housing at a density of one to six units per acre. This housing density is similar to the D-5 district's density and existing development in the neighborhood.

> **Urban/ Low Density Residential (ULDR) [page 147]**
> These lands are characterized by urban or suburban residential lands with **detached single-family units, duplex, cottage or bungalow housing, zero-lot-line dwelling units and** manufactured homes on permanent foundations at densities of **one to six units per acre.** Any commercial development should be of a scale consistent with a single family residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300). **[Emphasis added]**

The properties along the downhill side of St. Ann's Avenue are designated MDR, Medium Density Residential. MDR is defined below. This designation recommends multifamily housing at densities between five and twenty units per acre. This designation matches the D-18 district, and reflects some of the existing multifamily developments along this side of St. Ann's Avenue.

> **Medium Density Residential (MDR) [page 147]**
> These lands are characterized by urban residential lands for **multifamily dwelling units at densities ranging from 5 to 20 units per acre**. Any commercial development should be of a scale consistent with a residential neighborhood, as regulated in the Table of Permissible Uses (CBJ 49.25.300). **[Emphasis added]**

How the subject site became designated NP and not MDR or ULDR is a bit of a mystery in CBJ records. The NP designation has been applied to the lot since the previous Comprehensive Plan (2008). Before that, it was designated 'OPL', Other Public Lands, in the 1996 Comprehensive Plan. The OPL designation no longer exists in the Comprehensive Plan. Neither OPL nor NP appears to be an appropriate designation for the subject site or adjacent triplex since both sites are privately owned. Staff reviewed Comprehensive Plans as far back as 1958. The maps in those plans only identify subareas. For the Juneau subarea, the guidelines recommend medium density residential.

Due to the ownership status of the subject site and adjacent MDR district boundary, staff finds the rezone substantially conforms to the MDR land use designation. Further, the NP designation is inappropriate for the subject site and neighboring site and should be further examined during the next Comprehensive Plan update.

In addition to the land use designation, the Comprehensive Plan provides policies for growth and preservation. The policies below are germane to the subject rezone which relates to the need for housing in areas served by CBJ utilities and roads.

> **POLICY 10.1.** TO FACILITATE AVAILABILITY OF SUFFICIENT LAND WITH ADEQUATE PUBLIC FACILITIES AND SERVICES FOR A RANGE OF HOUSING TYPES AND DENSITIES TO ENABLE THE PUBLIC AND PRIVATE SECTORS TO PROVIDE AFFORDABLE HOUSING OPPORTUNITIES FOR ALL JUNEAU RESIDENTS.
>
> > **10.1 - SOP2** Designate sufficient land on the *Comprehensive Plan* Land Use Maps and zoning maps to provide for a full range of housing types and densities desired by resident households. Provide choices in residential neighborhood character such that residents can choose to live in urban, suburban and rural residential settings and neighborhoods.
> >
> > **10.1 - SOP1** Monitor land use designations to ensure sufficient land available to meet current and projected needs for residential development in areas with existing or projected municipal water and sewer service, arterial access, public transit service, and other adequate public facilities and services.
>
> **POLICY 10.3**. TO FACILITATE RESIDENTIAL DEVELOPMENTS OF VARIOUS TYPES AND DENSITIES THAT ARE APPROPRIATELY LOCATED IN RELATION TO SITE CONDITIONS, SURROUNDING LAND USES, AND CAPACITY OF PUBLIC FACILITIES AND TRANSPORTATION SYSTEMS.
>
> **POLICY 10.5.** THAT RESIDENTIAL DEVELOPMENT PROPOSALS, OTHER THAN SINGLE-FAMILY RESIDENCES, MUST BE LOCATED WITHIN THE URBAN SERVICE AREA BOUNDARY OR WITHIN A DESIGNATED NEW GROWTH AREA. APPROVAL OF NEW RESIDENTIAL DEVELOPMENT PERMITS DEPENDS ON THE PROVISION OR AVAILABILITY OF NECESSARY PUBLIC AMENITIES AND FACILITIES, SUCH AS ACCESS, SEWER, AND WATER.

Staff finds that the rezone request is consistent with the policies and land use map of the Comprehensive Plan.

Compliance with CBJ LAND USE CODE

Title 49 Analysis
The purposes of Title 49 are provided below.

(1) To achieve the goals and objectives, and implement the policies, of the Juneau Comprehensive plan, and coastal management program;

(2) To ensure that future growth and development in the City and Borough is in accord with the values of its residents;

(3) To identify and secure, for present and future residents, the beneficial impacts of growth while minimizing the negative impacts;

(4) To ensure that future growth is of the appropriate type, design and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;

(5) To provide adequate open space for light and air; and

(6) To recognize the economic value of land and encourage its proper and beneficial use.

Those six purpose statements are implemented by the establishment of zoning districts, which determine types of allowed and prohibited land uses, densities, housing types, commercial uses, parking, etc. A map showing the current zoning is provided in Attachment C. The site is zoned D-5, which is a low-density district permitting primarily single family homes and accessory apartments. The neighborhood uphill of St. Ann's Avenue is in a D-5 district. Properties on the downhill side of St. Ann's Avenue are zoned D-18. This district permits the same types of housing as D-5 but also allows multifamily housing and limited commercial uses such as small restaurants (<1,000 square), small theatres (<200 seats), and light manufacturing. Those commercial uses are permissible through the Conditional Use process whereby conditions can be required to lessen impacts to the neighborhood.

Table 1 shows some differences and similarities between the two zoning districts.

Table 1: Zoning Districts

	D5	D18
Density	5 units/ acre	18 units/ acre
Units/ Lot	Max. of 2 units on lot	Max. of 6 units on lot
Height	35'	35'
Building Coverage	50% of lot area	50% of lot area
Parking	3 for dwelling + apt	Depends on # of bedrooms
Yard Setbacks	Front Yard: 20' Rear Yard: 20' Side yards: 5'	Front Yard: 20' Rear Yard: 10' Side yards: 5'
Minimum Lot size	7,000 Sq. Ft	5,000 Sq. Ft

The subject site has been zoned D-5 since 1987. Prior to that, the lot was zoned RML, Low Density Multifamily Residential District. This district permitted single- and multi-family dwellings. RML also permitted a maximum density of 35 units per acre. Therefore, after 1987, the site was down-zoned from 35 units per acre to 5 units per acre (D-5 density). In 1987, the entire zoning map was overhauled and the naming of all residential districts and associated densities changed. This borough-wide change resulted in down-zoning some properties, such as the subject one. It is unclear why the other lots along the downhill side of St. Ann's Avenue remained in a multifamily zoning district.

The site is approximately 130 feet wide, approximately 100 feet deep, and consists of 13,366 square feet (0.3 acres). Under current D-5 zoning, the owner may have a duplex, attached housing (zero-lot line) with accessory apartments, or a single family house with an accessory apartment. In the D-18 district, the site could accommodate up to six units, attached or detached. The owner desires to subdivide the lot into 3 smaller parcels and construct one single family house and two attached homes (zero-lot line). As stated earlier, approval of the rezone does not also approve any subsequent development. Therefore, the analysis of the subject memorandum addresses a full build-out scenario of six units as well as other uses permitted in the D-18 district. If the rezone is approved, the owner must meet all applicable zoning requirements for the development proposed, such as yard setbacks, parking requirements, etc.

Future development on the lot will impact views from adjacent homes and increase traffic levels because the lot is vacant and is located at the end of St. Ann's Avenue. However as noted earlier, the maximum allowed height in the two zoning districts is the same, 35 feet. According to CBJ Engineering, the existing CBJ water, sewer, and streets in the neighborhood can accommodate the additional demand and traffic increase resulting from future D-18 development on this site. The CBJ Assessors Department finds that no decrease in property value will result with approval of the rezone.

Staff concludes that D-18 development will be consistent with the purposes of Title 49 and that the permitting processes will ensure those purposes are upheld.

ZONE CHANGE INITIATION

CBJ 49.75.110. INITIATION. A rezoning may be initiated by the director, the commission or the assembly at any time during the year. A developer or property owner may initiate a request for rezoning in January or July only. Adequate public notice shall be provided by the director to inform the public that a rezoning has been initiated.

1. Was the proposed zone change initiated by the property owner during the appropriate time frame?

Yes. The application for the subject zone change was made on July 13, 2016.

2. Has the director provided adequate public notice through newspaper advertising, property owner mailings and requiring a public notice sign to be posted on-site?

Yes. The public was notified through newspaper advertising published on September 2 and 12, 2016; mailings to owners of all properties within 500 feet of the subject property on August 9, 2016; and a public notice sign posted on-site for two weeks prior to the Planning Commission hearing on the rezone request. Staff also held a neighborhood meeting on August 17, 2016, for additional public noticing and commenting.

FINDINGS

After review of the application materials, the CBJ Land Use Code, the CBJ 2013 Comprehensive Plan, and existing conditions of the neighborhood, the Director makes the following findings:

1. The proposal meets the submittal requirements and the rezoning initiation, zone change restrictions and procedural requirements of the CBJ Land Use Code.

2. Rezoning the site to D-18 from D-5 substantially conforms to the Comprehensive Plan and D-18 allowed land uses for the following reasons: 1) the current NP land use designation is inappropriate for the privately-owned site, and the nearby MDR district is more appropriate for guiding land use growth; 2) D-18 development will not cause negative impacts to adjacent property; and 3) existing CBJ streets and utilities can accommodate the additional demand of future development.

3. The rezone expands the existing D-18 district to the subject site.

RECOMMENDATION

Staff recommends the Planning Commission recommend the Assembly approve the subject rezone application, changing the zoning district from D-5 to D-18.

ZONE CHANGE APPLICATION

Project Number	Project Name (15 characters)	Case Number	Date Received
		AME 16-011	7/13/16

LEGAL DESCRIPTION(S) AND LIMITS OF PROPERTY TO BE REZONED:
SE FRACTION USMS 164 (DOUGLAS)

IS THIS AN EXPANSION OF AN EXISTING ZONE? [X] Yes [ ] No

Total Land Area of Proposed Change 13,666 SF / 0.313 acres

Comp Plan Designation NP

Current Zone(s) D-5

Comp Plan Map _____

New Zone Requested D-18

TYPE OF ZONE CHANGE REQUESTED:
[X] Regular [ ] Transition

HAS THIS OR A SIMILAR ZONE CHANGE BEEN REQUESTED IN THE PREVIOUS 12 MONTHS?
[ ] Yes [X] No

UTILITIES AVAILABLE: WATER: [X] Public [ ] On Site SEWER: [X] Public [ ] On Site

PURPOSE OF THE REQUESTED ZONE CHANGE:
TO ALLOW SUBDIVISION OF EXISTING PARCEL INTO 2 (TWO) LOTS FOR SINGLE FAMILY RESIDENCE AND 1 (ONE) COMMON WALL DWELLING.

IS THERE A PROPOSED USE OF THE LAND? [X] Yes [ ] No

PROPOSED BUFFERS TO ADJACENT ZONES? [ ] Yes [ ] No

DESCRIBE (INCLUDING TYPE AND DENSITY OF PROPOSED DEVELOPMENT):
APPLICANT PROPOSES ONE SINGLE FAMILY UNIT AND ONE COMMON WALL UNIT ON REZONED PROPERTY

DESCRIBE ANY POTENTIAL IMPACTS TO PUBLIC INFRASTRUCTURE:

STREETS: ST. ANN'S AVENUE CURRENTLY EXISTS, NO IMPACTS

WATER: PUBLIC WATER WILL BE CONNECTED TO FOR ONE LOT, OTHER LOT HAS SERVICE

SEWER: PUBLIC SEWER WILL be connected to on one lot, other Lot has service

TO BE COMPLETED BY THE APPLICANT

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

ZONE CHANGE FEES

	Fees	Check No.	Receipt	Date
Application Fees	$ 600			
Admin. of Guarantee	$			
Adjustment	$			
Pub. Not. Sign Fee	$ 50			
Pub. Not. Sign Deposit	$ 100			
Total Fee	$ 750	1541	old #3329	7/13/16

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

Attachment A

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 7/13/16
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION

Project Description
Applicant requests to rezone existing 13,741 SF undeveloped parcel from D-5 zoning to D-18 zoning for purposes of allowing property to be subdivided into three (3) lots for allowing construction of a single family residence and a common wall dwelling. CBJ water and sanitary sewer exist to the property currently from St. Ann's Avenue. Rezone

PROPERTY LOCATION

Street Address	City/Zip

Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot): Southeast Fraction of USMS 1641, Douglas Alaska — USMS 1645E FRB

Assessor's Parcel Number(s): 2D040-T48-0011 ✓

LANDOWNER/ LESSEE

Property Owner's Name	Contact Person:	Work Phone:
Louie Russo and Guy Russo Jr. RUSSO UTD	Louie Russo	
Mailing Address	**Home Phone:**	**Fax Number:**
811 South 227 Place No. 7 Des Moines Washington 98198	206-719-1621	
E-mail Address	**Other Contact Phone Number(s):**	
juneauite@comcast.net		

LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****

I am (we are) the owner(s)or lessee(s) of the property subject to this application and I (we) consent as follows:
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.

X _____ Landowner/Lessee Signature — Date

X Guy A. Russo Jr. Landowner/Lessee Signature — Date 6/15/2016

NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.

APPLICANT If the same as OWNER, write "SAME" and sign and date at X below

Applicant's Name	Contact Person:	Work Phone:
R&M Engineering	Mark Pusich	780-6060
Mailing Address	**Home Phone:**	**Fax Number:**
6205 Glacier Highway Juneau Alaska 99801		
E-mail Address	**Other Contact Phone Number(s):**	
markpusich@pdceng.com		

X J Mark Pusich Applicant's Signature — 6-30-16 Date of Application

STAFF APPROVALS

OFFICE USE ONLY BELOW THIS LINE

✓	Permit Type	***SIGN	Date Received	Application Number(s)
	Building/Grading Permit			
	City/State Project Review and City Land Action			
	Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
	Mining Case (Small, Large, Rural, Extraction, Exploration)			
	Sign Approval (If more than one, fill in all applicable permit #'s)			
	Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
	Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
	Variance Case (De Minimis and all other Variance case types)			
	Wetlands Permits			
✓	Zone Change Application		7/13/16	AME 16-011
	Other (Describe)			

***Public Notice Sign Form filled out and in the file.

Comments:

Permit Intake Initials: ESF

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

Attachment B

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received:
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION

Project Description
Applicant requests to rezone existing 13,741 SF undeveloped parcel from D-5 zoning to D-18 zoning for purposes of allowing property to be subdivided into three (3) lots for allowing construction of a single family residence and a common wall dwelling. CBJ water and sanitary sewer exist to the property currently from St. Ann's Avenue.

PROPERTY LOCATION

Street Address	City/Zip

Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot)
Southeast Fraction of USMS 1641, Douglas Alaska

Assessor's Parcel Number(s)
2D040-T48-0011

LANDOWNER/LESSEE

Property Owner's Name	Contact Person:	Work Phone:
Louie Russo and Guy Russo Jr.	Louie Russo	
Mailing Address	**Home Phone:**	**Fax Number:**
811 South 227 Place No. 7 Des Moines Washington 98198	206-719-1621	
E-mail Address	**Other Contact Phone Number(s):**	
juneauitc@comcast.net		

LANDOWNER/LESSEE CONSENT ***Required for Planning Permits - not needed on Building, Engineering Permits***

I am (we are) the owner(s)or lessee(s) of the property subject to this application and I (we) consent as follows:
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.

X Louie M Russo — Landowner/Lessee Signature — Date: 6-15-16

X _____ — Landowner/Lessee Signature — Date

NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.

APPLICANT *If the same as OWNER, write "SAME" and sign and date "X" below*

Applicant's Name	Contact Person:	Work Phone:
R&M Engineering	Mark Pusich	780-6060
Mailing Address	**Home Phone:**	**Fax Number:**
6205 Glacier Highway Juneau Alaska 99801		
E-mail Address	**Other Contact Phone Number(s):**	
markpusich@pacene.com		

X Mark Pusich / Louie M Russo — Applicant's Signature — Date of Application: 6-30-16

STAFF APPROVALS

OFFICE USE ONLY BELOW THIS LINE

✔	Permit Type	Fee Waived	Date Received	Application Number(s)
	Building/Grading Permit			
	City/State Project Review and City Land Action			
	Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
	Mining Case (Small, Large, Rural, Extraction, Exploration)			
	Sign Approval (If more than one, fill in all applicable permit #'s)			
	Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
	Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
	Variance Case (De Minimis and all other Variance case types)			
	Wetlands Permits			
	Zone Change Application			
	Other (Describe)			

***Public Notice Sign Form filled out and in the file.

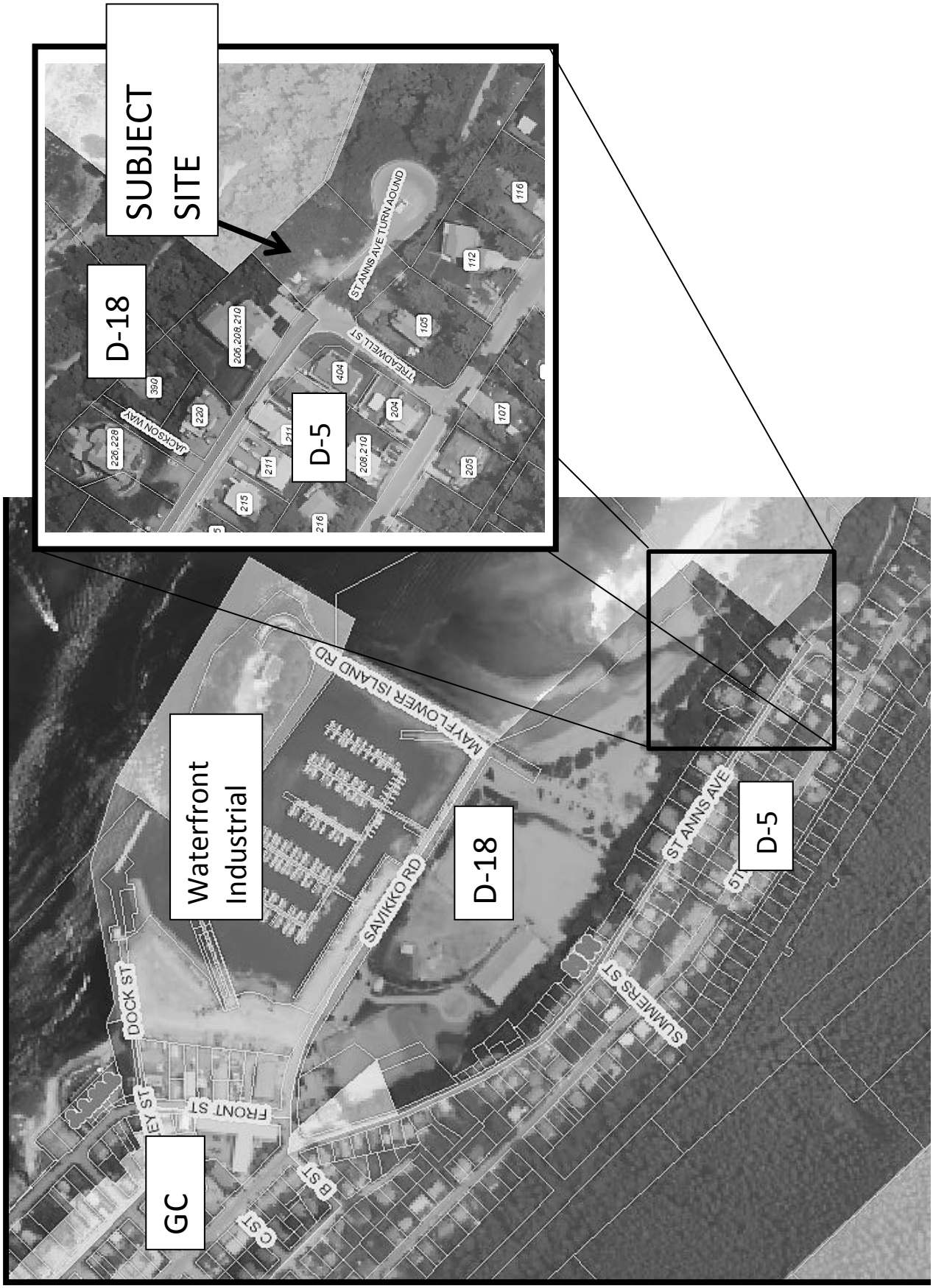
Comments:

Permit Intake Initials

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

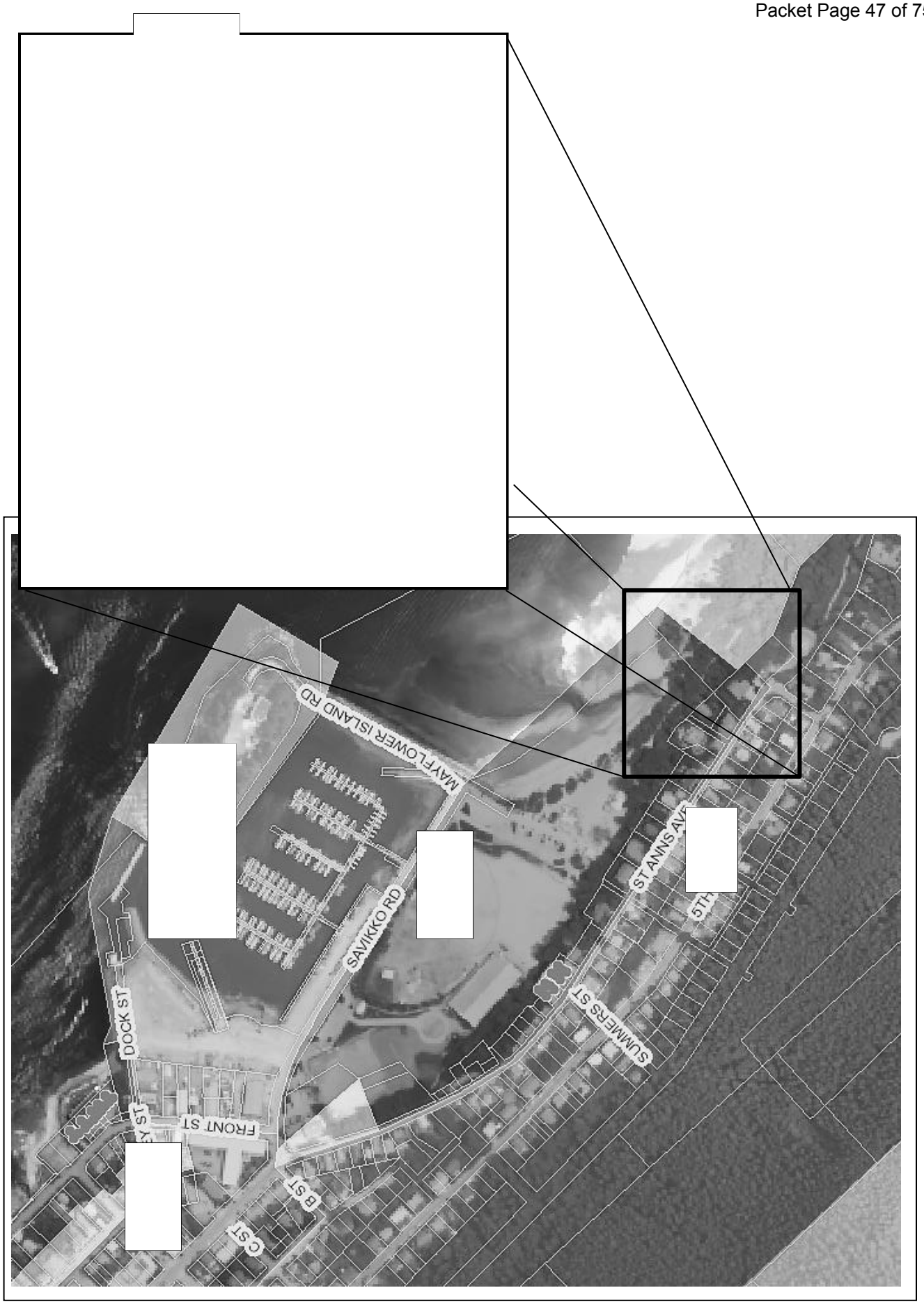
Attachment B

Current Zoning Map



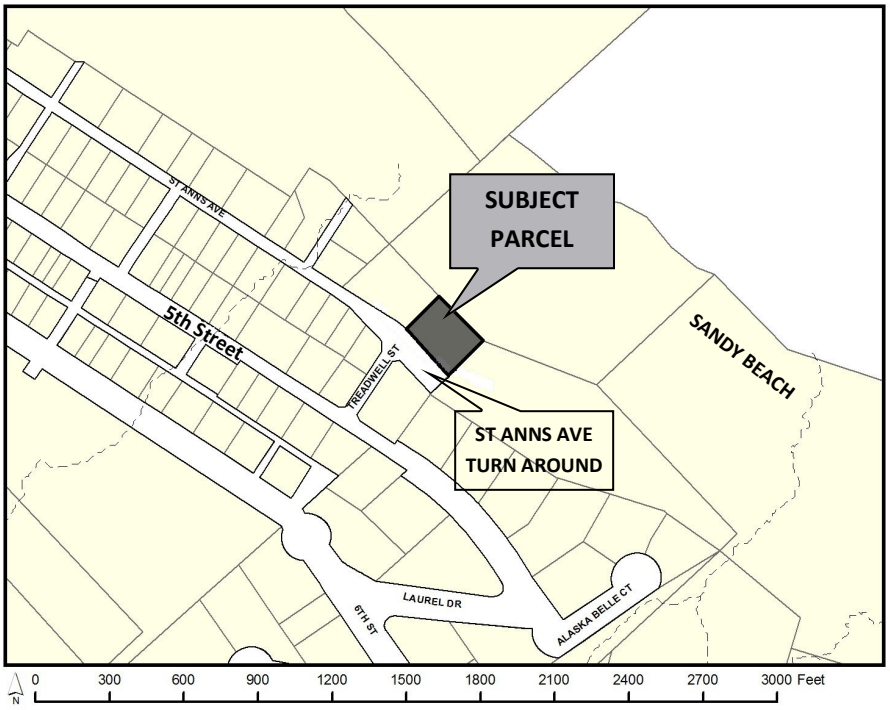
Attachment C

Proposed Zoning Map



Attachment D

NOTICE OF PUBLIC HEARING



City & Borough of Juneau
Community Development Department
155 S Seward Street • Juneau, Alaska 99801

SHIP TO:

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

PROPOSAL: A proposed rezone of a vacant lot near the end of St. Ann's in Downtown Douglas from D-5 to D-18 zoning district. (*Note: The Planning Commission has the discretion to consider and recommend alternative rezoning designations other than that being proposed by the applicant or recommended by staff.*)

File No:	AME2016 0011	Applicant:	R & M Engineering
To:	Adjacent Property Owners	Property PCN:	2-D04-0-T48-001-1
Hearing Date:	September 13, 2016	Owner:	Russo UTD
Hearing Time:	7:00 PM	Size:	13,366 Square Feet (0.3 acres)
Place:	Assembly Chambers	Zoned:	D5
	Municipal Building	Site Address:	St. Ann's Avenue
	155 South Seward Street	Accessed Via:	St. Ann's Avenue
	Juneau, Alaska 99801		

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department 14 days prior to the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a week before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact Eric Feldt at 586-0764 or eric.feldt@juneau.org

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

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Date notice was printed: August 9, 2016

Community Development

City & Borough of Juneau • Community Development
155 S. Seward Street • Juneau, AK 99801
(907) 586-0715 Phone • (907) 586-4529 Fax

PLANNING COMMISSION
NOTICE OF RECOMMENDATION
Date: September 14, 2016
File No.: AME2016 0011

City and Borough of Juneau
City and Borough Assembly
155 South Seward Street
Juneau, AK 99801

Proposal:	A proposed rezone of a vacant lot near the end of St. Ann's in downtown Douglas from D-5 to D-18 zoning district.
Property Address:	St. Ann's Avenue; Vacant Site
Legal Description:	Southeast Fraction of USMS 164
Hearing Date:	September 13, 2016

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated August 31, 2016, and recommended that the City and Borough Assembly adopt staff's recommendation for rezoning the subject site from D-5 to D-18.

Attachments: August 31, 2016 memorandum from Eric Feldt, Community Development, to the CBJ Planning Commission regarding AME2016 0011.

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the

recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ §01.50.020 (b).

Project Planner: _____ _____

Eric Feldt, Planner
Community Development Department

Ben Haight, Chair
Planning Commission

_____ 9/22/2016

Filed With City Clerk

Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this recommended text amendment. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

Andrew Hughes et al,
Appellant,

vs.

City & Borough of Juneau et al,
Appellee.

APPEAL CASE NO: 1JU-15-00744CI

NOTICE RE: COSTS AND ATTORNEY FEES ON APPEAL

To: Appellant and Appellee

Unless otherwise ordered by the court, the prevailing party seeking recovery of attorney fees and costs on appeal must submit a motion for attorney fees and an itemized and verified bill of costs within 10 days of the date shown in the clerk's certificate of distribution on the appeal decision. If the appeal decision was mailed, three additional calendar days are added to this deadline.

A request for any costs not allowed under Appellate Rule 508(d) must be made by separate motion.

Proof of service on the opposing party must be filed with the motion and bill of costs.

CLERK OF COURT

8/10/2016
Date

By: SHeidersdorf
Deputy Clerk

I certify that on 8/10/16
a copy of this order was emailed to:
Bruce
Palmer
McKeen

Clerk: sh

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

ANDREW HUGHES and TALL TIMBERS NEIGHBORHOOD ASSOCIATION, Appellants, v. CBJ PLANNING COMMISSION and HAVEN HOUSE, Appellees.	)	Case No.1JU-15-744 CI

DECISION ON APPEAL

I. INTRODUCTION

This case involves an administrative appeal of the City and Borough of Juneau ("City") Assembly's decision on an appeal of the City Planning Commission's decision granting a Conditional Use Permit[1] ("CUP") to Haven House, a faith-based organization designed to provide "safe, sober, stable, structured and affordable housing . . . to help women 'transition' from prison to ordinary life outside prison and to reduce recidivism." Haven House was granted a CUP to operate in the residential Tall Timbers neighborhood, zoned D-5 on the Table of Permissible Uses ("TPU"), CBJ 49.25.300.

This is an administrative appeal from the City Assembly. Mr. Hughes and Tall Timbers Neighborhood Association (hereinafter collectively as "TTNA") filed their notice of appeal from administrative agency on June 19, 2015 and opening brief on September 3, 2015. The City filed its opposition brief on October 13, 2015, and Haven House filed its opposition on October 16.

[1] Issuance or denial of conditional use permits is governed by CBJ 49.15.330(a-f).

The City requested oral argument and it was held in front of this court on February 17, 2016. TTNA appeared, represented by Attorney Daniel Bruce. The City appeared, represented by Attorney Robert Palmer, and Haven House appeared, represented by Attorney Mary Alice McKeen. The matter was taken under advisement at that time.

TTNA's issues presented for review by this court are as follows:

1) Whether the Assembly erred by holding that the parties had conceded that Haven House's proposed use was "not listed," and by affirming the decisions below where adequate written findings and substantial evidence fail to support their deviations from CBJ Title 49 as amended in 2010.
2) Whether the Assembly erred by affirming the decisions below where there are not adequate written findings and substantial evidence that Haven House "is of the same general character" as 1.610.
3) Whether the Assembly erred by affirming the decisions below where substantial evidence fails to support granting a permit to Haven House even if it is "of the same general character" as 1.610.
4) Whether the proceedings below have denied appellants procedural due process.

The above-captioned matter is an administrative appeal of the Assembly decision to deny an appeal. For the reasons explained herein, the court affirms the Assembly's decision and denies TTNA's appeal.

II. PROCEDURAL HISTORY

The mission and purpose of Haven House can be summarized as follows:

MISSION:
Haven House is a faith-based organization providing supported and structured living opportunities to foster healing and self-sufficiency for women coming out of prison.

PURPOSE:
Haven House is designed to be a positive, supportive living environment which will stimulate personal and spiritual growth, encourage accountability and financial responsibility, and provide referrals to essential reentry services during the participant's re-adjustment into the community. Haven House staff and volunteers will assist participants as they navigate their reentry by providing support and referrals to other community services for assistance with food, treatment, counseling, clothing, transportation, employment, and career

> development, among other services. Additionally, Haven House participants will be expected to participate fully in community activities, including house meetings, meals, and chores.
>
> Haven House will provide up to two years of transitional housing, a faith-based community with successful role models and opportunities for positive relationships, life skills training, and an opportunity for participants to support one another. Haven House is unique in that it is a faith-based home providing natural supports to its residents based on the presumption that women in safe, stable housing situations are less likely to reoffend.[2]

The procedural history of this case is adopted from the Assembly's decision on appeal from the Planning Commission.

On December 23, 2013, Haven House submitted a building permit application to the CBJ's Community Development Department ("CDD") to modify a single-family home in the Tall Timbers neighborhood to a "transitional group home." On January 24, 2014, the Director of the CDD sent Haven House a letter denying the permit, finding that under the 2010 CBJ Code Haven House was a "halfway house" and not a "group home" as defined by CBJ Code, which was not allowed in D-5 zones such as the Tall Timbers neighborhood.

Haven House filed an appeal of the Director's decision on February 11, 2014. After receiving supplemental material and argument from Haven House on March 10, 2014, the CDD Director sent Haven House a second letter, dated March 18, 2014, stating that he'd concluded that the CBJ code was "likely unenforceable" with respect to both "halfway houses" and "group homes." Based on that finding, and the additional information provided by Haven House elaborating on its proposed project, the Director explained that Haven House's proposed use, a "transitional group home," was a "use not listed" under CBJ 49.20.320, which would need to be

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[2] Appellee Haven House, Excerpt of Record, p. 479.

evaluated by the Board of Adjustment ("BOA"). Haven House submitted its applications for an unlisted use determination and CUP for an "entry home for women coming out of prison" to be located in the Tall Timbers neighborhood on May 2, 2014.

On April 1, 2014, a group of neighbors later identified as TTNA filed an appeal of the CDD Director's March 18, 2014 decision. Haven House filed its appeal of the same decision on April 4, 2014. On July 22, 2014, the Planning Commission dismissed the TTNA appeals and, at Haven House's request, stayed their appeal.

The BOA considered Haven House's application for an unlisted use determination on August 21, 2014. As explained in its August 26, 2014 Notice of Decision, the BOA found that "transitional housing for people coming out of prison is of the same general character" as "miscellaneous rooms for rent," category 1.610 of the TPU. Because the TPU allows "miscellaneous rooms for rent" in D-5 zones with a CUP, and since Haven House had applied to locate its facility in the Tall Timbers neighborhood—zoned D-5—the BOA concluded that Haven House's application for a CUP should proceed.

TTNA appealed the BOA's decision to the Assembly. At its regular meeting on September 29, 2014, the Assembly determined the appeal to be untimely and unripe, and dismissed it without prejudice. The Assembly notified TTNA that the unlisted use determination made by the BOA would be appealable once the Planning Commission made a final decision in regard to Haven House's CUP application.

After public hearing on October 14, 2014, the Planning Commission granted Haven House a CUP for "the development of safe, sober, and stable transitional housing in a home environment for up to nine women coming out of prison," to be located in the Tall Timbers

neighborhood. In its Notice of Decision dated October 16, 2014, the Commission adopted the analysis and findings contained in the CBJ Senior Planner's September 30, 2014, memorandum and imposed six conditions: two related to parking; a requirement that the vegetative cover on the site be maintained; one requiring that if exterior lighting is installed, it be designed and located in such a way as to avoid offsite glare; a requirement that a house manager live on-site; and lastly, a requirement that Haven House establish "house rules" "in order to preserve public health, safety, and ensure neighborhood harmony."

The Appeal to the Assembly followed the Planning Commission's decision. The Assembly issued a Decision on Appeal on May 19, 2015.[3] In conclusion, the Assembly wrote:

> In light of the deferential standard of review the Assembly must afford to the Planning Commission's zoning determinations (including Commission decisions when it sits as the Board of Adjustment), and the applicable standard of proof, the Appellants' appeal must be denied. The Assembly finds that the record as a whole provided the [BOA] with substantial evidence to make its unlisted use determination, and the Commission with substantial evidence to grant a [CUP] to Haven House. We further find that both decisions—UNL2014 0001 and USE2014 0008—are supported by adequate written findings.
>
> The Planning Commission's decision, and the underlying decision of the [BOA], are affirmed.

The Assembly upheld both the unlisted use determination and the CUP decisions of the Planning Commission. As such, the Assembly denied the appeal. TTNA subsequently initiated this appeal to the Superior Court pursuant to CBJ 01.50.190 and Rule 602 of the Alaska Rules of Civil Procedure.

III. STANDARD OF REVIEW

Four standards exist when dealing with administrative decisions. With questions of fact,

[3] See ER 138.

the court will apply a substantial evidence standard.[4] With questions of law that involve agency expertise, the court will apply the reasonable basis standard.[5] With regard to questions of law that do not involve agency expertise, a substitution of judgment standard will be applied.[6] And finally, when the court reviews an agency's interpretation of its own regulations, the court will apply a reasonable and not arbitrary standard.[7] Here, because the issues presented involve both questions of fact and questions of law involving agency expertise, the court should apply both the substantial evidence standard and the reasonable basis standard.

IV. DISCUSSION

TTNA presents four main issues on appeal for this court to review as well as various sub-issues. As the court finds that the first three issues presented are substantially interrelated, the court will analyze them together and then consider the fourth issue, procedural due process, separately.

A. Adequate Written Findings and Substantial Evidence in Decisions Below

Appellants contend that the Assembly erred by holding that the parties had conceded that Haven House's proposed use was a use "not listed" and by affirming the lower decisions where adequate written findings and substantial evidence failed to support their deviations from CBJ Title 49 as amended in 2010. TTNA next argues that the Assembly erred by affirming the decisions below where there are adequate written findings and substantial evidence that Haven House is "of the same general character" as 1.610. Finally, TTNA argues that the Assembly

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[4] *Pacifica Marine Inc. v Solomon Gold, Inc.*, No. S-15619, 2015 WL 4965689, at *8 (August 21, 2015) *citing Gottstein v. State, Dep't of Natural Res.*, 223 p.3d 609, 620 (Alaska 2010).
[5] *Id.*
[6] *Id.*
[7] *Id.*

erred by affirming the decisions below where substantial evidence fails to support granting a permit to Haven House even if it is "of the same general character" as 1.610.

For sake of argument, the court will find that TTNA did not concede that Haven House was a use not listed. However, the court finds that the Assembly did not err by affirming the decisions below and deviating from CBJ Title 49 as amended in 2010. Furthermore, the court finds that there were adequate written findings and substantial evidence to support such a decision.

The thrust of TTNA's argument on appeal is that Haven House is a halfway house and was thereby prohibited in the Tall Timbers neighborhood under Title 49 of the CBJ Code as amended in 2010.

> The [TPU] in CBJ 49.25.300 as amended in 2010 clearly lists 1.450 and 7.400, halfway houses, as a use not permitted in a D-5 district. Haven House is therefore a listed use not permitted. If the BOA had applied this ordinance, then it never would have reached the issue of whether Haven House is of the same general character as 1.610, miscellaneous rooms for rent. If the Commission had applied the ordinance, then it would have denied a permit to Haven House on the ground that it is a halfway house prohibited under 1.450 and 7.400.

Appellants argue that Haven House is a halfway house, that the Assembly should have found that it was a halfway house and thus a listed use not permitted, and thereby that Haven House is prohibited in the Tall Timbers neighborhood. TTNA argues that "adequate written findings fail to support the decisions to the extent that they rely on the alleged 'likely' or actual unenforceability of Title 49." "The Analysis section in the August 13 Memorandum (ER 61-63) and the decisions below particularly fail to address the alleged 'likely unenforceability' of Title 49 as amended in 2010. Further, there never has been an assertion or finding in this case that Title 49 is *actually* unenforceable." "Title 49 as amended is enforceable unless it is

unconstitutional . . . . Lacking the authority to declare Title 49 as amended unconstitutional, the March 18 Decision, the August 14 Memorandum and Planner McKibben at the August 21 meeting invented the concept of unenforceability or 'likely unenforceability,' thereby disguising what really is a constitutional argument and purporting to avoid the very clear and simple mandate of the [TPU] that Haven House is a listed use not permitted in a D-5 district." However, Plaintiffs' wisely concede through their briefing that the Assembly had the authority to enact and amend Title 49 and the TPU.[8] The likely enforceability of Title 49 is as such irrelevant to this issue on appeal and does not need to be reached by this court.[9]

To further support this argument, TTNA points to the fact that the March 18 Decision "conspicuously does not state that Haven House is not within the definition of 'halfway house' in CBJ 49.80.120, but does state that Haven House 'is . . . or is currently most similar to a boardinghouse and rooming house.'" TTNA writes, "The Assembly's May 19 Decision fails to set forth any legal theory under which this court should not now consider whether Haven House is prohibited as a halfway house."

TTNA argues that if the BOA had applied the Title 49 ordinance as amended in 2010, then it would have concluded that Haven House was a halfway house, a use not permitted in a

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[8] Appellants' Opening Brief, p. 20.

[9] Plaintiffs provide extensive briefing about the enforceability of Title 49 as amended in 2010 and about the error of the Assembly relying on a "likely unenforceable" standard in its decision to amend Title 49. Furthermore, Plaintiffs discuss standards of review that a court would use to decide whether or not Title 49 was enforceable. As the court notes, and as Plaintiffs concede, the Assembly had the authority to amend Title 49, and thus, the court need not address arguments about the enforceability of the old version of Title 49 here. The same is true in regard to Plaintiffs' argument about the application of the Severability Doctrine. Plaintiffs' argument about enforceability amounts to red herring. This is not the procedural posture of this case. It seems that Plaintiffs argument on these grounds really is another way to argue that they were denied due process, which will be discussed more fully below.

D-5 district, and it would never have reached the issue of whether Haven House was of the same general character as 1.600, miscellaneous rooms for rent. TTNA states that if the Commission had applied the ordinance, then it would have denied a permit to Haven House.

There is a major problem with Appellants' argument, however. On July 20, 2015, the City repealed the "halfway house" definition in CBJ 49.80.120 and removed that category from the TPU. On August 20, 2015, the City's Ordinance No. ("Ord.") 2015-34 became effective, which the Appellees claim moots TTNA's first two points on appeal. Ord. 2015-34 Section 2 amends Title 49 and the TPU, such that "halfway house" is no longer a category in the table. Ord. 2015-34 also codifies "transitional housing" into CBJ 49.25.300 as an allowed use with a CUP in a D-5 zone. Ord. 2015-34 explicitly codified Haven House's proposed use upon which its CUP was granted—transitional housing.[10] As such, Appellants' argument that Haven House is a halfway house is moot.

"Under ordinary circumstances, we will refrain from deciding questions where events have rendered the legal issue moot."[11] The Supreme Court has stated that a "case is moot if the party bringing the action would not be entitled to any relief even if they prevail."[12,13]

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[10] A fuller discussion of the "transitional housing" issue will be discussed below.
[11] *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1195 (Alaska 1995), citing *Brandon v. Dep't of Corrections*, 865 P.2d 87, 92 n.6 (Alaska 1993).
[12] *O'Callaghan v. State*, 920 P.2d 1387, 1388 (Alaska 1996) [internal citations omitted].
[13] Appellants respond in their Reply Brief that the "public interest exception to mootness clearly applies to this case." It seems that here, in reality, the Appellants are making another due process violation argument. TTNA does not set out the standard to qualify for the public interest exception and does not with, any specificity, make argument as to why this case would satisfy that standard. The Court notes that the public interest exception involves the consideration of three main factors: 1) whether the disputed issues are capable of repetition, 2) whether the mootness doctrine, if applied, may repeatedly circumvent review of the issues, and 3) whether the issues presented are so important to the public interest as to justify overriding the mootness *cont'd*

Taking their halfway house argument to its conclusion, however, Appellants are mistaken.[14] The court finds that Haven House is not a halfway house.

Appellants argue that substantial evidence and adequate written findings fail to support the decision that Haven House is not a halfway house. They contend that Haven House satisfies both the CBJ 49.80.120 definition of "halfway house" and other common definitions of the term "halfway house."

In 2010 the land use definitions were amended in the CBJ Code, and Greg Chaney, Planning Manager, authored a memo to the Planning Commission, addressing the changes to group homes and halfway houses within the code. As to these changes, Mr. Chaney wrote:

> The definition of *Group Homes* is proposed to be modified by removing *Halfway Houses* from the definition of *Group Homes.* Now *Halfway Houses* **for people serving a sentence** [emphasis added] for a criminal act would be regulated separately from living situations for people with disabilities in a family setting with caregivers who live on site.[15]

Ord. 2010-22 was the result of the Assembly's decision to amend these definitions and the TPU. Under Ord. 2010-22, halfway houses were defined as follows:

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doctrine *State, Dept. of Natural Resources v. Greenspace, Inc.*, 96 P.3d 1056, 1062 (Alaska 2004), quoting *Hayes v. Charney*, 693 P. 2d 831, 834 (Alaska 1985). "None of these factors is dispositive; each is an aspect of the question of whether the public interest dictates that a court review a moot issue." *Mullins v. Local Boundary Com'n*, 226 P.3d 1012, 1018 (Alaska 2010), quoting *Kodiak Seafood,* 900 P.2d at 1196. The Court must weigh these considerations against the considerations underlying the mootness doctrine. After weighing these considerations, the Court finds that the public interest exception does not apply here. The Court reviews the merits of the Appellants' argument despite the mootness doctrine, however, and finds that Appellants cannot prevail.

[14] Haven House details many ways in which the repealed land use category of "halfway house" was likely unenforceable. The court finds, as explained above, that it does not need to reach arguments about the enforceability of the repealed "halfway house" definition.

[15] Memorandum on the Enforceability of Halfway House and Group Home provisions, August 14, 2014, Agency Record p. 209-10.

> Halfway house means a single family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.

This is the definition that TTNA argues Haven House falls under, a specified listed use not permitted in D-5 zones. As such, TTNA states that Haven House's permit should have been denied.

TTNA has argued that Haven House is institutional in nature, instead of residential in nature. This argument is interesting, however, because correctional facilities are permitted in D-5 zones in the TPU. What is really remarkable about the ordinance as amended in 2010, however, is that correctional facilities were allowed in a D-5 zone with a CUP, but halfway houses were prohibited. This is identified as part of the reason the code was amended again in 2015.

> Importantly, Ord. 2010-22 caused small halfway houses—having up to nine residents and two supervisors—to be treated differently than large halfway houses. Specifically, small halfway houses were designated in two places, 1.450 and 7.400, which restricted them to five zoning districts. However, large halfway houses—having ten or more residents—were treated like 7.500 Correctional Facilities and allowed in nearly every zoning district with a conditional use permit. Also neither Ord. 2010-22 nor existing code defines "serving a sentence for a criminal act" or "institutional correction facilities."
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> Thus, multiple inconsistencies and vagueness resulted from Ord. 2010-22 that led the Director to conclude on March 18, 2014 . . . Title 49 [was] likely unenforceable regarding Halfway Houses[.][16]

Haven House contends that the Assembly solved the problems of Ord. 2010-22 by adopting Ord. 2015-34, which contains its intentional changes on land use categories in the City.

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[16] Memorandum on the Enforceability of Halfway House and Group Home provisions, August 14, 2014, Agency Record p. 212.

Ord. 2015-34 repealed the definition of halfway house in CBJ 49.80.120, abandoned the halfway house term, defined the land use category of "correctional facility," and codified the land use category of "transitional housing" that was the result of the use not listed process and the issuance of the CUP to Haven House through that process. Haven House states, "The Assembly also adopted an intentional, coherent policy that correctional facilities and transitional housing were allowed in residential districts if the applicants received a [CUP]."[17]

"Transitional housing" as used in Ord. 2015-34,

> Means a residential use for people released from a correctional facility or similar facility. Residents may be on probation and parole. Although approval by the Department of Corrections may be necessary for a resident to reside in transitional housing, unlike a correctional facility, a resident is not ordered to live in transitional housing. An owner or manager must live on site.

Appellants argue that Haven House falls squarely within this definition of a halfway house as defined in Ord. 2010-22. That ordinance is no longer a part of the City Code. TTNA points to the following facts to support its argument: Haven House would operate as a single-family dwelling; it is not for more than nine persons; there would not be more than two persons providing supervision to such persons; the Haven House women would all live together as a single housekeeping unit. TTNA further argues that Haven House also clearly satisfies other common definitions of the term halfway house.[18]

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[17] Appellee Haven House's Opposition Brief, p. 16.

[18] TTNA cites to *Black's Law Dictionary*, which defines halfway house as "a transitional housing facility designed to rehabilitate people who have recently left a prison or medical-care facility, or who otherwise need help in adjusting to unsupervised living." Halfway house, Black's Law Dictionary (10th ed. 2014). It is worth noting that under this definition, which Plaintiffs cite to, many other facilities would constitute a halfway house, e.g. an assisted living home for the elderly.

A letter provided from Ronald Taylor, former Deputy Commissioner for Reentry and Population Management, now Commissioner of the Department, describes the Alaska Department of Corrections view that Haven House is not a halfway house in common parlance, however.

> This letter is to provide clarification that Haven House is not considered a "halfway house" community residential centers (CRC).
>
> . . .
>
> In Juneau, Gastineau Human Services (GHS) operates as the only "halfway house" or CRC on 5597 Aisek Street. Additionally, the only correctional facility operated by the Department of Corrections is the Lemon Creek Correctional Center (LCCC). A person ordered to reside at either GHS or LCCC is serving a sentence that has been imposed by the court or the parole board. Any person who leaves a LCCC or GHS without lawful authority is guilty of the crime of escape within Alaska criminal statutes.
>
> A person on DOC probation or parole is no longer in the care and custody of the Department of Corrections. They must receive the approval from their probation/parole officer for their residence, and are responsible for locating their own residence.[19]

Haven House argued adamantly in both its briefing and oral remarks that its facility is not a halfway house within the criminal justice context.

> The reason why Haven House is not a halfway house, as that term is used in the criminal justice context, is that residence at Haven House is voluntary. Persons living in a halfway house are ordered to live there by the Department of Corrections; they are serving their sentence by being confined to the halfway house; they get credit for time for "time served" toward their sentence while they live at the halfway house; and they are guilty of the crime of escape if they are absent without lawful authority from a halfway house.
>
> The residents at Haven House choose to live at Haven House and participate in the Haven House Program. While a woman lives at Haven House, she is not serving her sentence and will not get credit for "time served." If a resident decides to move out of Haven House, she would not be guilty of the crime of escape.[20]

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[19] Excerpt of Record ("ER") 207.

[20] Appellee Haven House's Opposition Brief, p. 20.

Furthermore, Haven House succinctly addressed TTNA's argument about probation officer approval to live in Haven House.

> It is true that a person on supervised probation must obtain the approval of his or her probation officer to live at Haven House. But that is true with any residence where a person on supervised probation chooses to live: the Glory Hole, an apartment by themselves, a residence with a roommate, even living with their husband or wife. The requirement for approval by a probation officer does not turn any of these private residences into a halfway house.[21]

The court agrees with Haven House's analysis as included above. For these reasons, there is substantial evidence that Haven House is not a halfway house.

Addressing TTNA's next argument on appeal, the BOA issued a Notice of Decision in this case on August 26, 2014, adopting the findings and analysis of the Planning Commission, and concluding that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610 of the TPU, miscellaneous rooms for rent. Furthermore, the BOA recommended that Title 49 be amended to include a definition and a specific subcategory in the TPU for Transitional Housing in the D-5 zoning district with approved CUP.

In the Planning Commission's memorandum, adopted by the BOA, the analysis centers around CBJ definitions and commonplace definitions of the term "transient." The BOA found that Haven House was different from a halfway house in that "a number of people would have bedrooms but share common space," "there was a sense of transient occupancy that was distinguishable from other living situations," and "residents would not be serving a sentence."[22]

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[21] Appellee Haven House's Opposition Brief, p. 20-21.
[22] ER 144.

The Commission determined that Haven House was residential in nature, with individuals living together in a family setting. However, the Commission also noted that there would be on-site supervision, rules of conduct, and ancillary services. As such, the Commission, and subsequently, the BOA found that:

> Based on the above analysis the requested use, re-entry housing for women coming out of prison does not fall into a specific use subcategory listed in the [TPU], CBJ 49.25.300, and will have uses and impacts of the same general character as those in category 1.610, Miscellaneous Rooms for Rent. If approved, this Use Not Listed determination will allow Haven House and all future transitional housing for people coming out of prison to apply for a [CUP] in the D-5 zoning district.[23]

Then on May 19, 2015, the City Assembly issued its Decision on Appeal in response to TTNA's appeal of the Planning Commission's decision to grant Haven House a CUP. In an eleven page opinion, the Assembly upheld both Commission's unlisted use determination and the decision to grant Haven House's CUP.[24] The Assembly noted that when a proposed project does not squarely fall within any of the identified use descriptions, CBJ 49.20.320 applies:

> After public notice and a hearing, the board may permit in any district any use which is not specifically listed in the [TPU] but which is determined to be of the same general character as those which are listed as permitted in such district. Once such determination is made, the use will be deemed as listed in the [TPU].

The Assembly went on to note that the 231 page staff report, coupled with four hours of testimony from thirty-four members of the public "contained substantial evidence that a 'responsible mind' might accept as adequate to support the BOA's decision."[25] Specifically, the Assembly noted the following facts which constituted substantial evidence to support the BOA's decision: 1) "transitional housing" was not currently a

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[23] ER 63.
[24] ER 138-48.
[25] ER 144.

category in the TPU; 2) the Haven House residents would have bedrooms but share common space in the home; 3) the proposal included a sense of "transient occupancy that was distinguishable from other living situations;" and 4) residents would *not* be serving a sentence [emphasis added].[26]

While TTNA disagrees with the outcome of the BOA and Assembly's legal and factual analyses, their arguments do not support reversal or remand on appeal. The appeal "shall be heard solely on the record established before the municipal bodies" and the zoning body's decision "shall not be reversed if, in the light of the whole record, they are supported by substantial evidence."[27] "The majority rule, and the one we adopt, is that judicial review of zoning board decisions is narrow and that a presumption of validity is accorded those decisions."[28]

In land use decisions, the Alaska Supreme Court has found that "although no ordinance requires the Commission to make specific findings of fact to support its conditional use decisions, we have held that zoning boards and other agencies making adjudicative decisions must articulate the reasons for their decisions."[29] Moreover, Alaska law has well established that findings of fact are necessary in decisions because "such findings facilitate judicial review, insure careful administrative deliberation, assist the parties in preparing for review, and restrain

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[26] ER 144.
[27] *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993).
[28] *Id.*
[29] *South Anchorage Concerned Coalition., Inc. v. Coffey*, 862 P.2d 168, 175 (Alaska 1993); *See also Kenai Peninsula Borough v. Ryherd,* 628 P.2d 557, 562 (Alaska 1981) (holding that "A board's failure to provide findings, that is, to clearly articulate the basis of its decision, precludes an applicant from making the required specification and thus can deny meaningful judicial review.").

agencies within the bounds of their jurisdiction."[30] "The test of sufficiency is thus a functional one: do the Commission's findings facilitate this court's review, assist the parties and restrain the agency within proper bounds?"[31] The court finds that in this specific case, both the BOA and Assembly included adequate written findings in their decisions, sufficiency to inform the appeal agency of the basis upon which the decisions were made.

Upon reviewing the agency record and hearing oral argument, the court finds that the Assembly did not err by finding that Haven House's proposed use was "not listed," and by affirming the decisions below. Moreover, the Supreme Court has established that "[J]udicial review of zoning board decisions is narrow and ... a presumption of validity is accorded those decisions."[32] Therefore, administrative appeals before a superior court "shall be heard solely on the record established before the municipal bodies" and the zoning body's decision[33] "shall not be reversed if, in the light of the whole record, [it is] supported by substantial evidence."[34] As detailed in the court's analysis above, there were both adequate written findings and substantial evidence in the record to support their determination that Haven House's proposed use was a use not listed and that Haven House "is of the same general character" as 1.610, miscellaneous rooms for rent.

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[30] *Id.*; quoting *City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 870, 875 (Alaska 1985).
[31] *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 175 (Alaska 1993).
[32] *Coffey*, 862 P.2d. at 173.
[33] Similarly, the decision of the Planning Commission on a CUP "shall not be reversed if, in light of the whole record, it is supported by substantial evidence." *Griswold v. Homer*, 55 P.3d 64, 67 (Alaska 2002); *South Anchorage Concerned Coal. Inc., v. Coffey*, 862 P.2d 168, 173 (Alaska 1993).
[34] *Id.*; interpreting AMC 21.30.190; *see also Galt v. Stanton*, 591 P.2d 960, 965 (Alaska 1979) (Rabinowitz J., concurring); *Keiner v. City of Anchorage*, 378 P.2d 406, 411 (Alaska 1963).

Appellants also argue that even if the Assembly did not err in finding that Haven House's proposed use was a used not listed and of the same general character as 1.610, the Assembly erred by upholding the granting of Haven House's CUP due to four specific reasons: 1) Haven House would materially endanger the public health and safety; 2) Haven House would substantially decrease the value of the property in the neighboring area; 3) Haven House is out of harmony with property in the neighboring area; and 4) Haven House lacks general conformity with the CBJ Comprehensive Plan and other officially adopted plans. The court will consider each of these arguments in turn.

TTNA contends that Haven House would materially endanger the public health and safety. It is important to remember that this court does not make a *de novo* decision when reviewing Assembly decisions, but instead, examines the record below for both adequate written findings and substantial evidence supporting the lower decisions. To support the argument that Haven House poses a danger to the community, TTNA asserts several general statistics and arguments throughout its briefing. TTNA started its opening brief with the statement that the "Tall Timbers neighborhood has been one of stable families with children, not transient convicts." In its argument, TTNA goes on to write,

> Statistically, as many of [sic] 700 of the proposed residents of Haven House during the next ten years, including those from other parts of the state, would become recidivists. These convicts would be able to leave Haven House on their own, walking the children's 'safe routes' in the dark, with no police nearby and no suitable house manager. Some of them may escape or be expelled from Haven House while they are residing there. The Commission did not bother to ask exactly what crimes the convicts have committed or where they would live after they leave Haven House, and there is no indication why some would be leaving their other residences. The danger to public health and safety is obvious.[35]

[35] Appellants' Opening Brief, p. 40-41.

TTNA describes the Tall Timbers neighborhood before Haven House entered as "beautiful and perfect for raising children," "quiet," and "close knit," and that "the residents of the neighborhood also have made monetary and emotional investments in their homes." TTNA argues that,

> Each convict would reside at Haven House for a period between one month and two years. Therefore, Haven House would introduce as many as 1,080 convicts into the neighborhood over a ten-year period. Based on the statistics above, more than 700 of these would become recidivists.

TTNA states that "Haven House would threaten the safety of the children in the neighborhood" and that the "entire neighborhood is scared." One individual of the Tall Timbers neighborhood objects to "unknown faces in the neighborhood." Another individual states that "a house with nine felons would change everything." Finally, another individual commented that Haven House "is completely inappropriate." TTNA holds out that at least 29 residents have signed a petition opposing Haven House's application. Chairman Satre of the Commission [Planning] recognized that "[t]he neighborhood has almost unanimously indicated that Haven House will not be in harmony with the neighborhood." TTNA does not contend, however, that all of these individuals could live in the neighborhood, either individually or collectively, if it were not for the labeling of Haven House as something other than a dwelling.

Haven House opposes such generalized argument, and instead, contends that TTNA's argument that the women at Haven House will threaten the neighborhood is unsubstantiated and irrelevant to the legal analysis at hand. TTNA has the burden to show that the record cannot reasonably be read to support the Planning Commission's conclusion that Haven House will not

materially worsen, or endanger, the safety of the neighborhood. Generalized assertions about convicts and recidivists do not meet this burden.

TTNA next contends that Haven House would substantially decrease the value of the property in the neighborhood. Conflicting evidence on this point was presented below. For example, Ms. Lobaugh argued that the decrease would happen, while James R. Wakefield argued that it would not. TTNA points to problems with Mr. Wakefield's analysis, but it is not for this court to reweigh conflicting evidence. The lower decisions specifically addressed this argument and there is substantial evidence in the record to support those decisions.

Next, TTNA states that Haven House is out of harmony with property in the neighboring area. TTNA writes, "The present neighborhood residents ask simply for the application of 'common sense' . . . . Haven House would change everything and public opposition has been almost unprecedented." Appellants point to a number of decisions which have *affirmed* injunctions against "halfway houses" in residential neighborhoods altogether. Furthermore, Appellants cite to a federal case which they argue states that citizen input will be a sufficient basis for a rational government land use decision.

A number of things are unconvincing about this line of argument by Appellants. First, the court has specifically found that Haven House *is not* a halfway house. Furthermore, and more importantly, the procedural posture of the cases Appellants cite to is different than the posture here. In the cases TTNA cites, the reviewing court is *affirming* a lower court's factual findings and legal analysis, but here, TTNA is asking this court to substitute its judgment for the BOA and Assembly and reverse their decisions. That is not the standard of review. As the City writes in its Opposition, "TTNA's substantial evidence arguments are flawed and misconstrue the

standard of review. TTNA asks this court to ignore the substantial evidence in the record because TTNA is frustrated that the Assembly affirmed the issuance of [the CUP] despite on concerns raised by TTNA. However, the Assembly's review—like this court's review—was limited to determining whether the Commission had an evidentiary basis for approving the [CUP]."[36]

Finally, Appellants argue that "All of the arguments above all demonstrate that Haven House lacks general conformity with the 2013 CBJ Comprehensive Plan, which provides in part for 'safe neighborhoods,' 'public health, safety . . . and general welfare' and protection of 'community form' and 'from incompatible uses.'"[37]

As the court finds no validity in the arguments above, the court also finds no validity in this argument that Haven House lacks conformity with the Comprehensive Plan. The majority of the Appellant's claims are merely speculative, as they haven't yet seen any threats to health, safety, or harmony of the neighborhood. In fact, these issues were all presented to and addressed by the Planning Commission and Assembly.[38]

People of good will can have different opinions on the question of whether Haven House is compatible with the character of the Tall Timbers neighborhood. Under our democratic system, however, the opinion that carries the day is the one held by the people's elected representatives on the City Assembly and that of the men and women they appoint to the Planning Commission. It is not the role of this court to substitute its judgment for that of the Planning Commission or the Assembly.

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[36] Appellee CBJ Planning Commission's Opposition Brief, p. 24.
[37] Appellants' Opening Brief, p. 45.
[38] *See* Appellee's Exc. at 68-72.

The court incorporates its discussion from above and finds that the Assembly did not err by affirming the decisions below by upholding the granting of Haven House's CUP. The court also finds there was substantial evidence to support this decision.

B. Procedural Due Process

"The test for deprivations of procedural due process under both the Alaska Constitution and the United States Constitution is the test outlined in *Mathews v. Eldridge.* Under the *Mathews* test, a litigant claiming a due process violation must have been deprived of a cognizable liberty or property interest."[39]

In many courts, standing to litigate use of another's land is based in early nuisance law.[40] Under nuisance law, an individual could not maintain an action unless he suffered some special damage or an "aggrievment differing in kind, and not just degree suffered by the community as a whole" in a public nuisance action or a substantial unjustifiable interference with the use and enjoyment of his property in a private nuisance action.[41] As the Appellees have pointed out, granting a CUP is not a cognizable legal deprivation to the Appellants because the CUP will in no way restrict the use their property.[42] Moreover, the court agrees with Appellees' argument that the Planning Commission did conduct the permit hearing in accordance with the Planning Commission Rules of Order.[43] Even if the court made a contrary finding, which it has not, there is a serious question as to whether Appellants have waived any due process argument by not raising it below.

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[39] *Griswold v. City of Homer*, 252 P.3d 1020, 1029–30 (Alaska 2011).
[40] 4 Rathkopf's The Law of Zoning and Planning § 63:14 (4th ed.)
[41] *Id.*
[42] Appellee's Brief at 23.
[43] *Id.* at 19-21.

TTNA argues that the proceedings below have denied them due process because "the CBJ made up its mind about the merits of the Haven House project in advance."[44] TTNA cites to *Copeland v. Ballard*[45] and writes that, "It is well established that procedural due process 'requires notice and opportunity for hearing appropriate to the nature of the case' and includes 'the right to a neutral and unbiased decision-maker who presides over proceedings that are fair and that have the appearance of fairness.'"[46]

The Planning Commission was given a substantial amount of information from the public with which to make their decision. The Appellants submitted multiple written statements regarding their concerns. Moreover, many appeared at the public hearings and all were able to make public comments about the proposed CUP. After reading the CDD's report to the Planning Commission, it appears that they did take all those concerns into consideration and made quite reasonable decisions and findings, with added conditions on the Haven House project. As noted by the City,

> Like the prior hearings in this case, the Commission held a public hearing that demonstrated how nine volunteer citizens with diverse backgrounds and expertise in local land use policies can mediate a divisive application buttressed by people on both sides with strong emotions. The Commission was scrupulously informed by staff, TTNA, and Haven House with written comments and extensive oral comments. TTNA and Haven House were represented by counsel and twenty-two people commented: eleven in support of Haven House and eleven in opposition. The Commission also received an extensive staff report.[47]

The court finds that TTNA was not denied procedural due process below.

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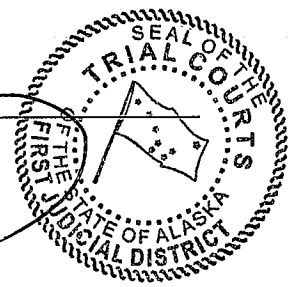
[44] Appellants' Opening Brief, p. 46.
[45] 210 P.3d 1197, 1201 (Alaska 2009).
[46] Appellants' Opening Brief, p. 49.
[47] Appellee CBJ Planning Commission's Opposition Brief, p. 25.

V. Conclusion

For the reasons explained herein, Appellants' appeal is DENIED and the decision of the Assembly is AFFIRMED.

Entered at Juneau, Alaska this 4th day of August, 2016.

Louis James Menendez
Superior Court Judge



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