

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

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.

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.

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

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.

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

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

Mr. Haight asked if there have been 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.

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.

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.

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.

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.

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.

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.

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.

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.

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 recurring 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

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.

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.

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.

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.

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.

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.

Roll 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.

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

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.

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.

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.

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

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.