

MINUTES
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
April 12, 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 7:04 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Bill Peters; Michael LeVine; Nathaniel Dye; Matthew Bell

Commissioners absent: Carl Greene; Percy Frisby

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Jill Maclean, Senior Planner; Jonathan Lange, Planner II; Allison Eddins, Planner I; Robert Palmer, Assistant Municipal Attorney

Assembly members: Debbie White, Assembly Liaison (telephonically); Jerry Nankervis, Loren Jones

II. APPROVAL OF MINUTES

- March 8, 2016 Regular PC Meeting
- March 22, 2016 Regular PC Meeting

MOTION: *by Mr. Peters, to approve the Planning Commission Regular Meeting Minutes of March 8, 2016 and March 22, 2016 with any minor changes by Commission members or staff.*

The minutes were approved with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None

IV. PLANNING COMMISSION LIAISON REPORT

Marijuana Land Use Code

Ms. White reported that at its May 2, (2016) Assembly meeting the Assembly would be reviewing Ordinance 2015 0038 which is the land use code regarding marijuana. She told the Commission she would forward to each of them the newest revision of the ordinance.

City Manager Kim Kiefer Retirement

Also at that meeting the Assembly and members of the community paid tribute to City Manager Kim Kiefer upon her retirement.

Vacant Planning Commission Seat

Applications for the vacant Planning Commission seat are due by April 20, (2016) said Ms. White. They currently have four applicants. The Assembly plans on reviewing those applications at its May 4, 2016, special meeting, which is prior to the Finance Committee meeting that evening.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Mr. Voelckers said he would like to pull USE 2016 0003, a Conditional Use Permit for an asphalt plant at the Alaska Marine Lines yard, and place it under the Regular Agenda for a hearing.

USE2016 0002:	A Conditional Use Permit for temporary asphalt plant in association with Egan Drive rehabilitation.
Applicant:	SECON, Inc.
Location:	3155 Channel Drive

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of a temporary asphalt plant in association with Egan Drive rehabilitation. The approval is subject to the following conditions:

- 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. (If new lighting is not required, this condition will not apply.)*
- 2) Prior to the issuance of a building permit, the applicant shall provide the final Stormwater Pollution Prevention Plan, in conformance with ADEC requirements, to ensure protection of adjacent waters.*

MOTION: *by Mr. Peters, to approve items A and B on the Consent Agenda with findings, recommendations and analysis by staff.*

The motion passed with no objection.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS

The Commission adjourned and reconvened as the Board of Adjustment.

VAR2015 0030:	A Variance request to the requirement for access on publicly maintained right-of-way for a proposed minor subdivision. Proposed access is a private easement.
Applicant:	Olmo, LLC.
Location:	North Douglas Highway

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and DENY the requested Variance, VAR2015 0030.

Ms. Boyce told the Commission that R&M Engineering had submitted a letter yesterday which was emailed to the Commission. In addition, she provided paper copies of the letter to the Commission members. She noted that there was also a response from the Law Department regarding this variance request in the new packet.

In response to a motion by Mr. Peters, the Commission unanimously decided to proceed with this item with no additional public comment.

In a brief review for the Commission on this matter, Ms. Boyce said at the end of the last meeting regarding this item that Mr. Voelckers had made a motion for approval of this variance with revised findings. She recalled that the Commission was left with questions regarding whether Criterion 4 for could be met.

At that meeting, Mr. Voelckers subsequently withdrew his motion so that the item could be continued.

Mr. Voelckers read his revised motion and also provided the Commission with a written version of the motion and findings.

MOTION: *by Mr. Voelckers, that a variance is granted to modify 49.14.424 to allow a limited subdivision access serving a three lot subdivision in Tract 2, MS569, Tract 1, and fraction Block B as proposed, except that the private easement extension within the subdivision shall be expanded to a minimum of 30 feet width and the ten foot utility easement along fraction Block B be combined to a single 30 driveway easement.*

Mr. Voelckers then reviewed the criteria, finding an affirmative answer meeting all the criteria.

He said that Criterion 1 is met. "Allowing the use of a private driveway easement for lot access due to significant physical constraints limiting conventional access, and serving only a limited number of lots, is consistent with past practices of the CBJ, and with the proposed ordinance language being drafted for non-standard access to three to four lots, as delineated in the attached staff report."

Mr. Voelckers found that Criterion 2 is met. "The limited private easement driveway will be improved to meet drive lane width and gradient requirements, and will safely serve the low vehicular counts anticipated."

Mr. Voelckers said Criterion 4 is new content of his motion withdrawn at the last meeting. He said he found that Criterion 4 is met. "The variance does not allow uses not authorized in the district. The requirement for 'interior access street' in 49.35.210 (b) 2, is intended to ensure that individual lots have a common vehicular access to an arterial, rather than individual driveways. That intent is met, he said.

Mr. Voelckers said he found that Criterion 5 (b) is met. "Granting of the variance would establish three lots, facilitating development of single family or duplex residences consistent with North Douglas residential development, and at a lower density than allowed outright without a variance."

Mr. Voelckers found that Criterion 6 is also met. "Granting the variance would result in overall benefits to the neighborhood. Additional housing of a consistent scale and nature will be allowed, without unduly affecting traffic and access issues."

Speaking in favor of his motion, Mr. Voelckers said that Mr. Palmer and the Law Department had raised a potential conflict between 49.15.424 and 49.35.210 (b) 2. He said that he has carefully reviewed this information and that it had been at least partially established at the last meeting that some of the language in 49.35.210 had been a relatively new reconsolidation of other language into the revised Title 49. He said he felt the intent is clear that it is trying to limit random driveways to a major arterial. He said he felt there was imprecise language which could be addressed by the Commission at the staff level and that it could further be refined to avoid any potential of conflict. He said in his opinion at the substantive level that they were not in conflict.

Mr. LeVine said he understood the first part of Mr. Voelcker's motion requiring expansion of the drive to 30 feet in width. He asked if widening the drive would involve further use of the property owned by Mr. Brantner.

The thought was to consolidate the existing ten foot easement into the 30 foot drive, said Mr. Voelckers. The letter from the applicant expressed potential flexibility in this area, he said.

Mr. LeVine said the right-of-way is on Tract 1 which is property belonging to Mr. Brantner. He said the memo from Mr. Palmer discussed the possibility of limiting Mr. Brantner's future use of his parcel depending on what action the Commission took regarding the variance under consideration. He asked Mr. Palmer to elucidate on the potential problem which could arise as a result of potential Commission action on the variance request.

Mr. Palmer said he understood the motion to include expansion of the access width to 30 feet. He said he did not hear what the road construction standard was and whether it would comply with the standards set forth in the table within 49.35.240. Putting that unanswered question aside, he said one of the hurdles involving the use of Mr. Brantner's property is that if the Commission in its role as Board of Adjustment does impose any sort of limits, the Board of Adjustment should recognize that some of those limits may preclude Mr. Brantner from developing his property. That could result in the CBJ litigating whether or not there is a "taking" for Mr. Brantner's development rights. *(A claim brought against the government in which a **property** owner seeks compensation for a 'taking' of his **property** under the Fifth Amendment.)*

Mr. LeVine asked why limiting of that access could potentially result in a taking of Mr. Brantner's property.

Mr. Palmer said that access is currently only on Mr. Brantner's property. The issue would not be ripe if the access was on the applicant's property, he added. Since the access is not on the applicant's property, the door is opened on the issue of whether it would be a taking if the CBJ limited the (ADT) Average Daily Trips, for example, explained Mr. Palmer, or limited the number of lots which could be served by this access.

Mr. LeVine asked if there was a way to alleviate that concern, and if the same concern would exist if the Board of Adjustment required that road to be constructed to CBJ standards.

Mr. Palmer responded that if the Board were to approve a variance that would require that access be constructed to a public street standard, even if it was not dedicated as a public street, then it would not be likely there would be the risk of a taking. As to whether there was a way to alleviate that concern, said Mr. Palmer, the Board would need to decide that if it did want to grant a variance, it would have to explain how the public health, safety and welfare is protected by the street standard which it granted, if it was different from the specifications on the table within 49.35.240.

Mr. LeVine said the motion could have a potential impact on variance Criterion 1, which is, "consistent with justice to other property owners." He said if this created a risk to Mr. Brantner's

future use of his lot, they may not be able to conclude that it was consistent with justice to other property owners.

Mr. Palmer said it could be considered with Criterion 1, and also with Criterion 2, regarding public health, safety and welfare, and also Criterion 3, as to whether or not it injures nearby property.

Mr. Voelckers said to keep in mind that this was already grandfathered in for more substantial use with no changes. He said in his way of thinking this significantly tempers what they may be doing which is precedential. This is not a new subdivision, said Mr. Voelckers. He said he did not see how they would be constraining Mr. Brantner's future use of his property. He said his motion does not stipulate what kind of road should be constructed. Mr. Voelckers said he felt the future question of what Mr. Brantner may or may not do with his lot would resolve itself. Further requests would be reviewed by the Planning Commission as they arose, he added. He said he did not see how this could be viewed as a taking.

Mr. Palmer said the fact that this property could be developed with presumably a higher ADT than is currently proposed is a real fact that could warrant some discussion. He said this could be a basis for the Board to at least consider the variance. However, added Mr. Palmer, it is not just the applicant's property that is being considered; it is Mr. Brantner's property as well. It gets back to the question that if the Board decides to grant a variance, what the road standard would be, and how it relates to 49.35.240. There is also the issue of whether the public health, safety and welfare is being provided as the Assembly has described within the table. If the Board deviates from that table, it needs to define to what extent, and why it saw the deviation as justifiable within this specific scenario.

Mr. LeVine said that he appreciated the insights offered by Mr. Palmer. Mr. LeVine said he was struggling to find a way to vote for the variance, but that he did not see how he could approve it. He said it seemed to him that the correct result would be to have a road built to CBJ standards which would eliminate the problem, and would actually elevate the value of Mr. Brantner's property. However, he said he could not find how their rules would enable the granting of this variance, and that this was disappointing to him.

Mr. Voelckers said at this time any potential development of Mr. Brantner's is completely uncertain. The amount of ADT's resulting from the variance is highly consistent with the draft language that the Subdivision Review Committee had considered this past summer, and that the Assembly had been interested in developing that process, to provide some vehicle to allow complicated, difficult geometry to still move forward. This is a good example of that, he added. Mr. Voelckers said he saw nothing in the road itself which intrinsically limits any of that. Mr. Voelckers said he did not see a specific, precluding issue to prevent the variance they were contemplating.

Mr. Peters said his concern was that if the Board granted the variance that it was then classifying 49.35.210 as design or dimension standards but not construction standards. He said he felt this needed to be resolved before they proceeded. He said he would love to see this project succeed, and that he understood that without the variance the applicant could construct a more robust development. He said he felt they were stuck on the fact that if they granted the variance they are then opening up a further issue. Therefore, he could not support the motion, said Mr. Peters.

Mr. Bell said that he, too, could not support the motion, and that he felt that Mr. Peters had clearly expressed the heart of the issue, as much as he appreciated the intention of the motion made by Mr. Voelckers.

Chairman Haight asked Ms. Boyce if within the conditions which were scripted if there was anything further that would contribute to the current discussion on the variance.

Ms. Boyce said the conditions stipulated for this project, should it be approved, were that no further subdivision beyond the six initial lots would be allowed. The only use allowed on each newly created lot is one dwelling unit, she said. That helps control the shared trips along the shared drive, she said. A homeowners association would need to be created for maintenance of the drive, said Ms. Boyce, among other potential duties. The grade may not exceed 14 percent, and all of the buildings must be sprinkled, she said. Also, a plat note would need to be added, stating that direct access from the resulting lots to North Douglas Highway would not be allowed.

Mr. Voelckers asked which tract was being addressed when it stipulates that no further development of the lots could take place. He asked if this included all of the contiguous lots.

It would involve the six lots specified within the variance request, said Ms. Boyce. That condition would not involve Mr. Brantner's property, she said.

Mr. Voelckers asked if accessory apartments would be allowed. There would only be three structures allowed composed of six common-wall dwelling units, said Ms. Boyce. There are no accessory apartments in a multi-family zoned district, she added.

Mr. Voelckers asked if within this scenario, if three duplexes could be constructed instead of six common-wall units. Duplexes could be constructed within a D-18 multi-family zoned district, said Ms. Boyce.

Mr. LeVine asked if it would be possible for Mr. Brantner or any other owners of that parcel to do something to alleviate the taking issue. He said he understood the concern was eliminating Mr. Brantner's future use of his parcel.

Mr. Palmer said it was likely that the applicant and Mr. Brantner could negotiate some agreement. However, he said, that is outside the scope of the Board's jurisdiction, because it would be a private agreement between two parties. The exception would be if it could be tied back to a public safety, health and welfare requirement, he said.

Mr. LeVine said that he was concerned that if the variance was denied, that the applicant would be prevented from re-applying for a period of time.

Mr. Palmer said he was not aware of any restrictions to the applicant re-applying in a timely fashion. That condition is specific to rezones, said Mr. Palmer.

Mr. Voelckers said he would like the legal term of "taking" defined, as it was a legal term on which he would like to be informed. He said it was his understanding that Mr. Brantner would not be precluded from development per the underlying zoning of his property. He said his understanding was that the only issue would be to upgrade the street to a paved standard.

He asked if the “taking” is just the potential imposition of the cost of paving.

Mr. Palmer responded that the motion currently does not limit the use of this access by an ADT threshold, for example. There is no ADT threshold that would preclude Mr. Brantner from developing. However, said Mr. Palmer, the question raised about road construction standards depending on what Mr. Brantner may potentially do in the future could open up the litigation for a taking unless Mr. Brantner appeared before the Commission and also asked for some type of variance. There are two options for potential risk of litigation, said Mr. Palmer.

In answer to Mr. Voelckers question, Mr. Palmer confirmed that both potential routes to litigation were specific to the drive itself.

Roll Call Vote: *(on the motion by Mr. Voelckers, that a variance is granted to modify 49.14.424 to allow a limited subdivision access serving a three lot subdivision in Tract 2, MS569, Tract 1, and fraction Block B as proposed, except that the private easement extension within the subdivision shall be expanded to a minimum of 30 feet in width and the ten foot utility easement along fraction Block B is combined to a single 30 foot driveway easement.)*

Yeas: Voelckers

Nays: Dye, Bell, Peters, LeVine, Haight

The motion failed.

Chairman Haight said this has been a difficult decision for the Commission, as they all have the desire to support the subdivision. He added that he hoped they could resolve this issue with Title 49, and create a workable solution for the applicant.

Mr. Voelckers said he would like to schedule as soon as possible either a meeting of the Subdivision Review Committee, or the Planning Commission during a Committee of the Whole meeting to address section 35 of the Title which has shown itself to be incompatible with justifiable development.

MOTION: *by Mr. Peters, to accept the staff recommendation and adopt the director's analysis and findings to deny the variance request for VAR2015 0030.*

The motion passed with no objection.

Chairman Haight adjourned the body as the Board of Adjustment and reconvened as the Planning Commission.

IX. REGULAR AGENDA

USE2016 0003: A Conditional Use Permit for an asphalt plant at the Alaska Marine Lines Yard.
Applicant: Knik Construction Co., LLC.
Location: 0 Jacobsen Drive

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of an asphalt plant and related stockpiling at the Alaska Marine Lines yard. The approval is subject to the following conditions:

- 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.*
- 2) Prior to the issuance of a building permit, the applicant shall provide the final Stormwater Pollution Prevention Plan, in conformance with ADEC requirements, to ensure protection of adjacent waters.*

Ms. Camery told the Commission this is a Conditional Use Permit for an asphalt plant with related assorted stockpiling at the Alaska Marine Lines yard. The plant would be used on a project-by-project basis, she said. Ms. Camery said this is an application for a permanent plant, not a temporary plant, but that it would typically operate March – September, and as contract demands. Their operating hours would be Monday – Friday, 7:00 a.m. – 10:00 p.m., said Ms. Camery. They have adequate space for parking on site, and the staff did not determine that a Traffic Impact Analysis was necessary.

The noise from the project would be primarily from backup alarms, according to the applicant, said Ms. Camery, with additional noise from trucks departing and returning to the operation. The staff determined that noise mitigation measures were not necessary for the project, said Ms. Camery. The primary concerns with noise in this area in the past were in connection with Alaska Marine Lines operations, she said.

The Stormwater Pollution and Prevention Plan in accordance with Alaska Department of Environmental Conservation (ADEC) requirements exceed the CBJ stormwater requirements, said Ms. Camery. The applicant would still need to apply for a grading permit, she said.

This project meets code requirements, and complies with the Comprehensive Plan, said Ms. Camery, and also with the Long Range Waterfront Plan. The staff recommends two conditions;

one for a lighting plan and one for a final Stormwater Pollution Prevention Plan, said Ms. Camery.

Commission Comments and Questions

Mr. Voelckers said he would like to know the amount of truck traffic anticipated to be generated by the operation of the plant, and how this would affect traffic on South Franklin.

Applicant, Parry Rekers with KNIK Construction Company

Mr. Rekers responded that they are trying to set up an asphalt plant which would be in operation on a project-by-project basis. The size of the job would determine the truck traffic generated by the plant operation, he said. They are mainly anticipating doing work in front of Alaska Marine Lines, if the opportunity arises, he said.

Mr. Voelckers said the staff report mentioned an operation involving up to 300 trucks a day, which is what generated his concern about the traffic.

Mr. Rekers said they would work in whatever location was part of the job. Typically on a job they would generate transfer of 200 tons an hour to up to 500 tons an hour. The 300 trucks a day referenced by Mr. Voelckers is in the area of 500 tons an hour, he said. Most of their jobs would be in the 200 to 300 tons an hour range, he added.

Mr. LeVine asked if a condition had been considered that the plant not operate in consecutive seasons, or if that was assumed because it is precluded by the rules.

Ms. Camery responded that determining how the DEC clock ran on this operation was the difficult part of this analysis. She said they would consider adding a specified time if the Commission deemed it important.

Mr. Dye asked for clarification on the standard times mentioned in the noise ordinance.

Ms. Camery responded it was 7:00 a.m. – 10:00 p.m. Monday – Friday. On the weekends the time of the operation would begin two hours later than the week days.

MOTION: *by Mr. Voelckers, that USE2016 0003 be returned for more analysis including a traffic impact study, and more specific information on anticipated timing and use patterns.*

Speaking in favor of his motion, Mr. Voelckers said that he could foresee a scenario in which up to 300 trucks a day were in operation. He said when paving happens it would be a significant push to accomplish the job on the best weather days of the season.

Speaking in support of the motion, Mr. LeVine said that he shared the concerns expressed by

Mr. Voelckers.

Roll Call Vote:

Yeas: Voelckers, Bell, Dye, LeVine

Nays: Peters, Haight

The motion fails.

MOTION: *by Mr. Peters, to move USE2016 0003 and to adopt the findings of the CDD Director and staff.*

For the reasons he provided in support of the motion by Mr. Voelckers, Mr. LeVine said he would not support the motion.

Roll Call Vote:

Yeas: Peters

Nays: Dye, LeVine, Voelckers, Bell, Haight

The motion fails.

MOTION: *by Mr. LeVine, to continue this item to the next meeting.*

The motion passed with no objection.

AME2016 0008:	A Rezone Request for 14 lots, 4.19 acres, in the Vintage Park neighborhood from LC - Light Commercial to MU - Mixed Use.
Applicant:	GMD Development, LLC.
Location:	Lots on Clinton Drive and 2797 Postal Way

Chairman Haight withdrew himself from participating on item AME2016 0008. Mr. Voelckers, as Vice Chairman, chaired this portion of the meeting.

Staff Recommendation

Based upon the proposed project (identified as Attachments A), and the findings and conclusions stated above, staff recommends the Planning Commission adopt the director's analysis and findings and RECOMMEND APPROVAL to the Assembly to rezone the subject parcels from LC to MU.

Mr. Peters said he wanted to state for the record that his employer is True North, which is an abutting property, but that he had no personal or financial connections with the project.

Mr. Lange told the Commission this is a rezone request for 14 lots of over four acres in the Vintage Park neighborhood from Light Commercial (LC) to Mixed Use (MU). To the north of the property is the Mendenhall River and a D-1 zoning district, and to the east is a D-18 zoning district, said Mr. Lange, and to the south is a Light Commercial zone. The parcel is north of True North Credit Union, to the west of the Post Office, and it is located north of some state office buildings and another office building, said Mr. Lange. Safeway is to the south, and this piece of property is very near the Mendenhall Mall, and to bus service along Riverside Drive, said Mr. Lange.

The applicants would like to develop the property with two projects: multi-family senior apartments consisting of 49 units on one acre, and an 80 unit, 84 bed assisted living and member care community, said Mr. Lange, on two to three acres of the remaining property.

A rezone request needs to be for land greater than two acres or an expansion of an existing zone. A similar rezone request for the property cannot have been considered within the past 12 months, he said. The rezone request must substantially conform to the maps of the Comprehensive Plan, said Mr. Lange.

The parcels are located within land designated as a Traditional Town Center in the Comprehensive Plan, said Mr. Lange. This is characterized by land which is high density residential and non-residential land uses in downtown areas and land around shopping centers, he said. This is for developments of 18 or more residences per acre, said Mr. Lange.

Some of the differences between LC and MU zoning are that Light Commercial zones have a maximum height of 45 feet placed on the structures, as opposed to MU, which has no maximum height limit, said Mr. Lange. Density per acre for Light Commercial developments is set at a 30 unit limit, which would provide for approximately 126 units, he said, if it was developed solely as multi-family housing, he said. No maximum density is set for the MU zones, said Mr. Lange. There are no setbacks required within the MU zoning district, said Mr. Lange. Light Commercial zoning has a front yard setback of 25 feet, and 10 feet for side and rear setbacks, he said. There are no setbacks required in the MU zoning district.

Most of the uses for the zones are similar with a few exceptions, said Mr. Lange, where Light Commercial zones have some allowable uses not allowed in an MU zoning district. Auto fuel stations, car washes and marijuana cultivation operations are allowed in Light Commercial with a Conditional Use Permit, but not in Mixed Use, said Mr. Lange. In MU zones, marijuana product manufacturing is allowed, he said, with a Conditional Use Permit.

The traditional town center model involves a mix of residential housing and commercial activity in the same area, or on the same parcel, said Mr. Lange.

Applicant

Applicant Emily Breidenbach of GMD Development presented herself to answer any questions the Commission may have.

There were no questions from the Commission.

MOTION: *by Mr. LeVine, to approve AME2016 0008 with staff's findings, analysis and recommendations.*

Speaking in favor of his motion, Mr. LeVine said this was one of those cases in which a rezone was the appropriate action to take. The new zone would nicely accommodate two developments which are needed in the community, he said.

The motion passed with no objection.

CSP2016 0002:	A City Project Review for construction of a pioneer road through CBJ lands on the west side of Douglas Island near the end of Douglas Highway.
Applicant:	City and Borough of Juneau
Location:	North Douglas Highway

Staff Recommendation

Staff recommends that the Planning Commission recommend to the Assembly that CSP2016 0002, City Project Review for construction of a pioneer road through CBJ lands on the west side of Douglas Island near the end of Douglas Highway is consistent with Title 49, the 1997 West Douglas Concept Plan, and the 2013 Comprehensive Plan, with the following recommendations:

1. Development of the pioneer road shall strictly adhere to CBJ Manual of Stormwater Best Management Practices.
2. Prior to development of culverts and bridges in the proposed project, Fish Habitat Permits shall be acquired and approved.

Mr. Lange told the Commission this is a City project review for construction of a pioneer road through CBJ land on the west side of Douglas Island near the end of Douglas Highway. There is Goldbelt land to the south and State land to the north, said Mr. Lange. Most of the land is vacant, he said, except for the Peterson Creek subdivision composed of six, single family homes.

Including Peterson Creek and its tributaries, there are 37 streams in this area, said Mr. Lange. The road would have two bridges, two fish-pass culverts and 26 other culverts, he said. Two of the streams are identified as streams with resident fish, said Mr. Lange, and the code allows for crossing of anadromous streams, he added, with bridges or culverts. The applicant, CBJ Department of Engineering, have been working with the Alaska Department of Fish and Game to identify which streams would require fish passage permits, said Mr. Lange.

Three potential routes were considered for the proposed road, said Mr. Lange. The Department of Fish and Wildlife Services recommended using a lower route which would cross the stream once and then follow the coastline, he said. It is Goldbelt property with eagle's nests in the area, he said. The middle route would proceed straight from the end of Douglas Highway. However, that affects too much of the stream, said Mr. Lange. Therefore, the upper route was selected for this project, he said. It would be a 14 foot wide road with eight foot turn-outs, he said.

A parking area of ten spaces would be located at the beginning of the road, with that area being located outside of the right-of-way as mandated by the Department of Transportation (DOT), said Mr. Lange. A gate at the entrance and a fence are also proposed, he said.

Wetlands fill is proposed, granted by an Army Corps of Engineers general permit, for 1.65 acres of fill, said Mr. Lange. The fill would be obtained from rock pits in the area to source and construct the road, he said.

The Fish and Wildlife Service expressed concern that the road would negatively affect deer habitat, said Mr. Lange. This road conforms to the West Douglas Concept Plan of 1997, said Mr. Lange, with the area-wide transportation plan of 2001, and with the Comprehensive Plan, he added. When a plan is submitted by a developer for a new growth area, a master plan would need to be reviewed by the Planning Commission and the Assembly, said Mr. Lange.

The staff has found that this road proposal does not constitute development of a new growth area, said Mr. Lange, because it is consistent with development of a minor nature as outlined in Chapter 6 of the West Douglas Concept Plan since it does not propose any uses, buildings or infrastructure, said Mr. Lange.

Commission Comments and Questions

Mr. LeVine asked if the lower route, having less impact on the salmon streams and other habitat, was considered by the staff while developing its recommendations, specifically Policy 7.3, specifying protection of riparian habitat, including stream corridors and lake shorelines from adverse effects of development. And if they were considered, said Mr. LeVine, he wanted to know how this was done.

Mr. Lange said the proposed road is a CBJ project on CBJ land, whereas the lower road proposal is located on Goldbelt land. The upper route crosses just two fish-bearing streams, whereas the middle route would cross many more of the fish streams.

Public Comment

Juneau resident Nancy Waterman said she felt they were at this hearing for the wrong purpose. She said the Commission should be considering an updated and reformatted West Douglas Conceptual Plan of 1997. That document should be approved by the Planning Commission and then sent to the Assembly for final approval. Then there would be a master plan, she said, ready to handle all of the different aspects of development in a new growth area.

Ms. Waterman said this road proposal is designating development into a new growth area. She said the analysis for this project is flawed. The conformity to adopted plans is not stated correctly, she said. Agencies and CBJ advisory committees were led to believe that the West Douglas Conceptual Plan had been adopted as a component of the CBJ Comprehensive Plan. It was not adopted, said Ms. Waterman. There is also no master plan, said Ms. Waterman.

This road proposal is not consistent with the Comprehensive Plan or Title 49, said Ms. Waterman. Also, said Ms. Waterman, which takes precedent; Title 49 or the Comprehensive Plan?

North Douglas resident Margo Waring asked why the CBJ would want to put its funds into a project which has no development planned. She said it would only create additional ongoing costs for Juneau tax payers. It is questionable why the CBJ would undertake maintenance of a project such as this during times of fiscal austerity. The construction of the road would create more use in the area such as parties and all-terrain vehicles, she said.

There is no project in site which needs this road, said Ms. Waring. The road will need to be maintained, said Ms. Waring, as a result of off-road vehicles traversing the road. This area of North Douglas serves many recreational and subsistence needs, said Ms. Waring. It would create two rock quarries, and numerous stream crossings in an area used by hikers year-round. It also contains some of Juneau's most used deer hunting areas, she said. Berry pickers use the area in the summer and mushroom hunters in the fall, she said. Peterson Creek is one of the few salmon streams on Douglas Island, said Ms. Waring. She said she is also concerned about the burning of the trees which would be logged for the road. There is also not a solid reason presented by the staff for the construction of the road, said Ms. Waring. It would be better to re-appropriate the money for this project for some other project which Juneau actually needs, said Ms. Waring.

Juneau resident Phillip Gray said he was a retired fishery biologist. He said in addition as a 45 year resident of Juneau that he has done a lot of deer and grouse hunting on the west side of Douglas Island. Mr. Gray said he agreed with the comments presented by Ms. Waring. He said

he did not understand why the municipality would want to spend \$3 million on a two mile road with no destination. It would degrade the fish habitat and some of the best deer habitat on Douglas Island, said Mr. Gray. He said he felt the CBJ was attempting a development before it had assessed all of the impacts on the area.

North Douglas resident Fred Hiltner said he has lived in North Douglas since 1981. He said that he is concerned that if a road is constructed in that area that it would severely diminish the area, with the result that it could never be recovered. Mr. Hiltner said he did not feel that construction of this road should be prioritized over immediate CBJ needs such as repairing roads within the City, school funding, and police and fire department funding. Before this development proceeded, it should be accompanied by a new Comprehensive Master Plan for the entire North Douglas area. A lot has changed since 1997, said Mr. Hiltner. He said he felt it should be demonstrated that there was a substantial need and benefit for the citizens of Juneau which clearly offsets the price to be paid for the development.

Mr. Lange said he wanted to point out that this is not a CDD project, and therefore they could not comment on this project for the Engineering Department.

Mr. Steedle said he could answer any questions about the source of funding for the project or how it fits in with CBJ plans.

Commission Comments and Questions

Mr. LeVine said he was disappointed there was not someone available from the Engineering Department to speak to the project. He asked if there are anticipated maintenance costs associated with the road once it is constructed.

Mr. Steedle said there would be future costs associated with the maintenance of the road, although not at the level of that associated with vehicular traffic.

Mr. LeVine asked if all of the cost of construction of this road was paid for by State funds, and if there was a time element associated with the use of those funds for this project.

Mr. Steedle said the original funding source was from Congressional delegation in the 1980's. That money went to the State, he said, which was going to delegate those funds for dredging the channel, performing an EIS (Environmental Impact Statement) for a second crossing, and for the continuation of the North Douglas Road. Ultimately the State appropriated those funds to the CBJ for the sole purpose of extending the road, said Mr. Steedle. He said he did not believe that funding was fungible (*able to replace or be replaced by another similar item*).

Mr. LeVine asked if it was subject to expiration.

Mr. Steedle said he could not answer that question. He added that it has only been CBJ money for the past six years or so.

Mr. LeVine asked Mr. Steedle if there were any existing plans to develop this area to the best of his knowledge.

Mr. Steedle said the project as presented is the extent of the plans for development of the road. Mr. LeVine asked if the lower area option for development, even though designated as the least intrusive, could not be built because it was Goldbelt land.

Mr. Lange said it was his understanding that Goldbelt did not want the road on its property. He said should Goldbelt change its stance on the issue that the road could be constructed on the lower option.

Mr. LeVine asked Mr. Lange if he knew why Goldbelt did not want the land on its property.

Mr. Steedle responded that Goldbelt did not want the development on its property because it would be more convenient for them to have the road constructed on CBJ property.

Mr. LeVine asked for the justification as to why the construction of a pioneer road does not constitute “development” which would require a master plan or a revision of the master plan for development.

Mr. Palmer said the code authority for this project is listed under 49.05.200 (b) 1 (g) . Under that provision, said Mr. Palmer, Title 49 specifically adopts Chapter 6 of the West Douglas Conceptual Plan dated May, 1997. That conceptual plan is part of the Comprehensive Plan so that Title 49 and the Conceptual Plan are consistent, he said. He said he thought the question before the Commission is a question of policy to decide whether or not this road is of a scope sufficient enough to trigger the new growth area requirements for a master plan or if it is of a small enough scale that the new growth area requirement is not triggered.

Mr. Voelckers said he is one of the primary authors of this from 20 years ago. He said he is generally in favor of the plan, because the original six or eight miles proposed for development had a road that linked a series of at least three or more future new growth areas. The overall master plan from 20 years ago illustrated the most likely places where those new growth areas would occur. There was a road to link those areas with three alternatives as presented, he said. The top road was the best selection based upon its lesser impact on wetlands, said Mr. Voelckers. Goldbelt is not reluctant to have the road on its property, said Mr. Voelckers. He said in his view one of the strongest arguments for taking the higher road (so to speak) was to allow the creation of fairly discrete nodes of development without creating a low-grade, less thoughtful development.

When Mr. Calvin, the president of the McDowall Group, appeared before the Commission about a year ago, said Mr. Voelckers, he said the single most important step for Juneau to take

was constructing this road. The pioneer road starts the process, said Mr. Voelckers. And a subsequent piece of this development is a deep water port for Juneau, said Mr. Voelckers.

MOTION: *by Mr. Peters, to approve CSP2016 0002 and to accept the analysis, findings and recommendations of the staff for this project.*

Mr. LeVine said he opposed the motion. He said in his opinion it does not make sense to begin building a road until there is broader development that would subsequently take place. He said he did not believe that building a two and a half mile pioneer road to nothing is an effective use of City funds or consistent with the Comprehensive Plan or Title 49. He said if the road were to be constructed, it would be development and that it should not occur until a master plan has been submitted.

Roll Call Vote:

Yeas: Bell, Dye, Peters, Voelckers, Haight

Nays: LeVine,

The motion passes.

USE2016 0005:	A Conditional Use Permit for Marijuana Cultivation Facility in an Industrial Zone.
Applicant:	Rainforest Farms, LLC.
Location:	5763 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 for the development of a marijuana cultivation facility in an industrial zoned area. The approval is subject to the following conditions:

1. Wastewater generated by the marijuana cultivation facility is prohibited from entering the CBJ sewer system.
2. Parking spaces shall meet CBJ 49.40.210(b)(1); 4 spaces including 1 ADA signed space shall be marked and maintained for Rainforest Farms; and 1 space shall be signed for the accessory dwelling unit.
3. If/when the owners expand to make deliveries, all deliveries must be undertaken during normal business hours, Monday through Sunday, and must not cause undue burden to the abutting properties.
4. The 50-foot streamside setback shall be maintained—fencing and parking are not allowed in the setback.

5. The CO₂ generator shall have an automatic shut off.
6. A propane sensor shall be installed in the cultivation building.
7. RC-48 Carbon-grade filters shall be replaced no less than once annually.
8. All CO₂ enrichment processes, plant extraction processes, fumigation and the use and storage of pesticide, fungicide, miticides and thermal insecticidal fogging shall be approved by the Fire Marshal and meet the requirements of the International Fire Code (IFC) and NFPA where applicable.
9. Structures meet the Sound Transmission Classification requirements as provided in the International Building Code to eliminate any detectable noise from fans or generators outside of the structures.
10. All windows to the cultivation facility will be opaque and armed with an alarm system.
11. Lighting shall be installed to illuminate all access points—doors, windows—to the cultivation facility.
12. No offsite glare shall be produced by exterior doorway lights.
13. Each door shall have either a grade 2 lock with deadbolt or grade 1 lock.
14. Security cameras shall record in no less than high definition 720dpi resolution, with a minimum of 20 frames per second, with the ability to record in the infrared spectrum.
15. Security cameras shall have an unobstructed view of each doorway to the processing building and cultivation building.
16. Security cameras shall have an unobstructed view of the regular activity without sight blockage from lighting hoods, fixture or other equipment in the processing building and cultivation building.
17. Security cameras shall have a battery back-up system installed that operates for a minimum of 24 hours; all batteries must be replaced annually.
18. Prior to the issuance of a Certificate of Occupancy, all security devices shall be inspected to ensure they are fully operational.
19. The applicant shall obtain a CBJ marijuana business license if and when applicable.
20. The property owner shall schedule an annual inspection to ensure conditions of this permit are met.
21. This CUP expires if the applicant does not receive a state marijuana license approval within 18 months.
22. The applicant has notice of pending legislation (Ordinance 2015-38) that may affect this approval. The applicant will comply with all requirements that Ordinance 2015-38 imposes when it is passed even if more restrictive than the approved conditions of USE2016 0001. If the Director determines that Ordinance 2015-38 imposes more substantial submittal requirements and/or more restrictive approval requirements than what was analyzed or imposed by this permit the Director may schedule USE2016 0001 for further review by the Planning Commission within three months of the adoption of Ordinance 2015-38.

Ms. Maclean told the Commission that this is a Conditional Use Permit for a marijuana cultivation facility in an industrial zone. The business is Rainforest Farms LLC, with business owners James and Giono Barrett and Michael Healy, said Ms. Maclean. The property is located

on Glacier Highway in Lemon Creek. It is approximately one acre of land, said Ms. Maclean. The land is zoned Industrial and labeled as Heavy Industrial in the Comprehensive Plan, she said.

The land is accessed off of Glacier Highway from a shared access easement, said Ms. Maclean. The building was formerly occupied by Taku Graphics, she added. The site is adjacent to a residential building as well as some salvage yards and trucking rental, said Ms. Maclean. The front and rear setbacks are ten feet, and the side setbacks are zero, she said. Since Lemon Creek is an anadromous stream, there is a 50 foot streamside setback, she said. There is an accessory dwelling unit located above the proposed cultivation facility, which requires one parking space, said Ms. Maclean. The cultivation facility will require four parking spaces, she added, which includes one space for ADA parking, she said.

There is an external stairway to the accessory dwelling, said Ms. Maclean, which will have no entrance to the cultivation facility. The cultivation facility will be armed by an alarm system and security cameras, said Ms. Maclean. There are French doors in the existing building which will be either walled in or replaced with security doors, she said. The facility is 2,750 square feet with a 510 square foot storage shed, said Ms. Maclean. Most of the odor control will be focused on the vegetative room, said Ms. Maclean, using the industry standard carbon filters.

They do not anticipate any negative impacts on traffic from this use, said Ms. Maclean. DOT did not express any concerns about the traffic generated by the facility, she said. Noise and lighting should not be an issue, she said. Public health, safety and welfare should not be an issue, said Ms. Maclean. The facility is not near any schools, churches or day care centers, she said. The use for the facility fits with the area, seeing as it is an industrial zone, said Ms. Maclean. This is an approved industrial use, she said. The project is also in conformance with the Comprehensive Plan, said Ms. Maclean.

They received two public comments in support of the Conditional Use Permit (CUP) and one comment in opposition to the CUP from the nearby residential dwelling, said Ms. Maclean. The Conditional Use is complete and of an appropriate use for the zone, said Ms. Maclean. The facility will not substantially decrease the value of the property or be substantially out of harmony with the property in the neighboring area, she said.

Approval of the cultivation facility is subject to 22 conditions, which Ms. Maclean read for the Commission.

Mr. Voelckers asked if the single family residence shared the driveway with the facility.

Ms. Maclean said that it did share the drive. In answer to Mr. Voelckers' question, she said the drive is 35 feet wide as it comes off of Glacier Highway.

Applicants

James Barrett told the Commission that the building they have identified is in a very secure location with adequate power supply for their needs. They will be using LED lights which do not have a large power consumption. They do not plan on using any toxic substances for the marijuana cultivation. They plan on using this site for marijuana cultivation, with the ultimate goal of having their own retail business in town to market the product, said Mr. Barrett. They will just be growing the flowers, with no additional processing of the product or extractions, said Mr. Barrett. At some point they plan on having a separate processing facility for that type of activity, he added.

They have a security room which should be adequate for holding a safe for any cash they need to keep on the premises, he said. The room downstairs identified as a laundry room is actually a boiler room, he said. There is outside access to that room, he added. There will be no cannabis in the storage shed. It will just be for preparation materials and for waste, he explained. The neighbors upstairs said they had no issues with the facility downstairs.

Giono Barrett said he will be focusing on the cultivation, and that they will be using very clean cultivation practices. They will not be using a lot of water and they will not be using fertilizers which have a salt residue, he said. None of their waste will be outside of the building, he said. The LED technology is environmentally friendly, he explained.

They will be using sophisticated, solid software to track each plant, said James Barrett.

Public Comment

Juneau resident Benjamin Wilcox said that he supported the cultivation facility, and that he felt the owners had the interests of the community at heart. He said if there was anyone who was becoming involved with this industry who was going to move forward with integrity and true purpose that it would be these individuals.

Juneau Resident Paul Disdier said he has gone over the CUP for this business, and he feels they have done a very good job. He said he believes these are reputable individuals, and the type of people who were wanted in this business. He said they are trustworthy people, and that he hoped the Commission and the community would trust them as well. Mr. Disdier asked the Commission to approve the CUP, and said these individuals would be an asset to the community.

MOTION: *by Mr. Peters, to approve USE 2016 0005, a Conditional Use Permit for a marijuana cultivation facility, and to accept the findings, analysis and recommendations of the staff.*

Speaking in support of the motion, Mr. Voelckers said they had spoken before about the extreme, long list of conditions attached to marijuana Conditional Use Permits. He said he was leaning towards being in support of removing about half of the conditions and supplanting

those with a more generalized statement that the director would work with the applicant to ensure that the necessary conditions be met.

Mr. LeVine said he is sympathetic to the point of view of Mr. Voelckers, but that the applicant has worked closely with the staff to craft the existing conditions, and given that this is only the second of these CUP's addressed by the Planning Commission, that he would support maintaining the specificity in the conditions, acknowledging that in the future they may be able to reduce the conditions by at least half.

Mr. Voelckers said he felt that Condition 9 that any detectable noise from fans or generators be non-detectable outside of the building was too restrictive. He said he felt it would be more reasonable to have the point from the property line rather than from immediately outside of the building.

Ms. McKibben said the primary reason for the difference in this Conditional Use Permit and the one which was passed by the Commission two meetings previous is that in this particular case there is another use within the same structure.

Mr. Voelckers said there might be a defining word or two added to that condition. He said according to the current phraseology that anyone who could hear anything outside of the building could claim the facility was not in compliance with the conditions.

Mr. Voelckers added as a friendly amendment to the main motion that the structure shall meet code in terms of noise and vibration separation in terms of the dwelling above and the operation below.

Mr. Peters accepted the friendly amendment.

The motion of Mr. Peters to approve the CUP with the friendly amendment offered by Mr. Voelckers passed with no objection.

X. BOARD OF ADJUSTMENT

XI. OTHER BUSINESS

Mr. LeVine said that he is a firm advocate of public participation in the meetings both verbal and written. He said they have had several written comments submitted for review by the Planning Commission right up to the commencement of the meeting. He said that he would like to ask the staff and the Law Department to develop some options for the Commission regarding a deadline for submission of written comments prior to the meetings, so the Commission members would have time to adequately review that information.

Mr. Haight said he agreed with the comments of Mr. LeVine. He said they have been getting inundated with several different written comments, which makes it difficult for the Commission to ingest. He asked the staff if they could come up with some recommendations for the Commission.

Mr. Steedle asked the Commission how they would specifically like to deal with late written comments: would the Commission not want to see them at all, or after the meeting?

Mr. Peters said that the current rules of order address written testimony. He asked if this is where additional information would be inserted regarding deadlines. Mr. Peters added that if they were going to insert a deadline in which written public testimony was required to fall, that his preference would be if it was not submitted by the deadline that he did not want to see it.

Mr. LeVine said that he concurred with Mr. Peters. If written information is not submitted by the deadline, then he did not want to see it. He added he did not think this should preclude people bringing documents with them to support their issue, especially if they were limited in scope, such as maps, for example. He said he did not think it was unreasonable to request that comments be submitted 48 or 72 hours before a meeting in order to be considered.

Mr. Steedle said the Rules of Order provides deadlines. He asked if the Commission would be amenable to going by these deadlines. It read in part that materials and exhibits submitted less than three days before the meeting would be distributed by the clerk provided that the submission includes at least 15 copies.

Mr. LeVine said the portion of that rule involving the submission of written matter right up to the meeting was the crux of the problem. It did not provide the Commission with adequate time to review the contents in a meaningful way, he said. He said he would like to resolve that ambiguity. He added that he did not think that public comments should be emailed to commissioners. The comments should all have to go through the CDD, he said.

Mr. Voelckers said he agreed with this idea. He said he felt it was inappropriate to have a stack of papers waiting on their chairs for when they came to a meeting.

Mr. Haight asked the Commission if it felt this should be tied more to when the packets were delivered to the commissioners.

If they set a deadline, it should be no later than three business days before a meeting, said Mr. Peters. He said that he would like to receive all materials no later than a Friday, for preparation for a Tuesday meeting. He said he would often be reading his packet over the weekend, noting that this packet was almost 1,000 pages in length.

Mr. Steedle said they would put together a proposal for the Commission by its next meeting.

The public comment deadline could be the Friday prior to the meeting, and Mr. LeVine noted if the primary packet had already been delivered, that they could be sent to the Commission by email.

Mr. Voelckers added that this rule should also apply to late submissions by the staff.

XII. DIRECTOR'S REPORT

▪ Lemon Creek Steering Committee Recommendations

Applications for the Lemon Creek Steering Committee allows for a maximum of 11 members, said Ms. Maclean. Eleven individuals had submitted applications for the committee and it was a well-rounded group, she noted, composed of members from various facets of the community.

MOTION: *by Mr. Peters, to accept all eleven applications for the Lemon Creek Steering Committee.*

The motion passed with no objection.

The members of the newly formed Lemon Creek Steering Committee are:

	Wayne Coogan
	Sandra Coon
	Sam Dapceovich
	Susan Erben
	Dave Hannah
	Michael Lukshin
	Steve Johnson
	Vivian Kokotovich
	Mark Pusich
	Patrick Quigley
	Michael Short

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Title 49 Committee

Mr. LeVine said the Title 49 Committee met on March 16, (2016) primarily to discuss the agenda for the year. Mr. LeVine was elected as chair of that committee.

Subdivision Review Committee

Mr. Voelckers reported that this committee has not met recently, but that he would like to refresh the invitation to review the access issue which was before the Commission this evening.

Mr. Steedle said the staff has been reviewing this issue and that it would soon be presented to the Commission.

Wetlands Review Board

Mr. Haight reported that the Wetlands Review Board would be meeting on Thursday, April 14, 2016.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS - None

XV. ADJOURNMENT

The meeting was adjourned at 9:55 p.m.