

MINUTES
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Nicole Grewe, Chair

February 23, 2016

I. ROLL CALL

Nicole Grewe, Chair, 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: Nicole Grewe, Chair; Ben Haight, Vice Chair; Bill Peters, Michael LeVine, Percy Frisby, Nathaniel Dye, Matthew Bell, Carl Greene, Paul Voelckers

Commissioners absent:

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager; Jill Maclean, Senior Planner; Chrissy Steadman, Planner II; Tim Felstead, Planner I, Amy Mead, Municipal Attorney; Robert Palmer, Assistant Municipal Attorney; Skye Stekoll, Architectural Assistant II

Assembly members: Debbie White, Assembly Liaison; Jerry Nankervis

Mr. Peters asked to suspend the rules so that the Commission can address an additional motion regarding the continuation of Chair Grewe's role as Chair of the Planning Commission.

MOTION: *by Mr. Peters, to suspend the rules so that the Commission can address a subsequent motion regarding the continuation of Chair Grewe's role as Chair of the Planning Commission.*

Roll Call Vote:

Ayes: Mr. Bell, Mr. Dye, Mr. Haight, Mr. Peters, Mr. Greene

Nays: Mr. Levine, Mr. Voelckers, Chair Grewe, Mr. Frisby

Prior to his vote, Mr. Greene asked for the definition of what it means to suspend the rules.

Chair Grewe explained that it means to suspend the rules, thus making it possible for another motion to be made.

Requiring a vote of six Commission members in order to pass:

The motion failed.

II. APPROVAL OF MINUTES

- January 26, 2016 – Planning Commission Committee of the Whole
- January 26, 2016 – Regular Planning Commission Meeting
- February 9, 2016 – Regular Planning Commission Meeting

MOTION: *by Mr. Peters, to approve the minutes of the January 26, 2016 Planning Commission Committee of the Whole meeting, the January 26, 2016 Regular Planning Commission meeting, and the February 9, 2016 Regular Planning Commission meeting with any minor modifications by staff or Commission members, and asked for unanimous consent.*

The motion passed by unanimous consent.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

With a large number of the public indicating that they wished to speak on non-agenda items, Chair Grewe limited the testimony to three minutes per person, and reminded the public that only items not addressed on the regular agenda could be addressed at this juncture in the meeting.

Juneau resident Dixie Hood told the Commission that she wanted to express her concern about Chair Grewe chairing the Planning Commission. Ms. Hood said she was concerned that Chair Grewe had testified before the Assembly, and that she and her husband have actively worked against the upcoming cultivation ordinance. Ms. Hood said she did not know if the activities of Chair Grewe were illegal, but that she did consider the action of the Chair in this regard to be completely inappropriate, and unethical, which should negate her participation as Chairman of the Commission. She added that in her opinion Chair Grewe should also not participate as a member of the Planning Commission. Ms. Hood said she would like the Commission to consider this issue, and also the CDD Director and the Assembly.

North Douglas resident Mary Ellefson named for the Commission a long list of public service and Juneau activities which she has been involved in. She said every few years it was necessary for her to appear before the Planning Commission to protect unfavorable development in her North Douglas neighborhood. She said over the past decade, there has been a change in zoning regarding cultivation of marijuana, the plan to develop a large scale peony farm, expressing her opposition to an off-road vehicle area, and studying the details of a second channel crossing.

Ms. Ellefson asked for a plan to guide the development in the area. Speaking of the recently adopted Auke Bay Area Plan, and current plans underway to develop an area plan for Lemon Creek, Ms. Ellefson asked the Commission to pass a moratorium on the issuance of any Conditional Use Permits regarding the commercial cultivation of marijuana in all residential areas until a North Douglas comprehensive plan is in place as well.

Steve Johnson reminded the Commission that the City population had voted a year and a half ago to allow marijuana sales and cultivation within the City. He said he felt it was incumbent upon the City bodies to make this happen, rather than stop it. He said he felt a recent application for a Conditional Use Permit (CUP) on North Douglas adequately addressed all of the issues, and he felt it deserved a hearing before the Planning Commission and Assembly.

Mr. Johnson asked if individuals would be able to publicly address the marijuana ordinance before the Commission this evening.

Chair Grewe said that public testimony on this issue had been closed at the last regular meeting. The Commission could vote to hear additional testimony on the ordinance, said Chair Grewe.

Accompanied by what appeared to be a half gallon of liquid fertilizer, Juneau resident Benjamin Wilcox said that what he held was nutrients which would be used on his plants. He then took a swallow of the contents of the container and told the Commission that it tasted like “crap”. He noted that in spite of its taste, it was not going to do anything to him or to the ground. He had passed information on this topic out to the Commission prior to speaking.

Mr. Wilcox told the Commission he has lived in Juneau for over 20 years, and plans to remain here for the rest of his life. He said he cared about Juneau as much as any of its non-cannabis friendly residents. He said that he would not be engaging in any activity which would harm the community. To ensure this, he said he has spent 46 days traveling over the past two years including 21 days in conferences, and 12 days in one-on-one meetings with industry leaders. He said he has visited eight retail commercial growing operations and almost 100 retail stores, as well as visits to a few labs and manufacturing facilities. In addition, said Mr. Wilcox, he has grown marijuana for the past eight years with his medical marijuana card. He said he has expended many hours to guarantee that this industry be properly introduced to the community.

Mr. Wilcox said he implored the Commission to use he and his colleagues as wells of information. He said they have been very clear and honest about their intentions and goals from the very beginning. He said the opposition offers “fear-based accusations” and “decades-old propaganda”, with no understanding of the plant or the industry.

Chair Grewe told Mr. Wilcox that he was skating too close to the marijuana ordinance item which was on the agenda for the evening, and in which public testimony had been closed.

Mr. Wilcox said he was speaking about an issue raised at the last meeting, which was old business, and not to the issue on the agenda for this evening. He said there have been many references to explosions. He said none of those explosions occurred in commercial operations. In addition, he said, none of those explosions had anything to do with the cultivation.

Mr. LeVine said he objected to the testimony.

Concurring with Mr. LeVine, Chair Grewe told Mr. Wilcox that she was sorry, but that his testimony was too close to the ordinance appearing on the agenda before the Commission this evening.

Mr. Wilcox said that he would then address non-agenda items. Mr. Wilcox said he has been following the proper procedure for months, and that only now do a group of residents want to oppose the ordinance. He said if these residents were so interested in their community, then they should have been working with the group throughout the process. He said it was not fair for them to step in at the end of the process after hundreds of hours of communal work, only to object at the “finish line”. He said it seemed “almost shady” that a fellow industry person’s Conditional Use Permit was moved back, and the doors opened for a group to comment on something which was not on the agenda, and without public notice.

Mr. Wilcox added that he felt that it was odd that the Commission was served with information on that testimony at the close of business, while the Chair to the Commission had copies of this information.

At the objection of Mr. Peters to this testimony, Chair Grewe told Mr. Wilcox the testimony needed to be limited to items not on the agenda.

North Douglas resident Wayne Carnes said at a recent meeting where he disagreed with some of the regulations he was asked why he was bringing up this issue at the “eleventh hour”. Mr. Carnes said he brought this issue up at the eleventh hour because he was ignorant. He said he found out three weeks ago how this ordinance would affect him.

The Commission took a two minute at-ease.

After reconvening the meeting, Chair Grewe explained that non-agenda items are interpreted differently by different individuals. She said the Commission would take comment only on non-agenda items, meaning no comment regarding marijuana. In answer to a question from the public, Chair Grewe further explained that when the marijuana ordinance was before the Commission this evening, that the Commission could vote whether to take additional public comment or not, if the motion was made.

Mr. Carnes resumed his testimony, stating that he was the captain of a ship, and that it was incumbent upon the crewmembers to speak up if they perceived that the captain is making a mistake. He said it was also up to the captain to listen and assess the crewmember observations, “even if it was 11:59:59”.

North Douglas resident Fred Hiltner told the Commission that CBJ Title 49.25.210 defines residential districts as established to provide a healthy, safe and pleasant environment for residential living, protected from incompatible and disruptive activities. He said it was his understanding that this is a charter which the Planning Commission is to uphold. He said that neighborhoods and industry do not mix well. He said as a sailor he knew it was critical to fix the boat before it leaves the dock. It was much harder to make repairs after leaving the dock, said Mr. Hiltner.

Juneau resident James Barrett said he had applied for a Conditional Use Permit and that there was not an ordinance for it yet. He said he wanted to distribute information which he had gathered regarding the state application process, and what would be covered within the next three weeks.

Kaja Brix, a North Douglas resident, said she worked in “public process”, and understood that the job of the Commission was difficult, and that it was difficult to hear public testimony, weigh options, and make a good decision on the behalf of the entire community. She said she wanted to commend the Assembly for hearing all of the public testimony at last night’s meeting. She called this a good, open, transparent process. She said that public officials have a responsibility to hear comments, to consider those comments, and to make difficult decisions.

North Douglas resident June Hall said she has lived in her home on North Douglas Highway for 41 years. She said she loves living in the area, and she believes that no one who lives in the area would not want to give up their residence. Ms. Hall said that she believes that with the way things are developing in the community that there could be some good economic growth for Juneau. She said she bases some of her belief on the recent study in the Juneau Economic Development Plan which cites a quote from the National League of Cities which states that in recent years many cities have shifted their primary economic development focus away from attracting large firms from outside the community to grow new businesses from within the community, and to help existing businesses survive and thrive.

There is not much available land for development in Juneau, said Ms. Hall. She added that zoning is difficult. Ms. Hall said on page 17 of the Juneau Economic Development Plan that zoned land is available for commerce and industry as well as residential development. This also supports zoning which supports neighborhood-based, small business growth that creates jobs and provides services for the community. The Plan also states that Juneau is to support local entrepreneurs, said Ms. Hall, particularly related to Juneau’s unique assets.

Thane Road resident Judy Sherburne told the Commission that she is, “all about economic growth” in favor of small and some large businesses. She said she does have a problem when this comes into conflict with neighborhoods. Neighborhoods could be disrupted by certain industry, said Ms. Sherburne. She said that she utilizes well water, as do her neighbors, and the neighbors have run out of well water in the past. She said they were discussing a water dependent industry, which is one example of her concerns. She said her biggest concern has to do with other problems which have already been discussed before the Commission. She asked

that the Commission take another opportunity to allow the public to provide further testimony on this issue.

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison Debbie White reported that since the last meeting, that the City has made the decision to appoint Rorie Watt to the City Manager vacancy. She said the Assembly has filled its empty seat with Jamie Bursell, who will be the second Assembly member living in a D-1 district. The City has also hired a Chief Housing Officer, Scott Ciambor. The Assembly has also selected Roger Healy to head the Engineering and Public Works Department. Mr. Healy has also worked for the City in the past, said Ms. White.

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

CSP2015 0019:	Reconstruction of Distin Avenue and portions of W. 7 th Street, W. 8 th Street, Indian Street and Calhoun Avenue including improvements to storm drain, sanitary sewer, water main, hand rails, concrete barriers, street paving, and altering sidewalk width.
Applicant:	City and Borough of Juneau
Location:	Distin Avenue and portions of W. 7 th Street, W. 8 th Street, Indian Street and Calhoun Avenue

Staff Recommendation

Staff recommends that the Planning Commission recommend that the Assembly approve the proposed project, as prescribed at CBJ 49.15.580(a).

Staff suggests the following recommendations for CBJ Department of Engineering and Public Works and/or the contractors undertaking the work:

1. The CBJ project manager contact the DIA prior to the start of the project and that the contractors are made aware of the possibility of finding burials/artifacts during the reconstruction project. If any historic, prehistoric, or archeological sites, locations, remains, or objects are discovered during development activity, all work in the area must cease, and the applicant/permittee/whomever must immediately notify the State Historic Preservation Officer at the Department of Natural Resources within two working days.
2. CBJ Fire department should be informed of water shut offs 24 hours in advance.
3. The fire hydrant on the corner of W. 8th Street and Calhoun Avenue should be relocated into a sidewalk bump out to improve pedestrian movement and crossing at this corner.

4. The design should be altered to provide continuous concrete sidewalk on W.8th Street outside 360 Distin Avenue with drop curbs installed as appropriate.

Advisory recommendation:

1. Juneau Police Department should enforce on any vehicle parking on the sidewalks in the neighborhood especially immediately following reconstruction.

CBJ Engineering would prefer Recommendation 3 to be addressed during the reconstruction of Calhoun Avenue. This project has been identified and will be undertaken as and when funds are available.

Mr. Felstead noted that there was a blue folder item which described an amendment to original CBJ Engineering proposal to account for vehicles that had been parking partially in the Right of Way for many years. This amendment satisfies Recommendation 4.

Mr. Felstead told the Commission that this project encompasses streets just behind the Governor's Mansion. This project is coming before the Planning Commission because it is included in the 2016 CIP (Capital Improvement Project) list. The Land Use Code requires CSP projects to be reviewed when they will total over a half million dollars, he explained.

In this area the right-of-way is only 30 feet wide, said Mr. Felstead. It is currently designed to operate as a one-way system, he said. Most of the sidewalks in the area are not five feet wide, he said, which is the width recommended in the Transportation Plan and in Title 49. This project will be linked to some work being performed at the Governor's mansion to improve the garden walls and drainage around that site, said Mr. Felstead.

This area is zoned D-18, said Mr. Felstead, so it is quite dense in terms of the number of dwelling units which creates a high demand for on-street parking. There will be a comprehensive upgrade to the street in terms of separating the storm water and sewer which are currently linked. The water mains will also be replaced, he said. All of the existing streets will be improved by new paving, he said. Some of the right-a-way will be reallocated to provide 5 foot sidewalks on at least one side of the street and some sidewalks will be narrowed as a result. Existing lighting and fire hydrants are unchanged, he said.

There is a power pole on Distin Ave. located in a travel way which will be included in the widened sidewalk, said Mr. Felstead. Pedestrian crossings will be improved, and the landings in front of the pedestrian crossings will be ADA (American Disability Act) compliant, he said. A new pedestrian sidewalk will be added going down West 8th Street, he said. With the existing parking situation, he said, some vehicles currently encroach into the existing right-of-way. The CBJ Engineering Department has come up with a proposal to allow the property owners to continue parking there to avoid throwing additional vehicles onto the on-street parking which is already overcrowded, said Mr. Felstead.

The sidewalk going by the Governor's mansion will be raised to give pedestrians an increased sense of security, said Mr. Felstead. The staff recommends that a fire hydrant on West 8th Street be relocated into a bump-out, he said. The CBJ Engineering Department would like to undertake this work at a later date, he said, when Calhoun Avenue is reconstructed.

The project conforms to many of the policies in the Comprehensive Plan, by improving surface water quality, improving the right-of-way to meet minimum standards, and with conformity in terms of on-street parking, said Mr. Felstead, taking into account the confined nature of the area.

Mr. Felstead repeated the recommendations and the advisory recommendation listed in the staff report above.

Commission Comments and Questions

Mr. LeVine said they had a parallel issue regarding Echo Cove before them on the Consent Agenda several meetings ago, and that the wording on the condition had been changed slightly. He said he felt this was the older verbiage. He said he encouraged the staff to make this condition consistent with the previous condition approved by the Commission several weeks ago.

Ms. Grewe said she had a technical edit in which the wrong number had been provided.

Mr Felstead agreed to address both of these items in the Notice of Recommendation.

Public Comment

Distin Avenue resident Jean Ann Alter said she wanted to encourage the Commission not to approve this item at this point. She said her main concern is that there is a lot which she owns between her home and her mother-in-law's former home which has a telephone pole which was moved there in the early 80's. The location of this pole totally blocks their lot, she said. The current plan calls for the City to build more cement and infrastructure around this pole. Ms. Alter said she would like to see the pole moved before this construction takes place, so that they will be able to use their lot. This lot would provide off-street parking for her family, she said, and also provide the opportunity for further housing for the community.

Ms. Alter said she has noted that telephone poles are almost always located between property lots and not in the center of the lot. Ms. Alter said she urged the Commission not to approve this project until AEL& P and the City could come up with a solution regarding the placement of the pole.

Commission Comments and Questions

Mr. Voelckers asked if this concern has been raised with the staff.

Ms. Alter said they received a notice about a year ago that some work in the area would occur. She said they called the City and left messages on two separate occasions. No one returned

their call, and she said since that time they have not had any information that this project was progressing until she received a notice indicating that there was a public hearing on the area improvements on this date. She said they did speak with the staff this evening and that they were quite cooperative. She said they were worried that if construction proceeded that they would forever lose the chance to build on their lot.

In answer to Mr. Voelckers' question, she said the lot was very buildable if the pole was not present.

Mr. Greene asked if there was enough lot frontage on the road to construct a garage or buildable lot.

Mr. Felstead replied that the lot could be developed for a single family dwelling. He said a garage cannot be constructed on a lot without an accompanying dwelling.

Ms. Alter said that she had comments about the walkway at the top of the 9th Street hill. She said since there is not a stop sign at that location, the cars are not used to stopping. She said putting a pedestrian crosswalk at that location with no stop sign for the cars would be dangerous for pedestrians. She added that she would like to see a yield sign installed at the corner of 7th Street and Indian Street, or a stop sign at that location.

Eighth Street resident Kenneth Clark Branch said he would like to see more opportunity for public input on this project. He said in general he supports the plan but perhaps they should have the opportunity to "fix the ship before it sails". Mr. Branch also had some knowledge of the power pole in question. It accommodated where powerlines emerge from the ground to become an aerial transmission line. Relocation of this pole would not be as straight forward as it would be if it were a pole in the middle of the aerial transmission lines.

Mr. Stekoll said the reason for widening the sidewalk around the power pole was to give it more protection from snowplows and vehicles. They had not considered moving the pole, he said. That job would fall under AEL&P, he said. He said they will try to identify a new location for the pole and contact AEL&P for a cost estimate.

Mr. Voelckers said it sounded like Mr. Stekoll was willing to consider moving the pole as an option.

Mr. Stekoll concurred.

Mr. Voelckers asked what kind of timeline this would create for the project. He asked if addressing the pole issue would place other aspects of the project in jeopardy.

Construction on the project is to begin May 1, said Mr. Stekoll. He said they would need to approach AEL& P for a timeline for moving the pole, and also they would need to obtain a cost

estimate for what could be a very expensive portion of the project. They would need to identify who would be responsible for paying for the pole to be moved, said Mr. Stekoll.

Mr. Voelckers said it seemed to him that the individual with the pole on their property had good reason for raising the issue.

Mr. Bell asked the staff if they were to request the staff to revisit the project with moving the pole in mind what it would do to their timeline for construction.

Mr. Stekoll said they could try to move quickly and provide the Commission with an update at the next meeting.

Mr. Felstead said they could add as a condition that the staff research the location of the pole.

MOTION: *by Mr. Voelckers, to move item CSP2015 0019 and add the discussed condition that staff work with the affected property owner and try to find an agreeable solution in an attempt to shift the pole to the perimeter of the property so that it can be developed.*

Speaking in support of the motion, Mr. Haight said he felt it was a very good idea to move the pole. It should not be obstructing the use of the property, he said. This would be the time to do it, he said. The cost would be the least at this juncture when construction of the streets and sidewalks was already going to take place, said Mr. Haight.

Speaking in support of the motion, Mr. LeVine said he felt the best option was for the staff to try to work this issue out with AEL& P and the affected resident. He said he would strongly encourage them to try to make this work since the Commission is very much in support of making available any buildable property.

The motion passed with no objection.

Mr. Stekoll added they would be having a public meeting in a few weeks with the contractor and the public would then be notified of the construction schedule.

CSP2016 0001:	Consistency review for the installation of W-beam guardrail along the water side of Glacier Highway beginning at mile point 21.17 and terminating at mile point 21.75.
Applicant:	State of Alaska DOT/PF
Location:	Glacier Highway between mile point 21.17 and 21.75

Staff Recommendation

Staff recommends that the Planning Commission find CSP2016 0001 to be consistent with adopted local plans and polices, as required by CBJ 49.15.580 and AS 35.30.010 and **approve** CSP2016 0001 to allow for the installation of 3,060 feet of guardrail along Glacier Highway, beginning at mile point 21.177 and terminating at mile point 21.757.

CBJ 49.15.580 (b) State project review: The commission shall review proposed Alaska State capital improvement projects for consistency with this title pursuant to AS 35.30.010 and may impose conditions on and modifications to such projects. If the commission approves or approves with conditions or modifications, a notice of decision shall be issued. A notice of decision becomes final 90 days from the date the project was submitted unless modified or disapproved by the assembly. If the commission disapproves, a notice of recommendation and draft resolution shall be forwarded to the assembly for further action.

Staff further recommends that two advisory conditions be placed on the finding of consistency in order to provide all possible notice to the applicant and the project contractor that a construction noise permit will be required for heavy equipment work during night-time hours as provided by CBJ 42.20.095(b) and that notice of any street closure must be provided to both Juneau Police Department and Capital City Fire and Rescue.

Advisory Conditions:

1. CBJ 42.20.095(b) Construction of buildings and projects. It is unlawful to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, or similar heavy construction equipment, before 7:00 a.m. or after 10:00 p.m., Monday through Friday, or before 9:00 a.m. or after 10:00 p.m., Saturday and Sunday, unless a permit shall first be obtained from the City and Borough of Juneau Building Official. Such permit shall be issued by the Building Official only upon a determination that such operation during hours not otherwise permitted under this section is necessary and will not result in unreasonable disturbance to surrounding residents.
2. At least three business days prior to any traffic revision or road closure of any public street or portion thereof, the contractor shall provide written notification of the traffic revision plan to the CBJ Fire Marshal and Chief of Police. Failure to provide such notice may result in suspension of any CBJ-issued permits for such work, and is punishable by a fine as an unlawful street closure under CBJ 72.17.010.

MOTION: *by Mr. Peters, to accept the Consent Agenda item 2016 0001, with staff's analysis and findings, and moved for unanimous consent.*

The motion passed by unanimous consent.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS

AME2016 0003:	Title 49 amendments related to marijuana uses
Applicant:	City and Borough of Juneau
Location:	Borough-wide

No recommendation – included in the packet is revised a Draft Ordinance, 2015-38 PC v3.

Chair Grewe said this item is continued from the February 9, 2016 meeting. They are to continue their deliberations on this item and hopefully forward it to the Assembly, she said.

Chair Grewe said at the last meeting that Commission member Bill Peters had alleged that she had a conflict of interest, without providing an explanation. Perhaps she did not handle the situation as well as she should have at that time, said Ms. Grewe.

Chair Grewe introduced her husband, Todd Boris, who was in the audience, and who had provided testimony at the February 9, 2016 meeting. She said that she did not introduce him at the last meeting, when he provided testimony, and that she should have done so.

Chair Grewe said there is a perceived conflict of interest. She said she called the Department of Law and discussed her situation with them, and that she did not plan on participating in any action regarding a forthcoming Conditional Use Permit. She was waiting for the issue to come up before she took any action, she said.

Supporting her participation in the marijuana ordinance before the Commission this evening, Chair Grewe said this is a borough-wide ordinance which impacts all zones equally. She said there could be a perceived conflict, since her home is located within the area of the conditional use applicant. She said she discussed this with the Department of Law, and that it comes down to the fact that although she has participated actively speaking against topics related to this item, that it does not preclude the applicant's ability to move forward with the Conditional Use Permit application.

Chair Grewe said she feels that she can participate in a fair and unbiased manner.

Chair Grewe said she would now pass the gavel to the Vice Chair, and let him make a ruling as to whether she has a conflict of interest participating in the ordinance before the Commission.

Vice Chair Haight said that he had the ability to take over the chairmanship of this ordinance, if he felt there was a conflict of interest. Chair Haight said he wanted the Commission's response to two questions:

1. Is the testimony the Commission has received and the actions taken by Chair Grewe at the last meeting something that would taint current and future Commission decisions on this item?

Mr. Voelckers said due to technical difficulties he could not phone in for the last meeting, and so that he was not present. He said he did read over the verbatim minutes very carefully. He said without being influenced by being in the room at the February 9, 2016 meeting that he felt

there was a lot of testimony that seemed misdirected. However, he added that he did not see a conflict heading forward regarding this piece of the ordinance.

Mr. LeVine said that he did not believe that the Commission debate and the motions they passed were unduly influenced by the testimony heard that evening.

2. Is there any concern by the Commission that participation or chairing of the continued discussion by Commissioner Grewe would not be impartial?

Mr. LeVine said that while he does not believe the action they took at the last meeting was biased, that he is very troubled by the appearance of what happened at the past meeting and by the fact that whether there is an actual conflict or not there was certainly enough that should have been disclosed at the last meeting. Mr. LeVine said he was very concerned about the appearance that the Commission may not be impartial, and that it was very important that their body always appear to be trustworthy before the public, and for that reason he said he was in favor of Vice Chair Haight presiding over the portion of the meeting which involved this ordinance.

Mr. Peters said that he concurred with Mr. LeVine. He said he felt that transparency was the keyword in this situation. He said he found it ironic that earlier this evening while taking public testimony, the Chair limited public participation to three minutes. He said it was evident that she tried very hard to keep public testimony tied to those matters not on the agenda. Mr. Peters said in his personal opinion it was in grave contrast to how she handled the last meeting. Mr. Peters said in his review of the February 9, 2016 meeting, that nearly 21 times she allowed public testimony to stray from the matters before the Commission that evening. He said he felt that it was imperative that Chair Grewe step down as Chair over the ordinance.

Mr. Haight said he has made his decision to continue as Chair for the duration of deliberation on AME2016 0003. He asked that Chair Grewe maintain her position on the Commission, and continue to offer her thoughts as they proceeded.

Ms. Steadman told the Commission that only those items in the ordinance which had a motion associated to them were amended in the draft before the Commission this evening.

Mr. Voelckers said he wanted to ascertain that even though motions have been passed on individual portions of the ordinance, that the ordinance as a whole could still be considered. He said he assumed there would be some flexibility to make sure that the entire ordinance was cohesive.

Ms. Steadman said the first item on the ordinance to be addressed this evening was noise. After discussions with the Law Department it is their recommendation that no more language needs to be added with relation to noise. Ms. Steadman said in their research noise has not come up as an issue, and further, that noise is a topic generally addressed in Conditional Use

Permits as a matter of course. It is an issue that can be addressed on a case-by-case basis, she said, especially if it is related to a specific zoning district. For example, said Ms. Steadman, there is a lot of Rural Reserve land adjacent to the airport. Would the noise created by fans and other equipment be an issue on that land which is already located next to a noise-inducing complex.

Ms. Steadman said as far as associating septic systems with a time of completion of any septic improvements that were necessary, that they have no recommendations for attaching a time frame. The need to improve the septic would be necessary before the prospective business owners could operate their business, she said.

Chair Grewe said it seemed to her that private septic systems are designed for household use. She asked if the state was going to redefine its regulations to allow for commercial wastewater to be run through what may have been designed as a single family dwelling.

Ms. Steadman said she understood the concerns were whether nutrients are going to be emitted into the septic system. She said it was not her understanding that the Department of Environmental Conservation (DEC) would be changing their regulations to address this issue. The state marijuana regulations require a waste disposal plan, said Ms. Steadman.

Mr. LeVine verified that the requirement that the septic system be evaluated before the operation could begin was a portion of the building permit process.

He was told that it was.

Ms. Steadman said they work with the applicants, and many times the requirements are situational depending upon each applicant.

Mr. Greene asked if an applicant did not have their septic system plan approved and if they subsequently backed out of the business, if those septic system requirements would still be in place for the private dwelling.

This would not be the case for any requirement within Title 49, said Ms. Steadman.

Ms. Steadman said she understood that Mr. LeVine wanted to have a discussion about the license fee and further discussion on the sunset provision within the Conditional Use Permit. Ms. Steadman said she recalled three options being considered for the sunset provision which included a general sunset provision for every zoning district and every Conditional Use Permit, a sunset required for some Conditional Use Permits within certain zoning districts and not others, or there could be a review of the conditions and not the expiration of the actual CUP.

Vice Chair Haight said that public testimony had been closed on this ordinance at the regular meeting two weeks ago, and the Commission had begun its deliberations. He said there was the

option to reopen public testimony should the Commission choose, on the entire ordinance or on select portions of the ordinance.

Mr. Peters said that he identified only two issues which could feasibly be reopened for public comment, and those two issues were the expiration as it relates to the CUP, and the deliberation or discussion of the Commission on fines.

If they were going to open public testimony, said Mr. LeVine, he would add to the list that the public could comment on the amount of the license fee.

Public Comment

The Commission moved to open public comment as it relates to the expiration of the CUP, (sunset provision), fines, and license fees.

Public Comment

Nelea Foster requested that the Commission not establish a sunset clause for any of the facilities. She said that annual inspection of the facilities was already in place, and that she felt a sunset clause was redundant. She said that she is working on opening a testing facility and that it already needed to meet numerous requirements.

Mr. LeVine asked Ms. Foster if the CUP did not have a sunset provision, if she had another suggestion for a way in which the City could revisit the conditions which are placed on the CUP.

Ms. Foster responded that this business is new for everyone. She said if their businesses were being inspected annually, that she felt that would be the time to have issues identified that needed to be remedied.

Mr. LeVine said it was his understanding that if no provisions are placed within the CUP, that they cannot revisit any of the conditions imposed by it. He said as a Commission, since this is a new business, they are trying to find a way to adjust those provisions within the CUP at some point should those adjustments be necessary.

Ms. Foster asked if the Commission has explored how other states have addressed this issue. She said she and other individuals interested in the marijuana industry wanted it implemented as best as it can be implemented. She said they are adult, serious individuals trying to establish this new industry. She said she feels the stigma associated with marijuana is placing a hamper on all those who are trying to succeed with this business.

Resident Steve Johnson said the sunset clause as it is written is pretty adamant. He said he was interpreting it to mean that every business, every five years, must go out of business according to the sunset clause. The business would then need to go through the entire CUP process again, said Mr. Johnson. Any investments the businesses have made, any equipment they have

purchased or any leases they have undertaken would have to be completely amortized to zero every five years, he said.

From a business point of view this is pretty tough, said Mr. Johnson. He said there needs to be a method to revisit the CUP's without pushing the participants out of business every five years. The businesses have to be given a means in which to recoup their investments, said Mr. Johnson.

Resident James Barrett said of all the aspects of the business that testing facilities above all should not be subject to a sunset clause. If there is a halt to the testing, said Mr. Barrett; that backs up the entire market. He said with on-site inspections and the retention of records which can be examined, and the numerous permits which must be obtained, that he felt a sunset clause for any of the businesses was not needed.

Mr. Voelckers said what this meant then was that whatever a Planning Commission deemed necessary with the initial Conditional Use Permit would then need to persist in perpetuity, both the positive aspects and perhaps negative aspects as well. They are trying to establish some mechanism in which they can go back and review the initial decision if it was needed.

He asked if Mr. Barrett had a suggestion as to how they could go back and rectify an initial mistake.

Mr. Barrett said all of these items were discussed at length with the Marijuana Committee. What they found was that the sunset clause was not necessary. He said it is actually a very safe industry. They are growing plants, he said. It is not a toxic situation in which lives could be lost.

North Douglas resident Wayne Carnes said he believed it is critical that if there is going to be industrial cultivation of marijuana in residential areas, to have a sunset provision in those areas. Mr. Carnes said that licenses that he holds for his work completely expire. One license is good for five years, he said. Another is only good for two years, he said. To renew his licenses, he must meet all requirements and reapply for those licenses, he said. This process takes him at least two weeks and a minimum of one thousand dollars every time he has to do it, he said. He can start the renewal process six months prior to the expiration of his licenses, he said. That way he said, as long as his licenses were approved, they would run smoothly into the next cycle.

Mr. Carnes said maybe license renewal on sunsets on the cultivation facilities could begin six or nine months before the expiration of the CUP.

Mr. LeVine asked why Mr. Carnes felt that it was necessary for the CUP to expire in its entirety as opposed to a provision that allows for review of the sufficiency of the conditions under which the business is operating.

Mr. Carnes felt it put more of the onus on the operators to make sure that they are meeting the letter of the law. Mr. Carnes said this is a new industry where everyone will learn about things they have done right and things they have done wrong. He said he felt it was better to err on the side of caution. If it turned out to be unnecessary to have a sunset provision, said Mr. Carnes, it could be discontinued within five or 10 years.

Juneau resident Denise McPherson said marijuana cultivation in D-1 and RR (Rural Reserve) areas of the CBJ is incompatible with the reason in which people buy homes in certain neighborhoods. Ms. McPherson said she felt that similar to the recently adopted Auke Bay Area Plan, that each area have its own Comprehensive Plan so that incompatible uses within the neighborhoods could be avoided. She said she was in favor of the sunset provision until each neighborhood had its own plan in place.

North Douglas resident Kaja Brix said that she supported a sunset provision. For most professional licenses there are obligations to demonstrate that the duties of the position are still being performed according to the necessary requirements. The sunset provision would enable operators and the public to address any issues which arose which needed to be addressed, she said. She said she felt the main point was that if the business is operating well, then there are no issues.

Mr. LeVine said that currently there is a licensing clause which gives the City the power to enforce the conditions of the CUP. He asked Ms. Brix why she felt it was important that the CUP itself sunset instead of there being a process in place in which the City reviews the conditions in order to ensure that they are sufficient, with the option of changing those conditions as necessary. The public could also participate in part of this process, he said.

Ms. Brix responded that she did not think a sunset clause within the CUP would put the entire business at risk. She said as she has already stated, that if the business is operating well, then it would not be put at risk.

North Douglas resident June Hall said she had serious concerns with the sunset clause. A Conditional Use Permit that expires in five years seems overly burdensome, unreasonable, and actually punitive, she said. There are already preventive measures in place both within the state regulations and the proposed ordinance, she said. This sunset clause seems unnecessary as there are multiple ways that repeatedly deal with noncompliance, she said. The State will undoubtedly make inspections in this industry as it has outlined in Article 8, she said. This ordinance also requires an annual inspection, she said. If there are conditions which are not being met, she said, or additional conditions which need to be applied, they should happen at that time, she said.

Without a City inspection the license holder cannot even get their license renewed, she said. To make a business reapply and go through the lengthy process of the CUP when no infractions have been committed seems unfair, said Ms. Hall. A CUP is not an easy road to take in the first

place, she said. Responsible business participants did not deserve the five year guillotine, she said. Getting a professional license is not the same thing as having your business closed down, she said. Ms. Hall said she hopes the Commission will give thought to the points she has raised and not place the “sword of Damocles” over a responsible business.

Mr. LeVine said currently the way the CUP process is established, they have absolutely no power to change a CUP once it has been issued. He said there is the possibility that some of the provisions within the CUP could prove in the future to be overly burdensome and unnecessary. He asked Ms. Hall if she had any ideas about how to resolve that potential situation.

Ms. Hall asked if the business could be regulated if they were not meeting the requirements by having their business license pulled.

Mr. LeVine said yes, the license could be used for enforcement. He said his concern was if the CUP had a condition which at some point was determined to be unnecessary or overly burdensome. He said at some point it was possible that could happen since this was a new business for the community. He said currently they have no ability to modify the CUP once it has been granted.

Ms. Hall responded it would be possible that could happen. She noted that the regulations are very strict and hopefully would be well enforced. She said when conditions are placed upon a business they can only do the best as they can at that time.

Tom LeBlanc said he is a resident at 25 mile. He said that he is a long time Juneau resident, and that he has raised his family here. He said he has worked in the construction industry all of his life. He said he is very interested in growing cannabis as a small business upon his retirement. He said he has no retirement fund but that he and his wife do own five acres of land out the road. He said imposing too many regulations upon a business would cripple the business.

North Douglas resident Robin Dale said she is in favor of the sunset provision. She said she felt this was especially important when marijuana activities were placed in residential areas. She said extra caution needed to be taken when dealing with a new business. She said a mechanism needed to be put in place to deal with unforeseen effects stemming from the new business, such as noise, water quality or neighborhood harmony, as well as traffic and parking issues along the highway.

Juneau resident Giono Barrett said the sunset clause is extremely scary for those who are attempting to establish a marijuana related business in Juneau. He said it is unreasonable to expect them to deal with what they are going through now for a year or year and half, only to have to go through it all over again in five years, and to listen to the people in the community come after them again and again. He said the black market is thriving right now due to a lack of legitimate businesses. He said 500 square foot grows are already happening and occurring all over the community, as well as in D-1 areas, and they do not even see them.

Mr. LeVine asked Mr. Barrett if he had any thoughts on the other two topics under consideration by the Commission this evening, considering the amount of the license fees and the amount of the fines.

Mr. Barrett said that it is a judgment call, and that worries him because it is such a subjective means of ascertaining if the business needs to be fined or not. What one person may think is an objectionable odor that they can smell from the business, may not be objectionable at all to another individual, he said. He said the scent of marijuana cannot be used by a law enforcement officer for search and seizure for that very reason; it is subjective.

Chair Grewe asked if Mr. Barrett has considered the sunset provision as being applicable to some aspects of the industry and not to others. Mr. Barrett said the entire process should not be too stringent for the industry resulting in potential businesses giving up because the process was too arduous.

Auke Bay resident Linda Blefgen said she supported the sunset clause for residential areas. She said she strongly supports comprehensive plans in neighborhoods. She said property owners are feeling the fatigue from having to constantly come forward and protect their investment in their homes, because there is no plan.

Mr. LeVine said he wanted to remind the audience that the three options listed for sunset clause possibilities are not the only possibilities that can be considered, but were just the ones that have been mentioned so far in the process.

Mr. Palmer said he would like to lay out some of the framework regarding the expiration and renewal concept. A Conditional Use Permit, when granted, is like a property right, he explained. Assuming there is no expiration date attached to it, that permit is something tangible that the property owner owns for the length of the term. The general concept is that the only way to modify that Conditional Use Permit is if the permit holder volunteers to come before the Commission and request a Conditional Use Permit amendment. Under current conditions said Mr. Palmer, the only time he could foresee an applicant coming before the Commission to request a Conditional Use Permit amendment is when they think a condition is too onerous. Mr. Palmer said he felt that the Commission is rightfully struggling with the concept, that the Conditional Use Permit terminate so that the Commission has the opportunity to modify, add or delete conditions.

Mr. Voelckers asked if a Conditional Use Permit amendment could be so minor as to be on the consent agenda, or if it always had to come before the Commission for a full hearing.

Mr. Palmer said they could articulate the rules as they do with all Conditional Use Permits and that it would be possible to have it on the consent agenda as long as it was something minor and there was no public opposition.

North Douglas resident Fred Hiltner said that he felt it was most important that the Commission err on the side of caution. He said the Commission should listen to the voices of Juneau. Mr. Hiltner stated that 80 Juneau residents have recently signed a petition to revisit the impact of these regulations on their neighborhoods. Mr. Hiltner said he did not mean this as a threat, but there is talk of legal action being taken. He said the current designation appears to be against City code. Mr. Hiltner said he also has to apply for licenses every five years, and when he discovered that was the case, that he did not complain. Mr. Hiltner said business owners should not worry about a sunset clause within their Conditional Use Permits if they were doing an above-board business which caused no problems. He said that marijuana growers should benefit from this process in a way, because it would show the Commission and the public that they were doing a good job.

Benjamin James Wilcox said that this industry is already facing multiple layers of permits, licenses, and a variety of other hoops. He said a sunset clause in the Conditional Use Permit does not apply to any other business. He said he did not see the connection between the marijuana industry and gravel pits. They are already required to obtain a City license which no other business is required to obtain, said Mr. Wilcox. He said the Commission is stacking redundant regulations on what is already a heavily regulated industry. He said that special regulations are not placed upon local plant nurseries in town. He questioned why additional regulations would need to be applied to businesses which grew marijuana since it was the same industry as the other plant growers in town. Mr. Wilcox said the Commission could insert a clause within a Conditional Use Permit that they have to continue following any updated state laws or City laws.

Mr. Wilcox said commercial agriculture is not new. The only thing that is new is the type of plant, and the legal sales that accompany it.

Juneau resident Dixie Hood said the Marijuana Committee has spent an extensive amount of time considering CBJ's situation and needs. The ordinance has been well written, she said, with details and oversight. A sunset clause of any sort seems totally unnecessary, she said. Ms. Hood said as a licensed family therapy therapist, and substance abuse counselor, that she is familiar with the issues surrounding both medical and recreational use of marijuana. Ms. Hood called the sunset provision a paranoid, punitive, proposal.

Commission Deliberation

Sunset Provision

Mr. Peters said he is still struggling with what he thinks is a duplicative process. There is the CUP, said Mr. Peters, then the State license, then the City license. He said he does recognize the concern for the different zones, but he does think the sunset provision would be very cumbersome and burdensome for any business, not just the marijuana business. This business

has been around for a very long time, said Mr. Peters. While there are unknowns at issue, he said he feels having a sunset clause is overreach and burdensome.

MOTION: *by Mr. Peters, to remove the sunset clause from the ordinance.*

Offering a friendly amendment to the motion, Mr. LeVine moved to strike subset (d) which is the sunset provision, and add in its place a provision that says, "Conditions imposed in a Conditional Use Permit shall be subject to review by the Planning Commission every five years. Such review shall be subject to normal public notice."

Speaking in support of the amendment, Mr. LeVine said the amendment is to replace the sunset provision with a provision that requires the conditions imposed in the CUP be reviewed for their adequacy by the Planning Commission subject to public input and review. The CUP itself would not expire, said Mr. LeVine.

Mr. Peters asked the staff how this situation would look for a business which had been open for 4 ½ years. For example, said Mr. Peters, would the business need to apply for this to be reviewed; and what would this look like in terms of processing from a staff perspective. If the review indicated that more conditions needed to be applied, how would that be implemented, said Mr. Peters. Would the business be shut down during the interim, or what mechanism would be in place for this process, he asked. Mr. Peters said he still had concerns about how this would be administered.

Mr. Steedle replied that he thought this would look like any Conditional Use Permit. Under very different circumstances, said Mr. Steedle, sand and gravel permits expire. Under that situation, said Mr. Steedle, the business goes in, extracts sand and gravel, and it shuts down. This is a very different circumstance than an ongoing scenario such as that of the marijuana industry, he said.

The Commission could set a termination date for each Conditional Use Permit administered to a marijuana establishment, said Mr. Steedle. Six months before the permit expires, the applicant could apply for renewal. There could be a fee associated with that, said Mr. Steedle. There would be a public hearing, he said, the same as for any Conditional Use Permit. The Commission would then be given the opportunity to see if the conditions originally imposed within the CUP are sufficient to protect the public interest. Mr. Steedle commented that he did not feel this process was much different than what the Commission did now.

So if it is review, said Mr. Peters, nothing is going to expire for this business. The business would continue, and at some point it would be reviewed, he said. What happens to someone's marijuana shop that has been operating for four years, 11 months and 15 days, and it has not yet been before the Commission for a review.

Mr. Steedle said it would be incumbent upon the business owner to come in for a permit renewal. The Commission would decide whether the CUP was too stringent, or too lenient, and issue a new Conditional Use Permit.

That would mean, said Mr. Peters, that the permit would still expire within five years.

Mr. Voelckers said it sounded like Mr. LeVine was talking about the Conditional Use Permit continuing, and that it would not expire, but the Commission would have the opportunity to revisit the particular terms of the conditional use. Mr. Voelckers said he found this to be a much friendlier engagement, and that it removes the specter of a business suddenly being cut off from operation after five years. He said it preserves a reasonable amount of public process, and did give the public the opportunity to provide its input on the business operation at the time of review.

Ms. Grewe said she is frustrated at the way the sunset provision creates an either/or scenario. She said she feels there is a way this issue can be addressed which perhaps will not make either side of the issue overly pleased, but that would be a good compromise. Ms. Grewe said she is not in favor of either the primary motion or the friendly amendment. She said she felt a solution could be obtained by the Commission that is better than either the motion or the friendly amendment.

Speaking against the motion, Ms. Grewe said it comes back to the idea of risk management. The CBJ has a problem enforcing Conditional Use Permits, said Ms. Grewe. The problem of enforcement in combination with a brand-new industry emphasize the need for risk management, said Ms. Grewe. Currently once a CUP is issued it runs with the land, she said. This is not an agricultural business such as peonies or tomatoes, said Ms. Grewe. There is risk involved with the industry, said Ms. Grewe, especially in certain zones.

Mr. LeVine said that Chair Grewe raises an important point regarding enforcement. That is why there is the required license, said Mr. LeVine. The license is for enforcement, he said. The CUP is for the conditions that will be enforced. Mr. LeVine said he feels that expiration of these permits, especially a new business, creates a specter that is unwarranted. If the Commission can find a way to review the conditions within the permit down the road without creating uncertainty for the permit holder, that would be the way to approach this issue, he said.

Mr. LeVine said he is not in favor of CUP's expiring anywhere. He said he is in favor of the Commission retaining the authority to think again about the conditions at some interval, without creating a threat to the permit holder.

At the request of the Commission, the motion was restated with the addition of the friendly amendment:

MOTION: *(with the friendly amendment, restated by Mr. LeVine) To strike what is now subsection (d) of 49.65.1145 page eight of 13, which says 'Conditional Use Permits issued to marijuana establishments shall expire five years from the date of issuance'. The conditions contained in a Conditional Use Permit issued to marijuana establishments shall be subject to review by the Planning Commission every five years. Such review shall be subject to the normal public process adhered to by the Planning Commission.*

Mr. Palmer said as long as the Commission recognizes that this is a slightly different process than the Conditional Use Permit Process since this is a renewal and a review of terms.

Mr. LeVine said the intent of his amendment was that the Commission have the ability to revoke, change or add conditions to the CUP.

Chair Grewe said if this would come back to the Commission and the public would have the opportunity to provide comment the business would not be put at risk. If the business was impacting adjacent properties, said Ms. Grewe, how would that be enforced.

Mr. Voelckers repeated for Chair Grewe that this is the purpose of the local license process. The license is the teeth to ensure that the CUP conditions are followed, said Mr. Voelckers. If those conditions are not followed, said Mr. Voelckers, then there is strong language for suspension and revocation of the license.

Mr. Frisby said he would like to hear the third option repeated for the sunset clause.

Ms. Steadman responded that those options were based upon discussion from the last meeting. These are not recommendations from staff, she said. Ms. Steadman named the third option raised at the last meeting as review of the conditions with no expiration.

Mr. Frisby noted that they have been discussing the third option raised at the last meeting then, in essence. A small business really does not need somebody watching over their shoulder every five years, said Mr. Frisby. Mr. Frisby said he would like to move ahead with the least amount of bureaucratic red tape so that the business can function. He said there is the State oversight and its license requirements, the City license, and the penalties involved if the business does not comply with the CUP. There is already a lot of duplication, said Mr. Frisby.

Mr. Peters said he is in support of the review because the ordinance already stipulates that a corrective order can be issued if the licensee fails to comply with any of the conditions within the license. The license is the teeth, said Mr. Peters.

Mr. Palmer said he felt that was an accurate portrayal of the draft ordinance currently before the Commission.

Mr. Greene said he would prefer a review of the CUP every three years. He said he felt five years was a long time. Mr. Green said he would make this a friendly amendment to the motion.

Mr. Peters said he would not accept the friendly amendment.

Roll Call Vote:

Ayes: Dye, LeVine, Peters, Frisby, Voelckers, Greene, Bell, Haight

Nays: Grewe

The motion passes.

Mr. Voelckers noted that in the sentence just corrected by the Commission (49.65.1145(9) (d)) that it references conditional uses pertaining to the establishment. He said he was not sure if it had been made sufficiently clear within the ordinance that the establishment was the basis of the conditional use.

There may be multiple establishments on one piece of property, said Mr. Palmer. So the concept is that the Conditional Use Permit is actually limited to the establishment, he said.

Mr. Dye asked if there was any way they could address the appeal of the Conditional Use Permit. He asked if a permit holder felt additional conditions were too harsh if there is any way they could appeal those new decisions. He asked if the operation could continue if the permit was under appeal by the business.

Mr. Palmer said he felt the appeal process would follow the existing appeal process for Conditional Use Permits. He added the business would need to comply with the new conditions until the appeal had been ruled in their favor.

Mr. LeVine said that since they were creating a process for review of the CUP if it was clear that the result of that review would actually be subject to the normal CUP process.

Mr. Peters said page six of 13 speaks to appeals: 49.65.1135. He asked if “review” should be added to that section.

That would go to the license section, said Mr. LeVine.

Mr. Dye said his concern was that they would appeal a decision, yet have to comply with the new conditions until their appeal had been ruled upon, and even if it was ruled in their favor they would already be out those resources complying with the new conditions, even though they had won the appeal.

Fees

MOTION: *by Mr. LeVine, to amend line 19 on page 11, which is “Marijuana license fee” from \$50 to \$450.*

Speaking in favor of motion, Mr. LeVine said his idea is that the City should at least recoup the expense that it is incurring. He said he tried to estimate the costs to the City for the inspection, and the processing of the licenses.

Chair Grewe said the \$450 amount seemed conservative to her.

Mr. LeVine said he does feel that it is conservative, but that he is also trying to be mindful not to create an onerous situation for the businesses.

Mr. Voelckers said he felt that \$50 was too slight of an amount to be meaningful, and that his calculations came out to about \$250 for a license fee. He said he felt that many of these businesses would be looking at two to four permits already which will not be insignificant costs for the business.

The motion was passed by unanimous consent.

Fines

MOTION: *by Mr. LeVine, to retain the penalty provision which is 49.65.1170. Except to strike the sentence on line 11 which begins ‘Each and every day...’ and ends with ‘CBJ 03.30.075’.*

In support of his motion Mr. LeVine said a \$500 amount of the fine parallels the sign ordinance for the City. Mr. LeVine said he would like to see a \$500 amount set for the fine, and that it does not accrue daily.

Mr. Greene said he felt the point of having the fine accrue each day is to ensure that the problem is remedied quickly. He said if it is a flat fee of \$500 then there is no incentive for the problem to be fixed in a timely manner.

Speaking against the motion, Mr. Peters said he did not feel the sentence should be struck. He said he does concur with the fine amounts.

Speaking in favor of the motion, Mr. Dye said the teeth is not to revoke, suspend or remove the license. He said the fear of the fine followed by the potential loss of the license, seemed enough for him.

Mr. Peters asked the staff regarding 49.65.1130, if the statement beginning on line 17.5; “...if the licensee has not complied with the corrective order, the marijuana establishment license will be suspended or revoked” was a true statement. If the licensee does not comply they

receive a \$500 fine, but this suspension or revocation clause allows the CBJ to shut down the business.

Mr. Palmer said that is his understanding on how this suspension or revocation section of the ordinance should be construed.

If there is no urgency to correct the problem, said Mr. Greene, at what point would the business be shut down. He asked what criteria the staff would use regarding enforcement.

It would depend on the nature of the violation, said Mr. Steedle. It is at the Director's discretion, he added. He said if the violation involves the absence of a sign, they would not have a license pulled right away. But if a business continued to be in violation of the CUP, then their license would be pulled, he said.

At what juncture would this occur, asked Mr. Greene.

"I will know it when I see it," said Mr. Steedle.

Since there is currently no precedent elsewhere in the code, said Mr. LeVine, his preference would be to leave this to the Director's discretion, and if that became a problem the Commission could deal with it when it arose.

As a friendly amendment to the motion, Mr. Greene said he proposed that they lower the fine, but have that fine accrue every day that compliance has not been met.

Mr. LeVine did not accept the friendly amendment to his motion.

MOTION: *by Mr. Greene, to amend the motion, and to reduce the fine to \$100 and that it accrue each day that compliance has not been met.*

Roll Call Vote:

Ayes: Greene

Nays: Voelckers, Grewe, Frisby, Bell, LeVine, Peters, Dye, Haight

The motion to amend the main motion fails.

Speaking in opposition to the main motion, Chair Grewe said she likes the ordinance for this item the way it is written. She said she felt the existing ordinance provides more teeth and is better for the community. She said she felt this was in line with other penalties unrelated to marijuana and that it was fair.

Roll call vote on the main motion: *(by Mr. LeVine, to retain the penalty provision which is 49.65.1170. Except to strike the sentence on line 11 which begins 'Each and every day...' and ends with 'CBJ 03.30.075'.)*

Ayes: Bell, Dye, LeVine, Peters, Frisby, Voelckers, Haight

Nays: Greene, Grewe

The motion passes.

MOTION: *By Mr. Peters, to approve Ordinance 2015-38 with the amendments that have been made this evening, and asked for discussion of the motion.*

Ms. Grewe asked if Mr. Peters would withdraw his motion because she still had several items within the ordinance which she wished to discuss. She said waste water was on their list for discussion.

Mr. Peters withdrew his motion.

MOTION: by Chair Grewe, to amend the ordinance on page seven on line 11, item (5), striking the last four words of the sentence on line 13; "...or will with improvements".

In support of her motion, Chair Grewe said she felt the concept of improvements to the septic system left the means of enforcement of that provision too nebulous. Chair Grewe said she wants to know that the septic system of the business is adequate for the job and it is ready to go.

Mr. Voelckers said it sounds like Chair Grewe is not persuaded that this item would be addressed through the building permit process. He asked why this would be any different than any other budding business.

Chair Grewe said she has been reading literature about domestic septic systems that were not designed to handle commercial volume, chemical disposal, and the known nutrients that leak out into the groundwater. She said she is worried about substandard septic systems attempting to accommodate commercial cultivation on top of that.

Mr. Voelckers said an engineer is referenced and required to examine the system. He asked why an improvement could not be proposed by the engineer.

Mr. LeVine asked if they were to follow through with Chair Grewe's recommendation how that would affect the process. He said the Commission would not be able to grant the CUP until the septic system was deemed compliant. He asked what Chair Grewe's recommendation would

do to the applicant's process in terms of acquiring all the necessary licenses and permits for operation.

Ms. Steadman said how this process has worked in the past when accessory apartments required a Conditional Use Permit was that it became a condition for approval of the Conditional Use Permit. If the work was not performed in 18 months, said Ms. Steadman, the Conditional Use Permit expired.

Ms. McKibben said the general idea is that the Conditional Use Permit is the approval of the concept. Most applicants do not spend a lot of money investing in a project until they know that they have received their Conditional Use Permit, she said.

Mr. LeVine said the CUP is necessary to get a State license. If they were to pass Ms. Grewe's motion, said Mr. LeVine, they would be requiring someone to update their septic system for a business for which they may not be able to obtain a license, instead of allowing the applicant to proceed simultaneously with the improvements to the septic system and the expenditure of funds on a license.

Mr. Palmer concurred with the analysis of Mr. LeVine.

Mr. Dye said if they did not upgrade their septic system and adhere to the conditions in the Conditional Use Permit, the license could be suspended or revoked.

Roll Call Vote on the motion: *by Chair Grewe, to amend the ordinance on page seven on line 11, item (5), striking the last four words of the sentence on line 13; "...or will with improvements".*

Ayes: Greene, Grewe,

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

The motion fails.

Chair Grewe said as she reviewed the ordinance she realized that there was one portion of the ordinance she felt was missing. She said there are no provisions for electricity. She said when a permit request comes before her that she wants to know about their electricity and whether it is aligned to the structure or by a generator. Chair Grewe said from her reading one of the largest complaints pertains to the sounds of generators. She said she is worried about insufficient electricity to power both a home and a grow operation. She said she was worried that instead of running a new electrical line to the grow house and burying it, that the business would install a generator instead. Chair Grewe said from her reading, that problems occur in neighborhoods because of the noise from running generators.

MOTION: *by Chair Grewe, that marijuana cultivation facility license applicants must provide an electrical generation plan that specifies all electrical generation means to be used for cultivating and growing.*

Vice Chair Haight said he knew this was always an issue with various types of facilities, and he wanted to know how this was dealt with under normal circumstances.

Ms. Steadman said that would be a question for the building official. She said these are plans that would be required for the building permit which would be the next step after the Conditional Use Permit process. They would have to show their electrical plans for the building permit, said Ms. Steadman.

Mr. Haight concurred, stating that these plans would need to be submitted for a building permit and certified by an engineer.

Mr. Palmer said he felt the point of Ms. Grewe may be questioning when this process occurs. He said it was his understanding of Ms. Grewe's motion that she would like the electricity issue dealt with at the time of the CUP, instead of waiting for the building permit.

Speaking in favor of the motion, Mr. Voelckers said he felt it was a legitimate piece of information to have as part of the Conditional Use Permit process.

Mr. LeVine said it seemed to him that the major concern was less with the generation of electricity than with noise. He asked Chair Grewe why she felt that the existing noise ordinance would not address her concerns.

Ms. Grewe said she is not questioning the noise ordinance. Her motion would enable the issue to be taken up during the conditional use process, she said, and not to rely on the noise ordinance alone. These have been known problems in other locales, she said.

Mr. Greene asked how they would decide if it was going to be a problem or not. An individual could submit plans for a generator at the back of the property and they would still not be able to anticipate the impact of the noise on the community, he said.

Mr. Frisby said it would depend on where it fell on the grid system, AEL&P's policy on cogeneration, and size, which has nothing to do with the noise generated; but on how the noise from the generator would be mitigated.

Mr. Bell said when an applicant comes before the Commission they have to have all of their ducks in a row and they have been scrutinized at great length already. This issue is already addressed within the process, he said. He said he was not in support of the motion.

Roll Call Vote: *(on the motion by Chair Grewe, that marijuana cultivation facility license applicants must provide an electrical generation plan that specifies all electrical generation means to be used for cultivating and growing.)*

Ayes: LeVine, Voelckers, Dye, Grewe, Haight

Nays: Frisby, Bell, Peters, Greene,

The motion passes.

Mr. Voelckers said he would like to move that it appeared that the section under License, suspension, or revocation implies but does not specify that it is at the discretion of the Director. He said if this is not specified, that he would like to add on line 18, (49.65.1130 page five) at the end of the sentence where it currently ends with “revoked”, that “at the discretion of the Director” be added.

Mr. Palmer suggested that the verbiage read, “as determined by the Director”.

Mr. Voelckers said he agreed with the suggestion of Mr. Palmer.

FINAL MOTION: *by Mr. Voelckers, that the section under License, suspension, or revocation be amended to add on line 18, (49.65.1130 page five) at the end of the sentence where it currently ends with “revoked”, that “as determined by the Director” be added.*

The motion passed with no objection.

MOTION: *by Mr. Voelckers, that on page 6 under Inspection of Premises that there be a clause (a) that ends with “license” on line 12. Item (b) would then be inserted following that sentence, with an item (c) which would include, “Inspection shall include access to any marijuana or marijuana product on the premises, equipment used in cultivating, processing, manufacturing, testing or storing marijuana, the inventoried tracking system and business records of the licensee or applicant.”*

Mr. Voelckers asked Mr. Palmer if this made sense as a drafting change.

Mr. Palmer said he saw nothing wrong with that correction.

The motion passed with no objection.

Mr. Voelckers said on page 8, 49.65.1150 of the ordinance the hours of operation for marijuana retail stores is specified. He said they have received some testimony regarding how hours of operation would affect the other types of marijuana facilities. He said there may be some value in making hours of operation an explicit part of the conditional use process.

Mr. Voelckers suggested adding: "If a marijuana cultivating, manufacturing or testing facility operation has meaningful public impacts from operations including noise, vehicular traffic, light pollution and similar effects the appropriate hours of use shall be established as a condition of use."

Mr. LeVine said he has been contemplating suggesting that 49.65.1150 be struck in its entirety from the ordinance. He said then the hours of operation could be determined strictly through the CUP process. He said he would be in favor of having all hours of operation an explicit component of the CUP replacing 49.65.1150. He said finally he had decided that it was best to stick with what is currently within the ordinance and that the Commission could decide at a later date if this became a problem.

Mr. Voelckers said that would be fine with him. He said it just seemed odd that the hours of operation are just specified for retail, when hours of operation may also be relevant for other types of facilities within neighborhoods, for example.

Mr. Peters said he would speak against the addition of any verbiage to that section. He said the reason those hours are specified for retail establishments is because they wanted them to be regulated for retail stores like alcohol.

Ms. Steadman said the Commission already has the authority to modify any operations or specify them on any Conditional Use Permit.

MOTION: *by Mr. Dye, to add language to the ordinance; "After review any new conditions may be appealed and all new conditions will not be enforced until after the appeal is complete."*

Mr. Palmer asked if it was the intent of the motion that the business continue to operate under the original Conditional Use Permit.

Mr. Dye said that it was.

Mr. Palmer said if new conditions were appealed to the Assembly by the business owner, that he could not envision a way that the new conditions could be appealed separately from the entire permit. The permit would have to go to the Assembly for review as a package, he said.

Mr. Dye said it was his intent that just the new conditions would be up for appeal.

Mr. Palmer said for an appeal to occur, the whole Conditional Use Permit is up for appeal.

Knowing that, said Mr. Dye, if someone wanted to appeal, they could theoretically be jeopardizing their entire Conditional Use Permit.

Mr. Palmer said it has already been stipulated that the entire Conditional Use Permit would not be up for revocation. Revocation is not an option on appeal, he said.

Mr. LeVine said although he may not be in support of it, there could be language which stated, "The Conditional Use Permit as it existed prior to review, shall remain in effect during the pendency of any appeal."

On appeal, if the decision is affirmed, said Mr. Palmer, then those new CUP conditions take effect. If they are rejected, then the old CUP takes effect.

Mr. Dye said he agreed with the suggestions of Mr. Palmer.

Speaking in opposition to the motion, Mr. LeVine said he did not feel the process would be onerous, and is unlikely to generate conditions that are going to result in an appeal, and that they simply go into effect as the review process occurs.

Mr. Greene asked how the conditions of the CUP could be changed, and not be onerous to the business owner.

Mr. LeVine said that would be his guess.

If they are onerous conditions, said Mr. Greene, they may be such that the business would not be able to continue.

Speaking in favor of the motion, Mr. Voelckers said it removes the specter of the business owner needing to immediately make what could potentially be costly improvements. They could potentially make a very good case that the condition was onerous and it would not be put into effect.

Mr. Peters also spoke in favor of the motion.

FINAL MOTION: *by Mr. Dye, with language crafted by Mr. Palmer, that on appeal the new Conditional Use Permit shall be stayed and the existing Conditional Use Permit shall govern the operations of the marijuana establishment. The scope of review on appeal are restricted to the new conditional use permit.*

Roll Call Vote:

Ayes: Greene, Dye, Frisby, Bell, Peters, Voelckers, Haight

Nays: Grewe, LeVine

The motion passes.

MOTION: *by Mr. Peters, to pass the ordinance, and bring it back to the Commission for final review.*

Chair Grewe said one of her fears is that permits will be submitted prior to the ordinance being approved by the Assembly. She said it was her understanding that those CUP's could be put in abeyance by the Planning Commission for justifiable reasons.

If the Commission passes this ordinance and makes a formal recommendation to the Assembly this evening, said Mr. Palmer, it would then go to the Assembly for introduction at one meeting and at a subsequent meeting the Assembly would take the ordinance up and move forward. He said it is up to the Assembly's discretion whether or not the ordinance goes to a Committee of the Whole.

It has already been requested that this ordinance go to an Assembly Committee of the Whole, said Ms. Steadman. It would be a minimum of three meetings before the ordinance is passed, she said.

MOTION: *by Mr. Peters, that the amended ordinance be moved to the Assembly.*

Speaking in opposition to the motion, Ms. Grewe said that she has a problem with the sunset provision and that she feels the Commission is doing a huge disservice. The community is experimenting with commercial marijuana in residential zones and it is stripping the one thing that could have allowed the neighborhoods to participate in a meaningful way in the review of the Conditional Use Permit every so many years, she said.

Roll Call Vote:

Ayes: Frisby, Peters, Voelckers, Greene, Bell, Dye, LeVine, Haight

Nays: Grewe

The motion passes

IX. REGULAR AGENDA

RESCHEDULED TO MARCH 8, 2016

CSP2015 0018: A City Project Review for installation of new bus stops on Yandukin Drive and Davis Avenue

Applicant: City and Borough of Juneau

Location: Yandukin Dr. at Shell Simmons Dr.; Davis Ave at Montgomery St.

Staff Recommendation

Staff recommends that the Planning Commission recommend to the Assembly that CSP2015 0018, City Project Review for installation of new bus stops on Yandukin Drive and Davis Avenue is consistent with Title 49 and the 2013 Comprehensive Plan, with the following recommendations:

1. Yandukin Drive: Sidewalks, crosswalks, and signage shall be installed on Yandukin Drive and Shell Simmons Drive to connect the airport and sidewalk facilities to the proposed bus shelters so that pedestrians may access the airport and transportation system in a safe manner.
2. Yandukin Drive and Davis Avenue: Bus shelters shall be illuminated for bus passenger safety.

X. BOARD OF ADJUSTMENT

POSTPONED UNTIL FURTHER NOTICE

USE2016 0001: Conditional use permit for a limited marijuana cultivation business in the D-1 Zoning District
Applicant: City and Borough of Juneau
Location: Yandukin Dr. at Shell Simmons Dr.; Davis Ave at Montgomery St.

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Lemon Creek Neighborhood Plan

Mr. Steedle said the neighborhood plan for Lemon Creek kicks off Thursday, March 10, in the DZ Commons at 500 p.m.

CDD at the Home Show

CDD will be at the home show, and giving a presentation on accessory apartments.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES - None

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. LeVine requested they have on the next agenda an executive session to discuss operations. He said the Commission has a lot of new members and that there has been a lot of discourse over the last several weeks and it would be valuable to be able to discuss some of the organization and personalities away from the public eye.

XV. ADJOURNMENT

The meeting was adjourned at 10:58 p.m.