

Agenda

Planning Commission - Regular Meeting City and Borough of Juneau Mike Satre, Chairman

July 14, 2015
Assembly Chambers
7:00 PM

I. ROLL CALL

II. APPROVAL OF MINUTES

- A. May 26, 2015 Draft Regular Planning Commission Meeting Minutes
- B. June 9, 2015 Draft Regular Planning Commission Meeting Minutes

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

IV. PLANNING COMMISSION LIAISON REPORT

V. RECONSIDERATION OF THE FOLLOWING ITEMS

VI. CONSENT AGENDA

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS

VIII. UNFINISHED BUSINESS

IX. REGULAR AGENDA

- A. AME2015 0008, Title 49 amendments in regard to transitional housing

X. BOARD OF ADJUSTMENT

XI. OTHER BUSINESS

XII. DIRECTOR'S REPORT

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

- A. May 4, 2105 Lands Committee Meeting Minutes
- B. May 6, 2015 Title 49 Committee Worksession Minutes
- C. May 4, 2015 Public Works and Facilities Committee Meeting Minutes
- D. May 26, 2015 Title 49 Committee Worksession Minutes
- E. May 21, 2015 Marijuana Committee Meeting Minutes
- F. June 6, 2015 Marijuana Committee Meeting Minutes

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

XV. ADJOURNMENT

MINUTES

Regular Planning Commission Meeting CITY AND BOROUGH OF JUNEAU Mike Satre, Chairman

May 26, 2015

I. ROLL CALL

Mike Satre, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:01 pm.

Commissioners present: Mike Satre, Chairman; Dennis Watson, Vice Chairman; Bill Peters, Nicole Grewe, Ben Haight, Michael LeVine, Paul Voelckers, Dan Miller

Commissioners absent:

Staff present: Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Eric Feldt, Planner II; Chrissy McNally, Planner I; Amy Mead, City Attorney; Robert Palmer, Assistant City Attorney; Greg Chaney, Lands and Resources Manager

II. APPROVAL OF MINUTES

- April 14, 2015 Regular Planning Commission Meeting

MOTION: *by Mr. Miller, to approve the Regular Planning Commission meeting minutes of April 14, 2015, with any minor modifications or corrections by Commission members or by staff and the recommended change forwarded to the Commission by Mr. Harris.*

The April 14, 2015 minutes on Page 19, the second sentence of the third paragraph under "Applicant" have been modified to read: "He referenced the newly adopted Juneau Economic Development Plan which states that an adequate supply of properly zoned land should be made available for commerce and industry as well as residential development."

The minutes were approved with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Assembly Liaison Loren Jones reported that he and Mr. Kiehl attended the Title 49 Subcommittee meeting and he thinks the daycare changes have been accomplished. That item should be coming to the Commission soon, said Mr. Jones.

Mr. Jones said there are also additional items which need to be dealt with by the Assembly regarding transitional housing for women. The Assembly denied the appeal of the Commission Haven House recommendation so subsequent changes need to be dealt with in the Table of Permissible Uses (TPU), said Mr. Jones.

The last three zoning requests denied by the Commission have been protested to the Assembly, said Mr. Jones. On June 11, (2015) at 5 p.m. in the Assembly chambers, there will be a special Assembly meeting to review the three protests, said Mr. Jones. There will be time for the applicants to speak followed by an open public hearing, said Mr. Jones. Following the public hearing the Assembly will discuss whether to move forward with an ordinance or not, he said. If they do decide to proceed with ordinances, they will be introduced on June 29, (2015) on a regular Assembly agenda for a public hearing, he said, with subsequent action on July 20, (2015).

Mr. Watson asked when the Assembly would decide on a new Planning Commission member.

Mr. Jones said they have three applicants for the Planning Commission position, and that the Assembly will be taking action on June 10, (2015) or June 15, (2015). He added the City Clerk will also be contacting those individuals who applied for the seat in December to see if they were still interested in the position.

V. RECONSIDERATION OF THE FOLLOWING ITEMS – None

VI. CONSENT AGENDA

The two variances listed under the Board of Adjustment were moved to the Consent Agenda.

Mr. Voelckers requested that CSP2015 0009 be removed from the Consent Agenda and placed under the Regular Agenda for purposes of discussion.

SMP2015 0005:	Preliminary plat review for an eight lot subdivision in a D-15 zoning district.
Applicant:	CBJ Lands and Resources
Location:	1598 Renninger Street

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Preliminary Plat permit. The permit would allow Preliminary Plat approval of an eight lot subdivision in Lemon Creek.

We further recommend that the approval be subject to the following conditions:

1. Prior to Final Plat approval, the applicant shall submit a Traffic Impact Analysis to the Community Development Department consistent with the Land Use Code (49.40.305(c) (1-8)). Any improvements recommended in the TIA shall be analyzed by staff and put into project design, where required.
2. Prior to Final Plat approval, the applicant shall submit construction drawings showing a crosswalk or similar feature on Renninger Street that connects the existing northern middle school driveway to Jackie Street.
3. Prior to Final Plat approval, the applicant shall submit construction drawings showing the extension of the eastern sidewalk on Renninger Street connecting with the future sidewalk along Jackie Street.

VAR2015 0012: Variance request to reduce the side yard setback from 10 feet to 5 feet.
 Applicant: Peter Strow
 Location: 3919 North Douglas Highway

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2015 0012. The Variance permit would reduce the side yard setback from 10 feet to 5 feet to allow construction of a shop and garage with an apartment.

VAR2015 0012: Variance request to reduce the side yard setback from 20 feet to 10 feet.
 Applicant: Peter Strow
 Location: 3919 North Douglas Highway

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2012 0013. The Variance permit would allow for a reduction to the front yard setback from 20 feet to 10 feet to allow construction of a garage and shop with an apartment above.

MOTION: *by Mr. Miller, to approve the revised Consent Agenda as read with staff's findings, analysis and recommendations.*

The motion was approved with no objection.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

CSP2015 0009 A City review of subdividing CBJ property into eight lots near Dzantiki Heeni Middle School.
 Applicant: CBJ Lands and Resources
 Location: 1598 Renninger Street

Staff Recommendation

Staff recommends the Planning Commission forward the subject City Consistency Project review to the Assembly with a recommendation of approval.

Mr. Voelckers said he wanted an overview of what was intended with the plans for the project.

Mr. Feldt said the proposal consists of eight lots with the first lot being a very large piece of CBJ property that spans to the far east. Lot Eight is a wetlands preservation property, noted Mr. Feldt, which will not be developed. Lots Two through Seven would be prepared for immediate development, said Mr. Feldt.

Lot One is not being used, and it consists of several hundred acres of CBJ land, explained Mr. Chaney. The land extends far beyond DZ to the east and to Lemon Creek to the west, said Mr. Chaney. For a development of this size two accesses would be needed, said Mr. Chaney, which is why there is the long road shown in the plans.

Mr. Voelckers asked what kind of timeframe for this project would be involved.

Mr. Chaney responded that lots Two through Seven would all be made available for development, but that they are not sure at this time how the land disposal would be accomplished. He said that would be up to the Assembly.

MOTION: *by Mr. Voelckers, to approve CSP2015 0009 and asked for unanimous consent.*

The motion was approved by unanimous consent.

TXT2009-00001: Proposed Title 49 and Title 4 changes regarding the subdivision of land.
 Applicant: CBJ
 Location: Borough-wide

Staff Recommendation

Staff recommends that the Planning Commission forward proposed TXT2009-00001 to the Assembly with a recommendation for adoption.

These are proposed changes to Title 49 regarding the subdivision of land, said Ms. Boyce. The rules that apply to subdivisions have been spread throughout Title 49 and Title 4, said Ms.

Boyce, and they are often in conflict with one another. The proposed changes will reside within Chapter 15 of the Code, said Ms. Boyce.

There is now an application cancellation process, said Ms. Boyce, which does not currently exist within the Code. This will apply to all applications, not just subdivisions, said Ms. Boyce. Public notice is being requested for minor subdivisions, she said. The construction plan and approval process has been clarified, said Ms. Boyce. There is also now a Notice of Decision for minor subdivisions, she said.

Minor subdivisions which are currently defined as one - four lots are being proposed to be expanded to one to 13 lots, said Ms. Boyce. Those will all be subject to Director approval, she said. It will be a clear two-step process with both a preliminary and a final plat, said Ms. Boyce. The developer will be given a written decision, she said.

Major subdivisions are currently defined as five or more lots, and the proposal is to expand that to 14 or more lots, said Ms. Boyce. That will require Planning Commission approval, with both the preliminary and final plat coming before the Commission, she said. Major subdivisions will no longer be reviewed like a Conditional Use Permit, she said.

Common wall subdivisions have been clarified, said Ms. Boyce, to relieve confusion regarding Common wall setbacks. The common wall line will be a zero setback, she said.

The street vacation section has been expanded and clarified to include all ways and easements, said Ms. Boyce. No matter how many lots are proposed, those will be reviewed under the minor subdivision process, she added. The Planning Commission will need to approve these requests if the taking of those properties creates a lot which would have a nonconformity ~~be substandard in size~~, she said.

Lot consolidations will be reviewed as a minor subdivision, said Ms. Boyce. The lot design requirements for public use lots can be waived by the Director for minor subdivisions, she said, and by the Planning Commission for major subdivisions. Public use lots could be created which do not meet the minimum zoning standard requirements, she said.

There is a proposed change to panhandle lots limiting the length of the panhandle, said Ms. Boyce. The section of the Code called the Director's Discretion Lot Design is proposed to be deleted, said Ms. Boyce. These types of lots look panhandle-like, said Ms. Boyce, and they are not an efficient way to subdivide land.

Regarding lot design and access, all lots are still required to have 30 feet of frontage on a right-of-way, said Ms. Boyce. If the minimum standard is 20 feet, such as in an industrial district, then that is the frontage requirement which would be adhered to, she explained. The Department will still designate one right-of-way as the principal access to a subdivision, said Ms. Boyce. A new addition to the Code regards remote subdivision access which can be by

right-of-way, she added. The concept of access within a subdivision has been expanded regarding privately maintained driveways with a right-of-way, said Ms. Boyce. Remote subdivisions accessible by navigable water have been expanded to also allow remote subdivisions accessible by a pioneer path, said Ms. Boyce. All lots within those types of subdivisions must have direct and practical access on the right-of-way, she added.

The Table of Roadway Standards now allows options for street standards for minor subdivisions that would generate 250 trips or less per day, said Ms. Boyce. Projects that would generate more than 250 trips per day (and less than 500) would require sidewalks on one side of the road, and the road would have to be a minimum of 24 feet wide and paved, said Ms. Boyce. The requirements increase as the average daily trips increase, commented Ms. Boyce. There are areas within the Borough such as locations within the Mendenhall Valley which cannot be gravel because of air quality standards, said Ms. Boyce. The Director, with certain findings, may reduce the required right-of-way width, said Ms. Boyce.

Private access driveways and rights-of-way are currently allowed within the City, said Ms. Boyce. These types of permits only apply to existing situations and subdivisions cannot occur on any of those lots until the streets are brought up to current standards, said Ms. Boyce.

Mr. Miller clarified that for collector streets, the right-of-way width may be reduced up to 10 feet, for streets with less than 500 average daily trips, or a privately maintained access road in a right-of-way, the width may be reduced by up to 25 feet. In addition, where the dedicated right-of-way abuts and runs parallel to the exterior property line, it will serve as a half street, and will be developed as a low-volume street, or a driveway in a right-of-way in which the width may be reduced by up to 30 feet. Alleys and stairway right-of-ways may be reduced by up to five feet.

These width reductions may be made by the Director with certain findings, said Ms. Boyce.

It has been proposed in the Code that new subdivisions can occur with privately maintained driveways or access within a right-of-way, said Ms. Boyce, under certain conditions. A privately maintained road would not be approved if it would land-lock the lot behind it, she said. This would be limited to minor subdivisions with an average of less than 250 average trips a day, she commented.

The Subdivision Review Committee recently addressed remote subdivisions, said Ms. Boyce. Access by a pioneer path has been proposed in addition to access by navigable waters, she said. It is proposed that remote subdivisions must be located at least a half mile outside of the CBJ roaded service areas, and must not be accessible by vehicular traffic of more than 1,000 pounds gross weight or an overall width of 48 inches, explained Ms. Boyce. A pioneer path is an access path accommodating vehicles of the above description and it may not be over 48 inches wide, she said.

Remote subdivisions accessed by a pioneer path are proposed to be composed of 13 or fewer lots, and they must be reviewed by the Planning Commission, said Ms. Boyce. They would be prohibited from subdivision within two years of creation of the remote subdivision, she noted. There would still be 60 feet of right-of-way required within the remote subdivision, she said.

The Subdivision Review Committee also recommended that all proposed Borough and State CIP projects (Capital Improvement Projects) estimated to cost more than \$500,000 would be presented to the Planning Commission for consistency review, said Ms. Boyce. At the Director's discretion those projects between \$250,000 up to \$500,000 could be presented to the Commission for review, she added. The Planning Commission may recommend modifications or conditions to the project through a Notice of Recommendation that would be forwarded to the Assembly for further action, said Ms. Boyce.

Ms. Grewe commented that it appeared that an ordinance was being created for review of CBJ projects in addition to State projects within certain specified dollar amounts. She commented that it seemed outside of the scope of the purpose of subdivision review.

Ms. Mead explained that while this was defined within the duty section of the Ordinance there was no subsection that corresponded to the duties. The purpose was to clarify the process, said Ms. Mead. Ms. Mead commented that she would not have recommended such a large bulk of modification to the Ordinance. She added that a phased approach where modifications could be accomplished more quickly would be preferable. She said she believes that such a large amount of modification has transpired because the process has been taking place for so many years.

Public Comment

Marlin Olson, of the Peterson Creek Landowners Association, commented that some of their lots are co-owned by two parties. They would like a way to subdivide those lots to clarify their interests, he said. He said he is hopeful that the Minor Subdivision Ordinance is going to provide them with a means in which to achieve that goal.

MOTION: *by Mr. Voelckers, to approve TXT2009-00001 proposed Title 49 and Title 4 changes with unanimous consent.*

Chairman Satre said he wanted to give credit to the staff and the Subdivision Review Committee for their hard work on this ordinance over the years. He said the Subdivision Review Committee and staff over the past two years have accomplished the bulk of the work on this ordinance.

The motion passed by unanimous consent.

X. BOARD OF ADJUSTMENT - None

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Ms. McKibben commented that the Assembly has upheld the Planning Commission recommendation on Haven House transitional housing for women.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Wetland Review Board

Mr. Miller commented that the Board met last week and discussed the Salmon Creek intersection improvements on Egan Drive that are planned. There is a small amount of wetland impact on both the refuge side and the Twin Lakes side. The intersection improvements will make a huge difference in safety, and those improvements were passed by the Wetland Review Board with unanimous approval, he said.

Title 49 Committee

The Committee approved draft changes to the ordinance for child care facilities, said Ms. Grewe.

Marijuana Task Force

Chairman Satre reported that the Marijuana Task Force met last Thursday (May 21, 2015) and provided the staff with the parameters they need to come back with some final zoning recommendations. Many further City regulations on marijuana have to be withheld pending forthcoming State regulations, he said. They can work on zoning at this juncture, said Chairman Satre.

They are still considering buffers from retail establishments, adding that the State would most likely set those recommendations. They are currently considering recommendations similar to liquor establishment buffers, which are 200 feet, he commented. The buffers would be restricted to special areas such as schools and churches, said Chairman Satre. They are considering allowing marijuana retail in the normal commercial and industrial districts as well as waterfront commercial districts, he said. Also it appears the Committee may be recommending cultivation on D1 lands that are outside of the urban service boundary, said Chairman Satre.

In answer to Mr. Voelcker's question on this subject, Chairman Satre said the State plans on beginning to issue licenses in March or April, 2016.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

There is a seat which needs to be filled on the Subdivision Review Committee due to the exit

from the Commission of Mr. Jackson, said Chairman Satre. He said that he would like to appoint the new Commission member selected by the Assembly to that committee vacancy.

There is also an opening on the Marijuana Task Force which needs to be filled by a Commission member, said Chairman Satre.

XV. ADJOURNMENT

The meeting was adjourned at 8:11 p.m.

DRAFT

MINUTES

Regular Planning Commission Meeting CITY AND BOROUGH OF JUNEAU Mike Satre, Chairman

June 9, 2015

I. ROLL CALL

Mike Satre, 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 7:00 pm.

Commissioners present: Mike Satre, Chairman; Dennis Watson, Vice Chairman; Nicole Grewe, Ben Haight, Michael LeVine, Paul Voelckers

Commissioners absent: Dan Miller, Bill Peters

Staff present: Hal Hart, Planning Director; Beth McKibben, Planning Manager; Eric Feldt, Planner II; Jonathan Lange, Planner II; Tim Felstead, Planner I

II. APPROVAL OF MINUTES

- March 24, 2015- Regular Planning Commission Meeting

MOTION: by Mr. LeVine, to approve the Regular Planning Commission meeting minutes of March 24, 2015, with any minor modifications or corrections by Commission members or by staff.

The minutes were approved with no objection.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT

Subdivision Ordinance and Land Swap

Assembly Liaison Loren Jones reported that the Subdivision Ordinance was introduced at last night's Assembly meeting. It will be before the Assembly for public hearing on June 29, (2015).

The Assembly also approved the land swap with the church to provide access to Pederson Hill, and it also approved an LID (Low Impact Development) at McGinnis subdivision.

Sign Fine Ordinance

The Assembly tabled the Sign Fine ordinance until the June 29, 2015 meeting. Mr. Jones reported that the Assembly was confused about the nature of the ordinance, interpreting it to mean that a business in violation of the ordinance would be fined \$500 each day until the signs were brought into compliance. Mr. Jones said the City Attorney stated this could only happen if the business not in compliance was cited by the CDD (Community Development Department) every day. After an hour long discussion on this item it was tabled.

Affordable Housing Commission Grant Program

The Assembly also voted to reconsider an earlier decision to look again at the desire of the Affordable Housing Commission to come up with a grant program for accessory apartments, said Mr. Jones.

Planning Commission Member Appointment

On June 10, (2015) the Assembly will be deciding on the Planning Commission replacement for Mr. Jackson. There are five or six applicants for that seat.

Front and Franklin Public Meeting

The second public meeting on the Front and Franklin Street review is slated for June 17, (2015), said Mr. Jones.

~~Honzinger-Honsinger~~ Pond/Bicknell Appeal

The ~~Honzinger-Honsinger~~ Pond/Bicknell appeal will be heard by hearing officer John Corso on June 15, (2015), said Mr. Jones.

Commission Comments and Questions

Chairman Satre asked if the Subdivision Ordinance would remain within the Assembly for action, or if it would be forwarded for additional committee work.

Mr. Jones responded that it may be going to the Assembly Committee of the Whole meeting on June 22, (2015), or it may just come up for public hearing before the entire Assembly on June 29, (2015).

Mr. Watson asked Mr. Jones if he was comfortable with the Subdivision Ordinance.

Mr. Jones responded that he still had some questions about the Ordinance such as allowing gravel streets within subdivisions.

V. RECONSIDERATION OF THE FOLLOWING ITEMS – None

VI. CONSENT AGENDA

CSP2015 0007: A State Consistency Review for Egan Drive, Glacier Highway, and Channel Drive at Salmon Creek, Intersection Safety Improvements (PRJ 67595 JNU), to include construction of acceleration and deceleration lanes.

Applicant: State of Alaska DOT&PF

Location: Salmon Creek Intersection

Staff Recommendation

Staff recommends that the Planning Commission find CSP2015 0007, a State Consistency Review for Egan Drive, Glacier Highway, and Channel Drive at Salmon Creek, Intersection Safety Improvements (PRJ 67595 JNU), to include construction of acceleration and deceleration lanes, consistent with Title 49 and the 2013 Comprehensive Plan.

CSP2015 0008: Review of State Project for 830 feet of new guard rail on Thane Road to shield on unrecoverable slope.

Applicant: State of Alaska DOT&PF

Location: Thane Road between mile points 3.2 to 3.3

Staff Recommendation

Staff recommends that the Planning Commission approve the proposed project, which would allow DOT&PF to install 1100ft of guard rail between Mile points 3.2 and 3.5 of Thane Road in accordance with the Project Description with the following recommendations:

1. DOT&PF consider future extension of the guard rail further south to given protection shoreline slopes.
2. Signage should be installed, at an appropriate distance before the end of the shoulder, to alert drivers, bicyclists and pedestrians that wall users much share the road. Shared road markings (aka sharrows) should be panted on the road surface at the same location.

USE2015 0006: A Conditional Use Permit for a State of Alaska licensed Child Care Center on existing church premises.

Applicant: Shamila Scalf

Location: 3220 Mendenhall Loop Road; 3209 Bresee Street

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Conditional Use Permit. The permit would allow the development of State of Alaska licensed Child Care Center in existing church premises.

The approval is subject to the following conditions:

1. No more than 40 children at any one time be allowed to use the Child Care Center on the subject parcel.

2. Access to the Child Care Center will only occur via Breese Street.
3. The current gate splitting the site remain locked during operational hours of the Child Care Center unless vehicle access is required for snow removal or similar parking lot maintenance operations.
4. Rules regarding traffic circulation will be included in the Child Care Center Policies Handbook and be agreed to by all parents and employees. Parents and staff should be made aware that driving through the neighboring Lakeshore Condominium complex is not allowed.

MOTION: *by Mr. Watson, to approve the revised Consent Agenda as read with staff's findings, analysis and recommendations, incorporating the memorandum from Staff on CSP2015 0008 noting 250 additional feet of guard rail. He asked for unanimous consent.*

The motion was approved by unanimous consent.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS

- Title 49 Amendments in regard to transitional housing.

Ms. McKibben noted that the Title 49 meeting will be this Friday (June 12, 2015), at 11:30 a.m. in the Community Development conference room. She verified with the Commission that enough members would be present at that meeting to constitute a quorum.

IX. REGULAR AGENDA

SMP2015 0004: Montana Creek West Phase 2B subdivision creating 16 lots.
 Applicant: Bicknell, Inc.
 Location: Montana Creek Area

Staff Recommendation

Applicant's Preferred Street & Sidewalk Designs

Staff recommends that the Planning Commission adopt the Director's analysis and findings and deny the requested Preliminary Plat permit because it does not meet all findings.

Staff Recommendation

2005 PUD Subdivision Design

Staff recommends approval of the 2005 PUD (Planned Unit Development) street and sidewalk design, and the conditions stated in the SUB2005-00048 notice of decision.

Ms. McKibben noted that the lots in question are located off of the Montana Creek Road towards Skater's Cabin. Montana Creek subdivision is a Planned Unit Development (PUD) that

was approved in 2005 and 2006. The land is zoned D3, ~~the PUD allowed with~~ smaller lots, compensated by open space and park space.

There are 86 lots proposed after final construction with 114 dwelling units, said Ms. McKibben. There is a wet land preservation lot, a perimeter buffer, with a park, sidewalks and pathways. Phase 1 was ~~planted-completed~~ with 28 lots, and Phase 2 with 12 lots, said Ms. McKibben.

The street and sidewalk layouts for the current proposal for Phase 2B differ from the original PUD proposal, noted Ms. McKibben. If the Commission ~~approved-approves~~ the original PUD ~~street~~ design, the applicant would still like to alter the sidewalks within that design, she said.

The staff has found that the applicant's preferred alternative with the alternate street and sidewalk design results in only one access to Montana Creek Road, noted Ms. McKibben. It does not meet the fire code and ~~disconnects-does not provide~~ access to the future proposed development. Since Finding 4 cannot be met, the staff recommends that the alternative proposal of the applicant be denied.

The original PUD plan provides both vehicular and pedestrian connections, while the applicant's preferred plan does not provide that internal connection to the future phase, including the park, said Ms. McKibben. Since the applicant's preferred plan does not meet fire code, ~~disconnects-does not provide~~ access to the future subdivision and future park, and results in only one access to Montana Creek Road, the staff recommends that the alternative design be denied, said Ms. McKibben.

If the Planning Commission were to approve the applicant's preferred alternative, the staff would recommend some added pedestrian access added linking this phase to the future phase and park, noted Ms. McKibben. In the current version of the applicant's preferred ~~plan~~ ~~sidewalk plan~~ there are a number more street crossings in order to access the park, said Ms. McKibben, making the trip to the park ~~a little~~ less safe.

Commissioner Comments and Questions

Mr. LeVine asked if the Commission decided to adhere to its original recommendation, if there was any further action required of the Commission aside from denying the request to change the original PUD.

It does need approval, noted Ms. McKibben, because each individual phase of the project requires preliminary and final plat approval.

Mr. Voelckers noted that there has already been a partial approval by flipping the sidewalk to the upper option ~~in phase 2A~~. An option would be to approve the overall street configuration of 2005 ~~-with an amended Option 3 of the sidewalk~~.

With option three the applicant had suggested that since they were being compelled to add a second route back to Montana Creek; that they would like the southwest corner piece of the property converted from a right-of-way to a lot.

Mr. Watson noted that Staff is recommending that a pedestrian path traversed two lots which will have more than single-family occupancy. Mr. Watson said this did not make a lot of sense to him.

The path is only being recommended if the Planning Commission chooses to not require the ~~alternative~~ street access as required in the PUD, said Ms. McKibben.

Mr. Watson said no matter where the sidewalk was located, that the same number of people would be crossing it. Because of this he noted that he saw no problem with allowing the applicant to place the sidewalk in an alternate location.

Ms. McKibben noted that with the applicant's preferred plan multiple crossings would be required to get to the park.

Mr. Voelckers said if there is a letter from the Fire Marshall indicating that two access roads would be a code requirement, ~~that~~ he was surprised that not fulfilling this requirement was presented as an option to the Commission.

Chairman Satre said the applicant has the right to advocate the request, and then asked for clarification from Ms. McKibben as to why the staff was presenting an option which did not meet the fire code.

Once the applicant was told that their plan did not meet Fire Department access requirements, they revised their proposal to provide street access, at the same time requesting a change in the sidewalk design, answered Ms. McKibben.

Mr. Watson asked why an access road to an undeveloped area was proposed.

This was needed to provide Fire Department access for the future phases, answered Ms. McKibben.

Mr. LeVine noted if the Commission was to insist upon the original sidewalk design, that the results would be sidewalks that did not meet. He said there was no way to make the process binding unless the original 2005 plat is amended.

Mr. LeVine asked if there was any explanation for why or how the earlier change was justified.

Applicant

Jacob Graves, who works for R & M Engineering, spoke on behalf of the applicant.

Chairman Satre asked Mr. Graves if he had any knowledge of the original request to change the sidewalks.

Mr. Graves responded that he did not have that information. He added the applicant prefers to go the shortest route with the sidewalk because less sidewalks saves on costs and maintenance.

Mr. LeVine asked Mr. Graves if he was aware of the timing of the future phases of the project. Mr. Graves responded that he believed it would be at least a few years before the next phase of the project was implemented.

Mr. Voelckers said according to information from the Fire Marshal that a development of 30 or more homes required two apparatus approaches. He asked if it could be a serious negligence issue with only one road.

Mr. Graves responded that according to the Fire Code if there is a second access which is planned for future development then it qualifies as the second access required by code.

Mr. Watson asked how wide the street was.

The right-of-way width is 60 feet, answered Mr. Graves.

Mr. Haight said the preferred alternative would put the additional phases in jeopardy because they would only have one access point. He said in his opinion that option is not fully developed at this time for consideration by the Commission.

Chairman Satre noted that the Commission had spent a lot of time and effort approving the initial PUD. There was a lot of public testimony from neighbors and the Commission did its best to balance the needs of the greater neighborhood with those of the developer. He said he felt the original PUD worked well.

Mr. Watson asked where the fire access would be located for this phase of the project.

Ms. McKibben showed Mr. Watson on a map where the access would be located.

MOTION: *by Mr. Voelckers, that the Commission follow the staff's recommendation on SMP2015 0004 which denies the applicant's current modification to the PUD and reaffirms the 2005 plan as amended to include Option 3 on the sidewalk routing as proposed by the applicant. To amend the statement about the applicant's sidewalk design in Finding 4, there may be some slight additional crossings which provide an alternate way to get to the park area and exit to the street following the continuity of the sidewalks which have already been approved, which does not result in endangerment of the public health or safety.*

Mr. LeVine said that he was troubled by the sidewalk portion of this action. He said he would support the motion, but that he felt this was an inefficient way to do business and that it would be better to go back and have a full discussion of the 2005 PUD if the sidewalks throughout all of the phases are to be amended.

Chairman Satre asked the staff if it would be possible to insert an advisory condition strongly suggesting to the applicant that subsequent sidewalk designs be tied into the existing sidewalk for this phase of the project.

Ms. McKibben suggested that the Commission may want to recommend that the applicant bring back the PUD for review for an amendment to the sidewalk plan, and the Commission could then review the entire development to which subsequent phases could then be compared.

Ms. McKibben said this particular item is for preliminary approval for this specific phase of the project, and if the Commission wished to review the entire PUD, it would need to amend that through a different process. She added that for the current motion Finding 4 would also need to be amended to support the motion.

Chairman Satre asked if the sentence: "The applicant's sidewalk design requires multiple street crossings and can increase pedestrian injury." could simply be eliminated from the findings.

Mr. Watson spoke in favor of the motion, adding he felt the Commission should look more closely at future plans, with the recognition that changes in plans do sometimes need to occur.

The motion passed with no objection.

X. **BOARD OF ADJUSTMENT** - None

XI. **OTHER BUSINESS** – None

XII. **DIRECTOR'S REPORT**

Housing Action Plan

On July 1 and 2 the consultants working on the Housing Action Plan with the Affordable Housing Commission will be in town, said Ms. McKibben. One of the ~~staff members~~ consultant team would like to speak with representatives from the Commission about maps. Ms. McKibben will poll the Commission members by email to see who is available for this meeting. In addition, the Affordable Housing Commission will be meeting with the consultants on July 2, at 5:15 p.m. in the conference room of the Tlingit and Haida Regional Housing Authority.

Auke Bay Multi Housing Construction

Next week there is a second pre-application meeting for 43 townhome units in the Auke Bay

area, noted Mr. Hart. People are already calling and attempting to preregister for ownership of one of those townhomes, he said.

All of the Cannery Cove condominiums currently under construction in Auke Bay have been sold, said Mr. Hart.

▪ Downtown Update

Mr. Hart told the Commission there is a lot of development going on in the downtown area. Foodland grocery has been totally remodeled by IGA, said Mr. Hart, including the addition of the hardware store.

On June 17, (2015) at Centennial Hall discussion will be underway regarding a \$53 million project, addressing how people depart the docks in Juneau and enter the community, said Mr. Hart. Construction on this project will begin this fall and take a couple of years to complete.

A bank, Ron's Apothecary and a liquor store are all slated for additions to the downtown area, said Mr. Hart.

The empty property adjacent to the downtown library now allows vendors to line Franklin Street which is leading to a more profitable business for those summer vendors, said Mr. Hart. There is a little pedestrian congestion in this area which needs to be smoothed out, noted Mr. Hart.

Mr. Hart gave Commission members a list of 41 projects either underway or scheduled for completion in the downtown area, including:

- ✓ Front and Franklin streetscape projects
- ✓ The circulator study
- ✓ Egan Drive upgrades

Sculpture

Mr. Hart shared with the Commission pictures of the proposed whale project sculpture comprised of stainless steel which would be overlooking the channel from a park area.

Gastineau Apartments

Both parties who have interest in the Gastineau Apartments have been civilly served by the City at the end of May. He said he believes they have 30 days to respond.

Housing Incentives

There has been discussion initiated by an Assembly member regarding the concept of using

housing incentives within the downtown area, said Mr. Hart. This item would probably first come to the Commission for recommendations to the Assembly, he said.

Ice Skating Rink

A small ice-skating arena for the downtown area is being considered, said Mr. Hart, to promote development and participation in the downtown area during winter months.

Urban Retail Books

Mr. Hart has made several books available in town on urban retail to be passed around amongst the retail community. A goal is to make businesses more successful in the downtown area, he said.

Commission Comments and Questions

Mr. Voelckers asked if he had interpreted the information correctly that there may be partial traffic closures on Seward and Front streets.

Mr. Hart answered that what he has seen in the plans thus far are the creation of more pedestrian sections but not the closure of streets. He said he also expects pedestrian pathways from the State Library Archives and Museum (SLAM) building to the hotel and perhaps even to the roadway.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Marijuana Task Force

Chairman Satre reported that the Marijuana Task Force met and forwarded recommendations on zoning maps and the Table of Permissible Uses to the Assembly. The next scheduled meeting is June 18, (2015).

Mr. Watson volunteered to fill the empty seat on the Marijuana Task Force.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Voelckers said he felt it would be smart for the CDD staff and the Fire Department to address more thoroughly the question of access points. He said that he found it unpersuasive that simply showing a small road arm leading to an empty forest as a viable access point. He added that he would like to have clarification if road access was an issue or not.

This information requested by Mr. Voelckers will be presented to the Commission during the Director's Report at a future meeting.

XV. ADJOURNMENT

The meeting was adjourned at 8:25 p.m.




Community Development

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

DATE: July 1, 2015

TO: Planning Commission

FROM: Beth McKibben, Planning Manager 
Community Development Department

FILE NO.: AME2015 0008

PROPOSAL: Text amendment to Title 49 regarding Transitional Housing

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

ATTACHMENTS:

Attachment A: Draft Ordinance – Amending Title 49

Attachment B: Draft Title 49 Committee minutes, June 12, 2015

Attachment C: June 9, 2015 Staff Memorandum to Title 49 Committee regarding Transitional Housing

Attachment D: June 1, 2015 Staff Memorandum to Planning Commission regarding Transitional Housing

Attachment E: October 13, 2014 Department of Corrections Letter

Attachment F: August 26, 2014 Unlisted Use Notice of Decision regarding Transitional Housing

Attachment G: August 14, 2014 Memorandum from CBJ Law Department

BACKGROUND

The Use Not Listed and Conditional Use permit process for Haven House, which found that transitional housing for people coming out of prison is similar to other “miscellaneous rooms for rent situations”, necessitates an amendment to the Table of Permissible Uses to reflect the decision made. Additionally, the review process for Haven House brought to light some issues in the table of permissible uses and definitions in Title 49 surrounding “halfway house” and “correctional facilities”. The following proposal simplifies the Table of Permissible Uses (TPU), eliminates redundant uses, and modifies uses as a result of the Board of Adjustments decision in USE2014 0001 (transitional housing) and the Assembly’s decision on appeal. CDD and Law staff presented and reviewed the proposed amendments with the Title 49 Committee on June 12, 2015.

The following proposals amend the Table of Permissible Uses (49.25.300) and the land use definitions to make Title 49.

Words with underlining are additions to current code, i.e. Transitional Housing.
Words with strikethrough are deletions to current code, i.e. Halfway House.

Staff proposes amending 49.25.300 as follows, which eliminates the inconsistent and redundant uses and inserts the transitional housing use consistent with this memo:

[illegible]

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Staff proposes amending 49.80.120 to include the following:

Transitional Housing: "transitional housing means a residential use for people released from a correctional facility or similar facility. Residents may be on probation and parole. An owner or manager must live on site."

Transitional Housing Policy Discussion

In light of the recent decision by the Assembly to uphold the Board of Adjustment Decision on the Use Not Listed case, UNL2014 0001, that determined transitional housing for people coming out of prison is of the same general character as those listed in category 1.610 of the Table of Permissible Uses, Title 49 needs to be amended to reflect that decision.

The UNL2014 0001 Notice of Decision (NOD) stated:

The Board concludes that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610, miscellaneous rooms for rent of CBJ 49.25.300, the Table of Permissible Uses.

The transitional housing use is deemed as listed in category 1.610 of the table of permissible uses for the purpose of determining whether a Conditional Use permit should be issued to Haven House. The Board recommends that Title 49 be amended to include a definition and a specific subcategory in the Table of Permissible Uses for Transitional Housing in the D-5 zoning district with an approved Conditional Use permit.

The NOD specifically stated that the TPU should be amended for the D-5 zoning district. However, staff recommends adding "transitional housing" to 1.610, with rooming, boarding, bed and breakfast, single room occupancies with shared facilities and temporary residents.

This proposal provides for transitional housing in all zoning districts where the similar miscellaneous rooms for rent are permitted with the same permitting requirements. As described by the Board of Adjustment, transitional housing is similar to 1.610 uses and also slightly different.

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- The proposed use of transitional housing for people coming out of prison does not exactly fit within any existing definitions or land use categories. Nonetheless, there are many similarities. The use is residential, in that the residents would be eating, sleeping and recreating there, and living together in a family setting. However, there will be onsite supervision, rules of conduct, ancillary services etc. Still, there may be impacts beyond those normally associated with uses permitted outright in the D-5 zoning district.
- A number of people have bedrooms and share common space.
- There is a sense of transient occupancy that is a little different from a typical living situation.
- Residents of transitional housing would not be serving a sentence and would not fall under the halfway house definition.
- Transitional housing is not a listed use but it is of the same general character as those uses listed in category 1.610.
- The characteristics of transitional housing met all the elements of the rooming and boarding house definition except the transitional care element, which would categorize transitional housing as a separate category in 1.610.

Consistent with those conclusions, staff defined transitional housing and proposed amendments to the Table of Permissible Uses (TPU) that continues the Conditional Use requirement like the other 1.610 uses.

Correctional Facility and Halfway House

Proposed definitions for Correctional Facility and Halfway House

Staff proposes amending 49.80.120 as follows:

Correctional Facility, TPU 7.500: “Correctional facility means a facility providing for the imprisonment or physical confinement of persons under guard or 24-hours physical supervision such as a prison, jail, detention center, halfway house, and similar facilities.”

Halfway House, TPU 1.450 & 7.400: ~~“Halfway house means a single-family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.”~~

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Correctional Facility and Halfway House Policy Discussion

The term correctional facility is located at TPU 7.500, but it isn't defined in Title 49. Additionally, during the deliberations of UNL2014 0001 and expressed by the different parties, the Title 49 definition of halfway house did not accurately capture the intended use, namely people ordered to serve pretrial detention in or ordered imprisonment in a facility like Gastineau Human Services. The proposed definition of correctional facility includes those facilities owned and operated by a government agency, like Lemon Creek Correctional Center, or those facilities under a contract managed by a government agency, like Gastineau Human Services. Also, a correctional facility—including a halfway house—is not the same as transitional housing because of the following:

1. People that live in a correctional facility are in the custody of the Department of Corrections;
2. People are ordered to live in the correctional facility;
3. A person is guilty of the crime of escape if that person is absent without authority from a correctional facility;
4. You receive credit for time served when living in a correctional facility; and
5. People would be in prison if they were not in a halfway house.

By defining correctional facility to include halfway house there is no need to have a definition for halfway house because a halfway house is just another form of a correctional facility. For clarity, a person released from a correctional facility but on probation or parole could live in many types of housing, including transitional housing.

By deleting halfway house (1.450 and 1.700) from the TPU and keeping correctional facilities as a Conditional Use, there are no changes to the TPU for where or how correctional facilities are approved and located.

Single Family and Group Home

Proposed definitions for Family and Group Home

Staff proposes amending 49.80.120 as follows:

Family, see TPU 1.100: *"Family means one or more persons living as a single housekeeping unit, ~~as distinguished from a group occupying a group home.~~"*

Group Home, TPU 1.400: *"~~Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons~~"*

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~~of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities."~~

Family and Group Home Policy Discussion

The CBJ defined group homes since at least 1987, but the term is likely unnecessary in Title 49 today. From 1987 to 1993, the definition of group home included child care homes, halfway houses, handicapped and infirmed homes, intermediate care home and nursing care homes. In 1993, the group home definition was amended to capture homes for persons with disabilities instead of handicapped or infirm homes. Then in 2010, the group home definition was substantially amended and it prohibited residents from "serving a sentence for a criminal act."

The purpose for the 2010 amendments was to alleviate restrictions that discriminated against federally protected individuals seeking group housing. As described before the Planning Commission:

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

People who require the services of a Group Home as proposed in the revised definition above are a federally protected class and may not be subject to any greater restriction than is imposed on [similarly situated uses]. Therefore, staff proposes to list Group Homes with the same restrictions as single-family residences. The advantage of keeping a distinct definition for Group Homes is that these facilities will be clearly distinguished from Halfway Houses and will have a defined maximum number of clients.

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On line 1.400 superscript note D appears to be superfluous since the term “Group Homes” is more clearly addressed in the Definitions section of the Land Use Code. Therefore Note D is to be removed from the Table of Permissible Uses.

According to CDD records, since the 2010 amendments, CDD has not received an application for a group home use. Additionally, because people with federally recognized disabilities cannot be treated differently than those without disabilities, the Group Home term is redundant because people with federally recognized disabilities could live in a variety of residential and institutional uses, like single family dwellings, multifamily dwellings, and assisted living facilities. For example, the Planning Commission recently reviewed a Conditional Use permit for a mixed use including single room occupancy of multifamily housing, USE2015 0001 (Housing First in Lemon Creek), in which all of the residents will likely have some type of federally recognized disability. Despite the likelihood of the residents being a federally protected class, the Planning Commission properly evaluated the Housing First project based on legitimate governmental interests like parking, traffic, noise, lighting, and public health/safety without treating the potential residents different than people without federally recognized disabilities. Thus, the Housing First project demonstrates that the term group home is no longer needed in Title 49 because the term is redundant as other uses more accurately regulate uses that currently fall under the group home definition.

Nursing Care, Assisted Living, Sheltered Care

Proposed definitions for Assisted Living

Staff proposes amending 49.80.120 as follows:

Assisted living, TPU 7.200: “Assisted living means a facility providing housing and institutional care for people unable to live independently or without assistance. Assisted living includes facilities that provide nursing care services that are not located in a single family dwelling.”

Assisted Living, Nursing Care, and Sheltered Care Policy Discussion

Staff proposes deleting the nursing care and sheltered care uses from the TPU 7.200 and defining assisted living to capture those two uses. Staff believes that as defined, assisted living captures those facilities like Wildflower Court (USE1998-00069, USE2003-00043), but assisted living would not capture a single family dwelling where members of that family received assistance and higher level care.

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Although assisted living and transitional housing are similar, they are also different in that assisted living is intended for longer term care and less turnover than transitional housing. Additionally, transitional housing requires an owner or manager to live on site to provide supervision and accountability of the property (i.e. garbage), which staff at an assisted living facility would likely provide.

Assisted living is different than adult day care because assisted living is intended for long term residence where traffic is expected to be less than a day care facility.

Additionally, there could also be some ambiguity between multifamily and assisted living. However, staff believes that with a history of uses like Housing First and Wildflower Court, staff can assist an applicant and the Planning Commission find the appropriate use.

Handicapped, infirm, and intermediate care

Staff proposes deleting the following definitions because they are not listed in the TPU and do not need to be listed in the TPU because they fall within the proposed definition of assisted living, 7.200.

Handicapped or infirm institution, no TPU: ~~"Handicapped or infirm institution means an institutional facility housing and providing care or assistance but no significant medical treatment for more than nine persons who are physically or mentally handicapped or infirm."~~

Handicapped or infirm home, no TPU: ~~"Handicapped or infirm home means a single-family dwelling providing residential area but no significant medical treatment for at least six but not more than nine persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit."~~

Intermediate care home, no TPU: ~~"Intermediate care home means a group home maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution."~~

Intermediate care institution, no TPU: ~~"Intermediate care institution means a building maintained for the purpose of providing accommodations for more than seven persons needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution."~~

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COMPLIANCE WITH THE COMPREHENSIVE PLAN

One of the identified purposes of the 2013 *Comprehensive Plan* is to “preserve, promote, protect and improve the public health, safety, appearance, convenience, provision of service and general welfare.” Chapter 4, Housing Element states that Juneau is suffering from a housing crisis.

Policy 4.1

“To facilitate the provision and maintenance of safe, sanitary and affordable housing for CBJ residents.”

Implementation Action 4.1 IA7

“Facilitate the provision of special needs and adaptive housing and supportive services in residential neighborhoods that are readily accessible to public transit, shopping, public amenities and supportive services.”

The 2015 Juneau Economic Plan also speaks to the need for housing in Juneau. This plan identifies a specific need for the homeless, low-income and special needs population. Additionally, this plan states that the number of Juneau residents over the age of 65 will double in ten years, and that to support the ability to age in Juneau we need a mix of housing, including assisted living and long term care facilities.

The proposed amendment to Title 49 is consistent and in compliance with the goals, policies and objectives of the Comprehensive Plan and the Juneau Economic Development Plan.

COMPLIANCE WITH CBJ LAND USE CODE

The proposed amendment to Title 49 will not create any internal inconsistencies within the Code. The proposed amendment will correct some internal inconsistencies within the Code.

The proposed change is consistent with Title 49.

FINDINGS

Based upon the above analysis, staff finds that the proposed text amendment to Title 49 is consistent with the goals and policies in the Comprehensive Plan as well as Title 49. Additionally, this change would not create any internal inconsistencies within any plans or Codes.

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STAFF RECOMMENDATION

Staff recommends that the Planning Commission forward the draft text amendment to the Assembly with a recommendation for approval.

Presented by: The Manager
 Introduced:
 Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2015-34

An Ordinance Amending the Land Use Code Relating to Transitional Housing.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Table. CBJ 49.25.300, Table of Permissible Uses, is amended to read as follows:

Code	Use description	R R	D 1	D3	D 5	D10 SF	D1 0	D1 5	D1 8	L C	G C	M U	MU 2	W C	WI	I
1.400	Group Homes	+	+	+	+	+	+	+	+	+	+					
1.450	Halfway Houses	3								3	3	3	3			
...																
1.610	Rooming, boarding, bed and breakfasts, single room occupancies with shared facilities, <u>transitional housing</u> , and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		
...																
Code	Use description	R R	D 1	D3	D 5	D10 SF	D1 0	D1 5	D1 8	L C	G C	M U	MU 2	W C	WI	I
7.200	Nursing care; Assisted living, sheltered care		3	3	3	3	3	3	3	3	1,3	1,3	1,3			
...																

7.400	Halfway Houses									3	3	3	3			
...																

Section 3. Amendment of Section. CBJ 49.80.120 Definitions, is amended to read:

49.80.120 Definitions.

...

Assisted living means a facility providing housing and institutional care for people unable to live independently or without assistance. Assisted living includes facilities that provide nursing care services. Assisted living use that occurs within a single family dwelling is regulated as a single family dwelling use.

...

Correctional facility means a facility providing for the imprisonment or physical confinement of persons under guard or 24-hours physical supervision such as a prison, jail, detention center, halfway house, and similar facilities.

...

~~Family means one or more persons living as a single housekeeping unit, as distinguished from a group occupying a group home.~~

...

~~Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a~~

~~single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities.~~

...

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

~~*Handicapped or infirm home* means a single family dwelling providing residential area but no significant medical treatment for at least six but not more than nine persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit.~~

~~*Handicapped or infirm institution* means an institutional facility housing and providing care or assistance but no significant medical treatment for more than nine persons who are physically or mentally handicapped or infirm.~~

...

~~*Intermediate care home* means a group home maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a~~

lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.

~~Intermediate care institution means a building maintained for the purpose of providing accommodations for more than seven persons needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.~~

...

Transitional housing means a residential use for people released from a correctional facility or similar facility. Residents may be on probation and parole. An owner or manager must live on site.

//

//

//

Section 4. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this _____ day of _____, 2015.

Merrill Sanford, Mayor

Attest:

Laurie J. Sica, Municipal Clerk



TITLE 49 COMMITTEE

PLANNING COMMISSION, CITY AND BOROUGH OF JUNEAU

JUNE 12, 2015 MEETING, 11:30 AM – 1:00 PM

COMMUNITY DEVELOPMENT DEPARTMENT (CDD) CONFERENCE ROOM

DRAFT MEETING MINUTES

Committee Members Present:

Nicole Grewe (Chair), Paul Voelckers, Bill Peters, Dennis Watson (Alternate)

Committee Members Absent:

Mike LeVine

Staff Present:

Beth McKibben, Planning Manager, Community Development Department (CDD)

Rob Palmer, Attorney, Department of Law (DOL)

Public or Other Present:

None present

Reading of Agenda

- Motion by Peters: To approve the agenda for the June 12, 2015 meeting.
- Vote: Motion carried.
- Resolved: Agenda for the meeting of June 12, 2015 approved without modification.

Approval of Minutes

- Motion by Peters: To approve the minutes for May 26, 2015 meeting as developed by CDD staff with any technical corrections presented by planning commissioners or CDD staff.
- Vote: Motion carried.
- Resolved: Minutes for May 26, 2015 meeting approved as developed by CDD staff with any technical corrections presented by planning commissioners or CDD staff.

Agenda Topic – Transitional Housing

- DOL provided brief overview of recent Haven House decision(s) and potential appeal to superior court. The Haven House decision, and related concerns, serves as impetus (and context) for considering changes to the Table of Permissible Uses (T49) related to group homes, transitional housing, correctional facilities, and corresponding definitions. Notably, DOL asserted the T49 Committee has any amount of time needed to fully consider proposed T49 changes. While Haven House, and related PC and Assembly decisions, remain in the forefront – there is time to fully deliberate PC decisions.
- Committee discussion focused on documents submitted by CDD staff prior to meeting including:
 1. June 1, 2015 Staff Memorandum to Planning Commission regarding Transitional Housing
 2. October 13, 2014 Department of Corrections Letter
 3. August 26, 2014 Unlisted Use Notice of Decision re Transitional Housing
 4. August 14, 2014 Memorandum from CBJ Law Department
 5. Anchorage Municipal Code definitions (AMC 21.05.040)

- Grewe expressed preference for considering any changes to T49's TPU comprehensively – not simply a reaction to the recent discussions and public hearings related to Haven House. And, that the Code of Ordinances in place at the time of Haven House decisions will be used in any appeal. Finally, expressed concern in jumping to code changes while Haven House decisions might be under appeal.
- Palmer indicated it is appropriate to consider TPU changes at this time regarding transitional housing, group homes, and correctional facilities.
- McKibben further affirmed that the Haven House decision(s) highlighted the need to clean up our code – especially to resolve “use not listed” issues.
- Voelckers initial reaction affirmed suggested edits – noted they were simple, elegant, and with brevity.
- Peters discussed details related to group homes. Namely, group home category is eliminated and will be considered as single or multi-family structure.
- Palmer emphasized the PC should remain focused on planning impacts, not categories of people. Also, stressed the importance of federally-protected classes of people.
- Grewe inquired about any missing use categories that should also be further studied, at this time, to ensure full context of proposed TPU changes are adequately deliberated.
- Palmer discussed substantive definition changes including transitional housing, correctional facility, assisted living, and a variety of deletions from the current TPU.
- Peters suggested change to correctional facility from “prisoner” to “persons”. All agreed.
- Motion by Peters: To recommend approval to the full PC of all changes to Table of Permissible Uses (and associated definitions) as crafted by CDD and DOL and with the exception language change presented by Peters.
- Vote: Motion carried by unanimous consent.
- Resolved: Final ordinance will be drafted by CDD staff, reviewed by DOL, and forwarded for full PC consideration. Ordinance's first public hearing likely to occur July 2015.

Committee Member Comments and Questions

- Discussion regarding three rezone protests heard by Assembly the prior evenings.

CDD Staff Discussion

- Will continue to work on high priority T49 changes throughout summer and fall season to address remaining Assembly and Planning Commission priorities. Will move towards lower-priority T49 changes during late fall/early winter.

Meeting adjourned at 1:00 PM



Community Development

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

Date: June 9, 2015

From: Rob Palmer, Assistant City Attorney
Beth McKibben, Planning Manager

To: Title 49 Committee, Planning Commission

Re: Transitional Housing

The following proposal simplifies the Table of Permissible Uses (TPU), eliminates redundant uses, and modifies uses as a result of the Board of Adjustments decision in USE2014-0001 (transitional housing) and the Assembly's decision on appeal.

This memo is divided into two sections: existing code and staff's proposed amendments. The existing code section simply describes the current definitions and correlating categories in the TPU. The staff proposal section starts with the proposed TPU amendments, proposed definitions, and then includes a policy discussion describing the definitions and the TPU amendments.

This memorandum includes the following attachments:

- June 1, 2015 Staff Memorandum to Planning Commission regarding Transitional Housing
- October 13, 2014 Department of Corrections Letter
- August 26, 2014 Unlisted Use Notice of Decision regarding Transitional Housing
- August 14, 2014 Memorandum from CBJ Law Department
- Anchorage Municipal Code definitions (AMC 21.05.040)

I. Existing Code

Single family, TPU 1.100: *"Dwelling, single-family, means a detached dwelling which is designed for and occupied by not more than one family."*

Family, see TPU 1.100: *"Family means one or more persons living as a single housekeeping unit, as distinguished from a group occupying a group home."*

Multifamily Dwelling, TPU 1.300: *"Dwelling, multifamily, means a building designed for or occupied by three or more families."*

Halfway House, TPU 1.450 & 7.400: *“Halfway house means a single-family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.”* 49.80.120 (halfway house).

Group Home, TPU 1.400: *“Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single-family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities.”* 49.80.120 (Group home)

Correctional Facility, TPU 7.500: Not defined in Title 49. (Ord. 2010-22 slightly modified TPU 7.500)

Nursing Care, TPU 7.200: Not defined in Title 49. (pre-existed Ord. 2010-22).

Assisted living, TPU 7.200: Not defined in Title 49. (pre-existed Ord. 2010-22).

Sheltered care, TPU 7.200: Not defined in Title 49 (pre-existed and modified by Ord. 2010-22)

Handicapped or infirm institution, no TPU: *“Handicapped or infirm institution means an institutional facility housing and providing care or assistance but no significant medical treatment for more than nine persons who are physically or mentally handicapped or infirm.”* (Prior to 2010-22, this use was listed in TPU 7.200, nursing care...).

Handicapped or infirm home, no TPU: *“Handicapped or infirm home means a single-family dwelling providing residential area but no significant medical treatment for at least six but not more than nine persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit.”* (Prior to 2010-22, this use was listed in TPU 1.400, group home).

Intermediate care home, no TPU: *“Intermediate care home means a group home maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.”* (Prior to 2010-22, this use was listed in TPU 1.400, group home).

Intermediate care institution, no TPU: *“Intermediate care institution means a building maintained for the purpose of providing accommodations for more than seven persons needing medical care and*

supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.” (Prior to 2010-22, this use was listed in TPU 7.200, nursing care...).

Existing CBJ 49.25.300, Table of Permissible Uses

Code	Use description	RR	D1	D3	D5	D10 SF	D10	D15	D18	LC	GC	MU	MU2	WC	WI	I
1.110	Single Family	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1.300	Multifamily dwelling						1,3	1,3	1,3	1,3	1,3	1,3	1,3	3		
1.400	Group Homes	1	1	1	1	1	1	1	1	1	1					
1.450	Halfway Houses	3								3	3	3	3			
1.610	Rooming, boarding, bed and breakfasts, single room occupancies with shared facilities, and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		
7.200	Nursing care, assisted living, sheltered care		3	3	3	3	3	3	3	3	1,3	1,3	1,3			
7.400	Halfway Houses									3	3	3	3			
7.500	Correctional Facilities	3	3	3	3	3	3	3	3	3	3	3	3			3

II. Comprehensive Title 49 review re Transitional Housing

The following proposals amend the Table of Permissible Uses (49.25.300) and the land use definitions to make Title 49.

Stylistic note:

Words with underlining are additions to current code, i.e. Transitional Housing.

Words with strikethrough are deletions to current code, i.e. ~~Halfway House~~.

A. Amend the TPU

Staff proposes amending 49.25.300 as follows, which eliminates the inconsistent and redundant uses and inserts the transitional housing use consistent with this memo:

Code	Use description	RR	D1	D3	D5	D10 SF	D10	D15	D18	LC	GC	MU	MU2	WC	WI	I
1.110	Single Family	1	1	1	1	1	1	1	1	1	1	1	1	1	1 ^A	1 ^A
1.300	Multifamily dwelling						1,3	1,3	1,3	1,3	1,3	1,3	1,3	3		
1.400	Group Homes	1	1	1	1	1	1	1	1	1	1					
1.450	Halfway Houses	3								3	3	3	3			
1.610	Rooming, boarding, bed and breakfasts, single room occupancies with shared facilities, <u>transitional housing</u> , and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		
7.200	Nursing care, Assisted living, sheltered care		3	3	3	3	3	3	3	3	1,3	1,3	1,3			
7.400	Halfway Houses									3	3	3	3			
7.500	Correctional Facilities	3	3	3	3	3	3	3	3	3	3	3	3			3

B. Transitional Housing

1. Transitional Housing Proposed Definition

Staff proposes amending 49.80.120 to include the following:

Transitional Housing: *“transitional housing means a residential use for people released from a correctional facility or similar facility. Residents may be on probation and parole. An owner or manager must live on site.”*

2. Transitional Housing Policy Discussion

In light of the recent decision by the Assembly to uphold the Board of Adjustment Decision on the Use Not Listed case, UNL2014 0001, that determined transitional housing for people coming out of prison is of the same general character as those listed in category 1.610 of the Table of Permissible Uses, Title 49 needs to be amended to reflect that decision.

The UNL2014 0001 Notice of Decision (NOD) stated:

The Board concludes that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610, miscellaneous rooms for rent of CBJ 49.25.300, the Table of Permissible Uses.

The transitional housing use is deemed as listed in category 1.610 of the table of permissible uses for the purpose of determining whether a Conditional Use permit should be issued to Haven House. The Board recommends that Title 49 be amended to include a definition and a specific subcategory in the Table of Permissible Uses for Transitional Housing in the D-5 zoning district with an approved Conditional Use permit.

The NOD specifically stated that the TPU should be amended for the D-5 zoning district. However, staff recommends adding “transitional housing” to 1.610, with rooming, boarding, bed and breakfast, single room occupancies with shared facilities and temporary residents.

This proposal provides for transitional housing in all zoning districts where the similar miscellaneous rooms for rent are permitted with the same permitting requirements. As described by the Board of Adjustment, transitional housing is similar to 1.610 uses and also slightly different.

- The proposed use of transitional housing for people coming out of prison does not exactly fit within any existing definitions or land use categories. Nonetheless, there are many similarities. The use is residential, in that the residents would be eating, sleeping and recreating there, and living together in a family setting. However, there will be onsite supervision, rules of conduct, ancillary services etc. Still, there may be impacts beyond those normally associated with uses permitted outright in the D-5 zoning district.
- A number of people have bedrooms and share common space.

- There is a sense of transient occupancy that is a little different from a typical living situation.
- Residents of transitional housing would not be serving a sentence and would not fall under the halfway house definition.
- Transitional housing is not a listed use but it is of the same general character as those uses listed in category 1.610.
- The characteristics of transitional housing met all the elements of the rooming and boarding house definition except the transitional care element, which would categorize transitional housing as a separate category in 1.610.

Consistent with those conclusions, staff defined transitional housing and proposed amendments to the TPU that continues the conditional use requirement like the other 1.610 uses.

C. Correctional Facility and Halfway House

1. Proposed definitions for Correctional Facility and Halfway House

Staff proposes amending 49.80.120 as follows:

Correctional Facility, TPU 7.500: “Correctional facility means a facility providing for the imprisonment or physical confinement of prisoners under guard or 24-hours physical supervision such as a prison, jail, detention center, halfway house, and similar facilities.”

Halfway House, TPU 1.450 & 7.400: ~~“Halfway house means a single family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.”~~

2. Correctional Facility and Halfway House Policy Discussion

The term correctional facility is located at TPU 7.500, but it isn’t defined in Title 49. Additionally, during the deliberations of UNL 2014-0001 and expressed by the different parties, the Title 49 definition of halfway house did not accurately capture the intended use, namely people ordered to serve pretrial detention in or ordered imprisonment in a facility like Gastineau Human Services. The proposed definition of correctional facility includes those facilities owned and operated by a government agency, like Lemon Creek Correctional Center, or those facilities under a contract managed by a government agency, like Gastineau Human Services. Also, a correctional facility—including a halfway house—is not the same as transitional housing because of the following:

1. People that live in a correctional facility are in the custody of the Department of Corrections.
2. People are ordered to live in the correctional facility.

3. A person is guilty of the crime of escape if that person is absent without authority from a correctional facility.
4. You receive credit for time served when living in a correctional facility.
5. People would be in prison if they were not in a halfway house.

By defining correctional facility to include halfway house, there is no need to have a definition for halfway house, because a halfway house is just another form of a correctional facility. For clarity, a person released from a correctional facility but on probation or parole could live in many types of housing, including transitional housing.

By deleting halfway house (1.450 and 1.700) from the TPU and keeping correctional facilities as a conditional use, there are no changes to the TPU for where or how correctional facilities are approved and located.

D. Single Family and Group Home

1. Proposed definitions for Family and Group Home

Staff proposes amending 49.80.120 as follows:

Family, see TPU 1.100: *"Family means one or more persons living as a single housekeeping unit, as distinguished from a group occupying a group home."*

Group Home, TPU 1.400: *~~"Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single-family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities."~~*

2. Family and Group Home Policy Discussion

The CBJ defined group homes since at least 1987, but the term is likely unnecessary in Title 49 today. From 1987 to 1993, the definition of group home included child care homes, halfway houses, handicapped and infirmed homes, intermediate care home and nursing care homes.¹ In 1993, the group home definition was amended to capture homes for persons with disabilities instead of

¹ Ord. 87-49 at 235; Ord. 93-46 at 2.

handicapped or infirm homes.² Then in 2010, the group home definition was substantially amended and it prohibited residents from “serving a sentence for a criminal act.”³

The purpose for the 2010 amendments was to alleviate restrictions that discriminated against federally protected individuals seeking group housing. As described before the Planning Commission:

The definition of *Group Homes* is proposed to be modified by removing *Halfway Houses* from the definition of *Group Homes*. Now *Halfway*

Houses for people serving a sentence for a criminal act would be regulated separately from living situations for people with disabilities in a family setting with caregivers who live on site.

People who require the services of a *Group Home* as proposed in the revised definition above are a federally protected class and may not be subject to any greater restriction than is imposed on [similarly situated uses]. Therefore, staff proposes to list *Group Homes* with the same restrictions as single-family residences. The advantage of keeping a distinct definition for *Group Homes* is that these facilities will be clearly distinguished from *Halfway Houses* and will have a defined maximum number of clients.

On line 1.400 superscript note D appears to be superfluous since the term “*Group Homes*” is more clearly addressed in the Definitions section of the Land Use Code. Therefore Note D is to be removed from the Table of Permissible Uses.⁴

According to CDD records, since the 2010 amendments, CDD has not received an application for a group home use. Additionally, because people with federally recognized disabilities cannot be treated differently than those without disabilities, the Group Home term is redundant because people with federally recognized disabilities could live in a variety of residential and institutional uses, like single family dwellings, multifamily dwellings, and nursing care facilities. For example, the Planning Commission recently reviewed a conditional use permit for a mixed use including single room occupancy of multifamily housing, USE2015-0001 (Housing First in Lemon Creek), in which all of the residents will likely have some type of federally recognized disability.⁵ Despite the likelihood of the residents being a federally protected class, the Planning Commission properly evaluated the Housing

² Ord. 93-46 at 2.

³ CBJ 49.80.120; Ord. 2010-22; Ord. 2010-22 Line Item Changes at 8.

⁴ Memo from Greg Chaney, Planning Manager, to the Assembly and Planning Commission Committee of the Whole, Re: TXT2009-00004 (April 7, 2010).

⁵ Current illegal use of a controlled substance is not impairment, but people with mental impairments and recovering alcoholics and drug addicts are a federally protected people. 42 U.S.C. 3602(h)(3); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 803 (9th Cir. 1994) *aff'd sub nom. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995); *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 923 (4th Cir. 1992) (former drug addicts and recovering drug addicts are protected under the Fair Housing Act).

First project based on legitimate governmental interests like parking, traffic, noise, lighting, and public health/safety without treating the potential residents different than people without federally recognized disabilities. Thus, the Housing First project demonstrates that the term group home is no longer needed in Title 49 because the term is redundant as other uses more accurately regulate uses that currently fall under the group home definition.

E. Nursing Care, Assisted Living, Sheltered Care

1. Proposed definitions for Assisted Living

Staff proposes amending 49.80.120 as follows:

Assisted living, TPU 7.200: "Assisted living means a facility providing housing and institutional care for people unable to live independently or without assistance. Assisted living includes facilities that provide nursing care services that are not located in a single family dwelling."

2. Assisted Living, Nursing Care, and Sheltered Care Policy Discussion

Staff proposes deleting the nursing care and sheltered care uses from the TPU 7.200 and defining assisted living to capture those two uses. Staff believes that as defined, assisted living captures those facilities like Wildflower Court (USE1998-0069, USE2003-0043), but assisted living would not capture a single family dwelling where members of that family received assistance and higher level care.

Although assisted living and transitional housing are similar, they are also different in that assisted living is intended for longer term care and less turnover than transitional housing. Additionally, transitional housing requires an owner or manager to live on site to provide supervision and accountability of the property (i.e. garbage), which staff at an assisted living facility would likely provide.

Assisted living is different than adult day care because assisted living is intended for long term residence where traffic is expected to be less than a day care facility.

Additionally, there could also be some ambiguity between multifamily and assisted living. However, staff believes that with a history of uses like Housing First and Wildflower Court, staff can assist an applicant and the Planning Commission find the appropriate use.

F. Handicapped, infirm, and intermediate care

Staff proposes deleting the following definitions because they are not listed in the TPU and do not need to be listed in the TPU because they fall within the proposed definition of assisted living, 7.200.

Handicapped or infirm institution, no TPU: ~~"Handicapped or infirm institution means an institutional facility housing and providing care or assistance but no significant medical treatment for more than nine persons who are physically or mentally handicapped or infirm."~~

Handicapped or infirm home, no TPU: ~~"Handicapped or infirm home means a single family dwelling providing residential area but no significant medical treatment for at least six but not more than nine persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit."~~

Intermediate care home, no TPU: ~~"Intermediate care home means a group home maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution."~~


Intermediate care institution, no TPU: ~~"Intermediate care institution means a building maintained for the purpose of providing accommodations for more than seven persons needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution."~~



MEMORANDUM

Date: June 1, 2015

To: Planning Commission

From: Beth McKibben, AICP 
Planning Manager
Community Development Department

Re: Title 49 Amendments in regard to Transitional Housing

Summary:

Staff will be working with the Title 49 Committee and the Planning Commission to promptly present amendments to Title 49 regarding transitional housing and related uses. Staff intends to present a comprehensive amendment proposal to the Title 49 Committee on June 12. If the Title 49 Committee needs more than one meeting to make the policy recommendations, then staff intends to present the following amendments to the Assembly in an ordinance for introduction on June 29.

Discussion:

In light of the recent decision by the Assembly to uphold the Board of Adjustment Decision on the Use Not Listed case, UNL2014 0001, that determined transitional housing for people coming out of prison is of the same general character as those listed in category 1.610 of the Table of Permissible Uses, Title 49 needs to be amended to reflect that decision.

The UNL2014 0001 Notice of Decision (NOD) stated:

“The Board concludes that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610, miscellaneous rooms for rent of CBJ 49.25.300, the Table of Permissible Uses.

Planning Commission
 Title 49 Amendments
 June 1, 2015
 Page 2 of 3

The transitional housing use is deemed as listed in category 1.610 of the table of permissible uses for the purpose of determining whether a Conditional Use permit should be issued to Haven House.

The Board recommends that Title 49 be amended to include a definition and a specific subcategory in the Table of Permissible Uses for Transitional Housing in the D-5 zoning district with an approved Conditional Use permit. “

The NOD does specifically state that the TPU is to be amended for the D-5 zoning district. However, staff intends to recommend to the Assembly the following amendments, which is to add “Transitional Housing” to 1.610, with rooming, boarding, bed and breakfast, single room occupancies with shared facilities and temporary residents as shown below.

TPU:

	Use description	RR	D1	D3	D5	D10 SF	D10	D15	D18	LC	GC	MU	MU2	WC	WI	I
1.610	Rooming, boarding, bed and breakfasts, single room occupancies with shared facilities, <u>transitional housing</u> , and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		

This proposal provides for “transitional housing” in all zoning districts where the similar miscellaneous rooms for rent are permitted, with the same permitting requirements. As described by the Board of Adjustment, transitional housing is similar to 1.610 uses and also slightly different.

- The proposed use of transitional housing for people coming out of prison does not exactly fit within any existing definitions or land use categories. Nonetheless, there are many similarities. The use is residential, in that the residents would be eating, sleeping

and recreating there, and living together in a family setting. However, there will be on-site supervision, rules of conduct, ancillary services etc. Still, there may be impacts beyond those normally associated with uses permitted outright in the D-5 zoning district.

- A number of people have bedrooms and share common space.
- There is a sense of transient occupancy that is a little different from a typical living situation.
- Residents of transitional housing would not be serving a sentence and would not fall under the halfway house definition.
- Transitional housing is not a listed use but it is of the same general character as those uses listed in category 1.610.
- The characteristics of transitional housing met all the elements of the rooming and boarding house definition except the transitional care element, which would categorize transitional housing as a separate category in 1.610.

Consistent with those conclusions, the following definition has been proposed to be added to Title 49.

Definition:

Transitional Housing: “*transitional housing* means a residential use for people released from a correctional facility or similar facility. Residents may be on probation and parole. An owner or manager must live on site.”

Because the proposed amendment to the Table of Permissible Uses is a little different than what the Board decided with the Use Not Listed case, staff wanted to give the Commission an opportunity to review it in the event the Title 49 Committee needs more than one meeting to discuss a more comprehensive amendment to Title 49 related to transitional housing.

Staff intends to present a more comprehensive amendment to the Title 49 Committee on June 12 that amends the Table of Permissible Uses and 49.80.120 (definitions) regarding the following uses: transitional housing (as described above), halfway house, group home, correctional facility, handicapped or infirmed homes and institutions, and intermediate care homes and institutions.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Packet Page 51 of 95
Department of Corrections
OFFICE OF THE COMMISSIONER

550 West 7th Avenue, Ste 601
Anchorage, Alaska 99501
Main: 907.269.7397
Fax: 907.269.7390

October 13, 2014

Mary Alice McKeen
Haven House
Box 20875
Juneau, Alaska 99802-0875

sent via email to ottokeen@gmail.com

Dear Ms. McKeen,

This letter is to provide clarification that Haven House is not considered a "halfway house" or community residential centers (CRC). The CRCs throughout the state are operated under contract with the Department of Corrections (DOC), rather than operated directly by the DOC.

In Juneau, Gastineau Human Services (GHS) operates as the only "halfway house" or CRC on 5597 Aisek Street. Additionally, the only correctional facility operated by the Department of Corrections is the Lemon Creek Correctional Center (LCCC). A person ordered to reside either at GHS or LCCC is serving a sentence that has been imposed by the court or the parole board. Any person who leaves a LCCC or GHS without lawful authority is guilty of the crime of escape within Alaska criminal statutes.

A person on DOC probation/parole is no longer in the care and custody of the Department of Corrections. They must receive the approval from their probation/parole officer for their residence, and are responsible for locating their own residence.

While the Department supports the development of housing for persons who are on probation or parole, and has stated its support for the missions and goals of Haven House, Haven House would not be a "halfway house" or CRC. A woman on probation or parole could choose to live at Haven House, just as she could choose to live at any other residence in Juneau. Additional information on the Department's strategies for assisting prisoners reentering society can be found at the Department of Correction's website, in particular, the Five-Year Prisoner Reentry Strategic Plan, 2011-2016 (March 2011) prepared by the Governor's Prisoner Reentry Task Force. It is located at

www.correct.state.ak.us/TskForce/documents/Five-Year%20Prisoner%20Reentry%20Plan.pdf

Sincerely,

A handwritten signature in blue ink that reads "Ronald F. Taylor".

Ronald F. Taylor
Deputy Commissioner for Reentry and Population Management



**BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Date: August 26, 2014

File No.: UNL2014 0001

Haven House, Inc.
Attn.: June Degnan
PO Box 20875
Juneau, AK 99802

Application For: Use Not Listed determination for re-entry housing for women coming out of prison in the D5 zoning district per CBJ 49.20.320

Legal Description: Tall Timbers 1 Block G Lot 3

Property Address: 3202 Malissa Drive

Parcel Code No.: 5-B21-0-142-003-0

Hearing Date: August 21, 2014

The Board of Adjustment ("Board"), at its special public meeting, considered a request for a similar use determination. CBJ 49.10.210(3); 49.20.320; 49.25.300(a)(2). The Board reviewed the staff report with attachments; reviewed public comments presented prior to the hearing, and considered the public comments at the hearing.

The Board adopts the findings and analysis listed in the attached memorandum dated August 13, 2014, and approves the Similar Use Determination. The Board concludes that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610, miscellaneous rooms for rent of CBJ 49.25.300, the Table of Permissible Uses. The transitional housing use is deemed as listed in category 1.610 of the table of permissible uses for the purpose of determining whether a Conditional Use permit should be issued to Haven House.

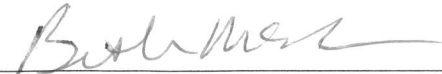
The Board recommends that Title 49 be amended to include a definition and a specific subcategory in the Table of Permissible Uses for Transitional Housing in the D-5 zoning district with an approved conditional use permit.

Attachments: August 13, 2014 memorandum from Beth McKibben Community Development, to the CBJ Planning Commission regarding UNL2014 0001.


This Notice of Decision is not appealable until the Planning Commission makes a final decision on the Conditional Use permit requested for this transitional housing use. CBJ 01.50.020(b).

Haven House, Inc.
File No.: UNL2014 0001
August 26, 2014
Page 2 of 2

Project Planner:


Beth McKibben, Planner
Community Development Department


Michael Satre, Chair
Board of Adjustment

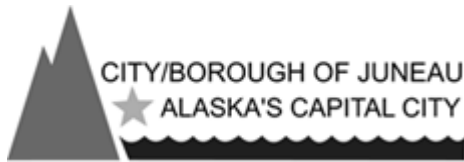

Filed With City Clerk

Date

8/27/14

cc: Plan Review

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



Law Department

MEMORANDUM

DATE: August 14, 2014
 TO: Planning Commission
 FROM: Robert H. Palmer, III
 Assistant Municipal Attorney
 SUBJECT: Enforceability of Halfway House and Group Home provisions

This memorandum provides the legislative history and legal basis for why the halfway house and group home provisions in Title 49 are likely unenforceable. This memorandum does not preclude the Planning Commission (“Commission”) from making a different conclusion. This memorandum also includes supplemental points of authority that show how courts have approached similar cases.

The source of the enforceability concerns are based on the current definitions of halfway house and group home as applied through the table of permissible uses (“TPU”). Those definitions and the TPU changed in 2010. Notably, if Haven House had applied prior to 2010, it would have likely qualified for an allowable use permit to operate as intended at 3202 Malissa Drive because a halfway house or group home was a permitted use in a D-5 zone from at least 1987 until 2010.¹

I. LEGISLATIVE HISTORY

A. 1987 to 2010: Regulation of group homes and halfway houses

In 1987, Title 49 was completely repealed and reenacted.² Since 1987 and until 2010, the following definitions and TPU applied to group homes and halfway houses.

¹ Assembly Meeting No. 2010-10, Minutes at 5 (April 12, 2010) (describing that the Commission only reviewed an allowable use permit to impose conditions, but the Commission could not deny the permit).

² Ord. 87-49 § 2.

Enforceability of halfway house and group home provisions

Page 2

1987-1993 Group Home Definition: “A residential use such as a rooming house or dwelling for persons seeking rehabilitation or recovery from any physical, mental, emotional, or legal disability, or any combination thereof, in a family setting including a child care home, halfway house, handicapped or infirm home, intermediate care home and nursing care home.”³

1993-2010 Group Home Definition: “Group home means a residential use such as a rooming house or dwelling for persons seeking rehabilitation or recovery from any physical, mental, emotional, or legal disability, or any combination thereof, in a family setting including a child care home residence, halfway house, ~~handicapped or infirm home~~ for persons with disabilities, intermediate care home and nursing care home.”⁴

1987-2010 Halfway House Definition: “Halfway House’ means a single-family dwelling for not more than nine persons who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit.”⁵

Figure 1: 1987-2010 Table of Permissible Uses⁶

Code	Use description	RR	D1	D3	D5	D10	D15	D18	LC	GC	MU	WC	WCO	WCR	I
1.400	Group Homes ^D		2	2	2	2	2	2	2	2					
1.450	[not used]														
7.400	Institutions (other than halfway houses) where mentally ill persons are confined								2	2	2,3				
7.500	Penal or correctional facilities	3	3	3	3	3	3	3	3	3	3				3

Approval Type 2: “Allowable Use Permit – Requires Planning Commission Approval”⁷

³ Ord. 87-49 at 235; Ord. 93-46 at 2.

⁴ Ord. 93-46 at 2; Ord. 2010-22 Line Item Changes at 8.

⁵ Ord. 87-49 at 236; Ord. 2010-22 Line Item Changes at 8.

⁶ Ord. 87-49 at 66 and 69; Ord. 95-09 (same); Ord. 2010-22 Line Item Changes Ex. A at 1 and 6.

⁷ Ord. 87-49 at 66.

Aug. 14, 2014

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Approval Type 2,3: “Allowable Use Permit required if Minor Development, Conditional Use permit required if Major Development”⁸

Note D: “**This category includes** homes for the handicapped or infirm nursing care, **halfway houses**, and child care homes.”⁹ (emphasis added)

Importantly, from 1987 to 2010, group homes and halfway houses were treated identically and were allowed in every residential zone except RR. In 2010, the definitions and the TPU changed.

B. 2010 to present: Regulation of group homes and halfway houses

Relevant to group homes and halfway houses, Title 49 was revised in 2010 to remedy concerns how the group homes definition and TPU restrictions discriminated against federally protected individuals seeking group housing.¹⁰

In 2010, the legislative history describes that the Commission and the Assembly were focused on remedying group home discrimination concerns. The Commission minutes regarding Ord. 2010-22 do not provide any facts illuminating the reason to restrict halfway houses in the TPU.¹¹ On April 7, 2010, before the Assembly and Planning Commission, the Planning Manager provided a memorandum addressing the changes to group homes and halfway houses within the code.¹² As to these changes, Mr. Chaney wrote:

⁸ *Id.*

⁹ Ord. 87-49 at 73; Ord. 93-46 (changing child care homes to child care residences); Ord. 2010-22 Line Item Changes Ex. A at 13 (deleting note D and changing to Reserved).

¹⁰ *E.g.*, Memo from Greg Chaney, Planning Manager, to the Planning Commission, January 26, 2010 (“Further research has revealed that people who require the services of a Group Home as proposed in the definition above are a federally protected class and may not be subject to any greater restriction than is imposed on single-family residences. Therefore, staff proposes to list Group Homes with the same restrictions as single-family residences. The advantage to keeping a distinct definition for Group Homes is that these facilities will be clearly distinguished from Halfway Houses and will have a defined maximum number of clients.”)

¹¹ Planning Commission Minutes at 21 (February 23, 2010); Ord. 2010-22.

¹² Memo from Greg Chaney, Planning Manager, to the Assembly and Planning Commission Committee of the Whole, Re: TXT2009-00004 (April 7, 2010).

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

People who require the services of a *Group Home* as proposed in the revised definition above are a federally protected class and may not be subject to any greater restriction than is imposed on single-family residences. Therefore, staff proposes to list *Group Homes* with the same restrictions as single-family residences. The advantage of keeping a distinct definition for *Group Homes* is that these facilities will be clearly distinguished from *Halfway Houses* and will have a defined maximum number of clients.

On line 1.400 superscript note ^D appears to be superfluous since the term “*Group Homes*” is more clearly addressed in the Definitions section of the Land Use Code. Therefore Note ^D is to be removed from the Table of Permissible Uses.¹³

Mr. Chaney’s memorandum focused on changing the definitions because of concerns about discriminating against those with disabilities.¹⁴ At hearings on February 23, 2010, before the Planning Commission and April 12, 2010, before the Assembly, the reason and effect of restricting halfway houses to only four or five zones was not discussed. The changes to halfway houses and group homes were only passingly discussed.¹⁵ Regardless, Ord. 2010-22 passed.

Ordinance 2010-22 created the definitions and TPU that are currently found in Title 49:

2010-present Group Home Definition: “*Group home* means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional, or legal disability, or any combination thereof, in a family setting, including a child care residence, halfway house, home for persons with disabilities, intermediate

¹³ *Id.*

¹⁴ *Supra* at note 10. Mr. Chaney’s concerns appropriately reflected how the law had changed regarding zoning of suspect and quasi suspect classes of people, like housing former mental patients. *E.g., J.W. v. City of Tacoma*, 720 F.2d 1126 (9th Cir. 1983) (reversing a denial of a special use permit for a group home for former mental patients in a residential zone).

¹⁵ *Supra* n. 1 at 5 (Assembly Minutes); Planning Commission Minutes at 21 (February 23, 2010).

~~care home and nursing care home.~~ Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single-family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities.”¹⁶

2010-present Halfway House Definition: “*Halfway house* means a single-family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.”¹⁷

Figure 2: 2010-Present Table of Permissible Uses¹⁸

Code	Use description	RR	D1	D3	D5	D10 SF	D10	D15	D18	LC	GC	MU	MU2	WC	WI	I
1.400	Group Homes	1	1	1	1	1	1	1	1	1	1					
1.450	Halfway Houses	3								3	3	3	3			
1.610	Rooming, boarding...	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		
7.400	Halfway Houses									3	3	3	3			
7.500	Correctional Facilities	3	3	3	3	3	3	3	3	3	3	3	3			3

Approval Type 1: Indicates the use requires Department approval.¹⁹

Approval Type 1,3: Indicates uses with minor developments require Department approval and uses with major developments require a conditional use permit from the Commission.²⁰

Approval Type 3: Indicates the use requires a conditional use permit from the Commission.²¹

¹⁶ CBJ 49.80.120; Ord. 2010-22; Ord. 2010-22 Line Item Changes at 8.

¹⁷ CBJ 49.80.120; Ord. 2010-22; Ord. 2010-22 Line Item Changes at 8.

¹⁸ CBJ 49.25.300 TPU; Ord. 2010-22; Ord. 2010-22 Line Item Changes Ex. A at 1 and 6.

¹⁹ CBJ 49.25.300(b)(1).

²⁰ CBJ 49.25.300(c).

²¹ CBJ 49.25.300(b)(3).

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Importantly Ord. 2010-22 caused small halfway houses—having up to nine residents and two supervisors—to be treated differently than large halfway houses. Specifically, small halfway houses were designated in two places, 1.450 and 7.400, which restricted them to five zoning districts. However, large halfway houses—having ten or more residents—were treated like 7.500 Correctional Facilities and allowed in nearly every zoning district with a conditional use permit. Also neither Ord. 2010-22 nor existing code defines “serving a sentence for a criminal act” or “institutional correction facilities.”

Thus, multiple inconsistencies and vagueness resulted from Ord. 2010-22 that led the Director to conclude on March 18, 2014, as follows:

I conclude Title 49 is likely unenforceable regarding Halfway Houses because of the following: (1) large halfway houses (10+ people) are allowed in residential zones but small Halfway House (less than 10) are not, and neither Title 49 nor the legislative history provide justification for the distinction; (2) neither Title 49 nor the legislative history provide justification for the change in prohibiting small Halfway Houses in residential areas; (3) neither Title 49 nor the legislative history provide justification for distinguishing Halfway Houses from other uses in which people are not serving a sentence; and (4) the Table of [Permissible] uses lists Halfway Houses in two different sections (1.450 and 7.400), table CBJ 49.25.300, which creates an arbitrary effect if CBJ 49.25.300(a)(3) is applied.

Similarly, I conclude Title 49 is likely unenforceable regarding Group Homes as applied to Haven House because of the following: (1) neither Title 49 nor the legislative history provide justification for distinguishing Group Homes from other uses in which people are not serving a sentence; and (2) neither Title 49 nor the legislative history provide justification for differentiating Group Homes with more than six residents and those with less than six residents.

For those reasons, I conclude that I cannot apply the Title 49 provisions regarding Group Homes and Halfway Houses to Haven House. Thus, I conclude Haven House cannot be classified as a Group Home or Halfway House.²²

²² Letter from Hal Hart, Director of Community Development, to Pamela Finley, Attorney for Haven House Inc., March 18, 2014. (“March 18 Decision”)

II. DISCUSSION

Zoning, especially regarding group homes and halfway houses, is regulated and limited by numerous laws.²³ While specific sources of authority may have different standards of review or require a different analysis, every zoning restriction in Alaska must at least pass the “fair and substantial” standard, which is the lowest standard for a substantive due process or equal protection claim.²⁴ Because the Director concluded the halfway house and group home definitions as applied through the TPU did not likely meet the “fair and substantial” standard, an analysis of other sources of authority was not warranted with the March 18 Decision.²⁵

A. Fair and Substantial Standard of Review

The City and Borough of Juneau (“CBJ”) may impose zoning restrictions so long as the restrictions are not “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”²⁶ While zoning restrictions are presumed to be enforceable, the zoning restriction must have a fair and substantial relationship to a legitimate government purpose.²⁷ Thus, without a fair and substantial basis between the zoning restriction and any legitimate government purpose, the zoning restriction is arbitrary and unenforceable.²⁸

²³ E.g., CBJ Title 49; 42 U.S.C. 12101 *et seq.* (Americans with Disability Act); 42 U.S.C. 3602 *et seq.* (Fair Housing Act).

²⁴ *Luper v. City of Wasilla*, 215 P.3d 342, 349 (Alaska 2009) (describing that “Alaska’s standard is more protective than the federal standard because it requires that the relationship be ‘fair and substantial’ rather than merely ‘rational.’”).

²⁵ *Supra* at 22.

²⁶ *Seward Chapel, Inc. v. City of Seward*, 655 P.2d 1293, 1297-98 (Alaska 1982).

²⁷ *Luper v. City of Wasilla*, 215 P.3d 342, 348 (Alaska 2009) (“When a zoning ordinance infringes on property rights we apply the minimum level of scrutiny, under which the provision must bear a “fair and substantial” relationship to a “legitimate” government purpose.”); *Griswold v. City of Homer*, 925 P.2d 1015, 1019 (Alaska 1996).

²⁸ *Griswold v. City of Homer*, 925 P.2d 1015, 1019 (Alaska 1996) (describing that “a legislative body’s zoning decision violates substantive due process if it has no reasonable relationship to a legitimate government purpose.”);

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1. The current halfway house and group home definitions as applied through the TPU are likely unenforceable.

The CBJ would likely have a difficult time explaining that a rational basis, let alone a fair and substantial basis, exists to prohibit halfway houses in all residential zones.

The TPU was changed in 2010 to conform to legal requirements to regulate homes for federally protected people just like single family residences are regulated. In the process, the definition and TPU for halfway houses changed. The legislative history of group homes and halfway houses indicates both were allowed in all residential zones (D1 – D18) and both commercial zones (LC & GC).

In the 2010 amendments, the changes focused on resolving discrimination concerns for group homes, but the amendments did not consider the ramifications to halfway houses. The 2010 amendments restricted small halfway houses to five zones (RR, LC, GC, MU, MU2).²⁹ This legislative history neglects to describe any facts or rationale to provide a justification for the more restrictive treatment of halfway houses. Thus, because halfway houses were allowed in more zones and no justification has been articulated for the restrictive 2010 amendments, there is not likely a fair and substantial basis for the 2010 amendments restricting small halfway houses to only five zones.

Furthermore, the TPU is likely arbitrary because it allows halfway houses with more than nine people in twelve zones (including all residential).³⁰ But the TPU prohibits halfway houses

e.g., J.W. v. City of Tacoma, 720 F.2d 1126, 1130 (1983) (concluding a zoning ordinance was applied unconstitutionally because it discriminated against former mental patients).

²⁹ 1.450 Halfway House is allowed in RR, LC, GC, MU, and MU2; 7.400 Halfway House is allowed in LC, GC, MU, and MU2. CBJ 49.25.300 TPU.

³⁰ 7.500 Correctional Facilities (larger halfway houses per halfway house definition CBJ 49.80.120) are allowed in RR, D-1, D-3, D-5, D-10SF, D-10, D-15, D-18, LC, GC, MU, MU2, and I. CBJ 49.25.300 TPU.

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with nine or fewer residents to only four or five zones (no residential).³¹ Because the TPU allows for more intensive halfway houses in residential zones but prohibits less intensive uses—without describing the standards or justifications—there is likely no “fair and substantial” basis to restrict halfway houses as applied by the TPU.

Given this record, a “fair and substantial” basis may not exist for the disparate treatment of halfway houses in the TPU and the restricted number of zones as compared to the pre-2010 TPU. No traditional zoning basis, like traffic impacts or other reasons have been provided to restrict halfway houses to four or five zones. Additionally, no basis has been outlined for restricting halfway houses more than correctional facilities, where correctional facilities have higher traffic and greater zoning concerns. Lastly, no basis has been provided to restrict the number of zones allowing a halfway house from what had been permitted under the pre-2010 TPU. Without a “fair and substantial” basis for the disparate treatment, especially for small halfway houses, the TPU regarding small halfway houses is not likely enforceable.

To summarize, prior to 2010, group homes and halfway houses were treated the same. In 2010 the definitions of group homes and halfway houses changed. Group homes became more narrowly defined and focused on avoiding discrimination concerns of federally protected people. In the TPU, group homes were then allowed in most zones. With this change, the definition for halfway houses became broader. In the TPU, halfway houses were added in two places: 1.450 and 7.400. Furthermore, halfway houses were allowed in only four or five zones with a conditional use permit; even though prior to the 2010 change halfway houses were allowed in eight zones. Lastly, if the halfway house at issue has ten or more residents, then it would be

³¹ 1.450 Halfway House is allowed in RR, LC, GC, MU, and MU2; 7.400 Halfway House is allowed in LC, GC, MU, and MU2. CBJ 49.25.300 TPU.

classified as a correctional facility and be permitted in almost all zones with a conditional use permit. Therefore, the question becomes—post Ord. 2010-22—whether there is a fair and substantial basis to restrict halfway houses, with less than ten residents, to fewer zones than a correctional facility or a group home.

The inconsistencies and concerns as to halfway houses within the code and TPU can be summarized as follows:

1. Halfway houses, prior to 2010, were allowed in eight zoning districts, including D-5, because halfway houses were subsumed in the group home definition.
2. In 2010, small halfway houses were given their own designation in the TPU in two places: 1.450 and 7.400; Large halfway houses were designated in the TPU as 7.500.
3. When halfway houses were added to the TPU in 2010 at 7.400, halfway houses replaced mental institutions without analysis of whether the impacts are different.
4. In 2010, halfway houses were changed from an allowable use permit requirement to a conditional use permit requirement.
5. With the changes in the TPU, halfway houses were allowed in only five zones, when prior to 2010 they had been allowed in eight zones.
6. If the halfway house has more than ten residents under the 2010 amendments, it will be regulated as a correctional facility, and correctional facilities are allowed in twelve zones. TPU at 7.500.
7. Therefore, a halfway house with fewer than ten residents is not permitted in a residential zone but a large halfway house is allowed in a residential zone.
8. The record—in the form of committee minutes and memoranda—does not indicate any basis for the restrictive changes to halfway homes.

Therefore, because the definitions of group home and halfway house and the application of the TPU to those two categories were not likely supported with a “fair and substantial” basis, the two terms should not be relied upon until supporting justification is provided.

2. People on probation or parole are serving a sentence

Similarly, the 2010 amendments did not describe why a sentence prohibition was included in the group home definition. While a justification may be possible to distinguish people on probation or parole from other federally protected people, no justification has been presented to date.³²

Although the phrase “serving a sentence for a criminal act” is included in both the group home and halfway house definitions, the CBJ code does not define it.³³

The legislative history describes that a person on parole would be “serving a sentence for a criminal act”:

it is clear that ‘parole’ may be part of a criminal ‘sentence.’ The proposed phrase ‘Clients must not be serving a sentence **or be on parole** for a criminal act’ (emphasis added) is therefore redundant.³⁴

In light of that legislative history, the following describes why somebody on parole or probation would be “serving a sentence for a criminal act.”

Alaska case law has described a person on probation is still serving a sentence.

By its very nature and definition probation means and signifies liberty under certain imposed conditions. Its basic purpose is to provide a program which offers an offender the opportunity to rehabilitate himself without confinement. This is to be accomplished under the tutelage of a probation officer and under the continuing power of the court to impose a sentence for his original offense in the event he abuses his opportunity and violates the conditions of probation.³⁵

³² 2 Rathkopf’s The Law of Zoning and Planning § 23:27 (4th Ed.) (“even though a group home may function as an integrated single-housekeeping unit, it is unlikely to be held to constitute a ‘functional family’ where the purpose of the living arrangement is to provide a transitional or halfway house for rehabilitation of adult convicts, alcoholics, or drug users.”)

³³ CBJ 49.80.120 (definitions).

³⁴ *Supra* at n 10.

³⁵ *Beckman v. State*, 689 P.2d 500, 503 (Alaska App. 1984).

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Parole is quite similar, except parole means the defendant received a sentence greater than two years. If the defendant complies with the correctional facility rules, the parole board can make an individualized determination, conclude the defendant qualifies for good time credit, and release the defendant with conditions of parole.³⁶ However, like a defendant on probation, a parolee is still serving a sentence because the parolee must comply with the parole conditions.

In summary, a person on probation or parole is still serving a sentence because the person must comply with the conditions imposed for release. Importantly, a defendant who violates conditions while on probation or parole can be further sentenced. Thus, as *Beckman* outlines, probation and parole serve to rehabilitate without confinement, but these defendants are still fundamentally serving criminal sentences. Therefore, the group home definition is likely unenforceable as applied to people who are serving a sentence.

B. Other Considerations for the Planning Commission

1. Federal Statutes

In addition to the fair and substantial standard, zoning restrictions can be preempted by federal law. For example, the Americans with Disability Act prohibits discrimination based on recognized disabilities and local governments must provide reasonable accommodations, which has been interpreted to prohibit zoning restrictions that treat people with a recognized disability differently.³⁷ Similarly, the Fair Housing Act prohibits discrimination based upon a handicap or familial status.³⁸ Specific to the context of zoning, the following qualifies as a handicap or disability:

³⁶ AS 33.16.010 – 33.16.900.

³⁷ 42 U.S.C. 12102 *et seq.*; *e.g.*, *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir. 1999).

³⁸ 42 U.S.C. 3601-3631; *e.g.*, *Oxford House-C v. City of St. Louis*, 77 F.3d 249, (8th Cir. 1996) (concluding that an eight person limit per group home does not violate the Fair Housing Act).

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- Recovering alcoholics and recovering drug addicts³⁹
- Past resident of mental institution⁴⁰
- Physical or mental impairment, but current illegal use of a controlled substance is not an impairment⁴¹

Thus, the Fair Housing Act and the Americans with Disability Act can preempt some local government zoning restrictions.

Although those federal statutes preempt some zoning restrictions, local governments can still impose zoning restrictions that pass the fair and substantial standard and do not discriminate against protected persons.⁴² As described below, formerly incarcerated persons—without more—are not a protected class of persons.⁴³

2. Neighborhood opposition regarding people on probation or parole.

The law is not clear on what type of zoning restrictions a local government can impose on people on probation or parole. However, a Ninth Circuit Court of Appeals decision, *J.W. v. City of Tacoma*, implies that violent criminal behavior could form the basis for a zoning decision, but speculative neighborhood fear cannot.⁴⁴

³⁹ *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 803 (9th Cir. 1994) *aff'd sub nom. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995); *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 923 (4th Cir. 1992) (former drug addicts and recovering drug addicts are protected under the Fair Housing Act).

⁴⁰ *J.W. v. City of Tacoma*, 720 F.2d 1126 (9th Cir. 1983).

⁴¹ 42 U.S.C. 3602(h)(3).

⁴² *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 367 (2001) (“the result of *Cleburne* is that States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions toward such individuals are rational.”); *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008) (non-discriminatory zoning regulations can prohibit people protected by the Fair Housing Act on the basis that the tenancy is too short for a single family residential district); 2 Rathkopf’s *The Law of Zoning and Planning* § 23:26 (4th Ed.) (describing that the placement of group homes in residential districts present complex issues and court typically balance the interests of the neighbors, the benefits from locating group homes in residential areas, and any government interests).

⁴³ See *J.W. v. City of Tacoma*, 720 F.2d 1126, 1129 n. 2 (9th Cir. 1983).

⁴⁴ *J.W. v. City of Tacoma*, 720 F.2d 1126 (9th Cir. 1983).

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In *J.W.*, the court held a zoning ordinance unconstitutional as applied because the denial of a special use permit for a nine-person group home was arbitrary.⁴⁵ Specifically, the court evaluated traditional zoning concerns:

The city's decision to deny Blount the requested permit fails to withstand such analysis. The ordinance prerequisites for issuance of a permit are conceded by the city to be satisfied. The State of Washington has officially concluded that there is a special need for more small, family-like group homes for the mentally ill in residential neighborhoods. It was stipulated below that the Blount house,

both by its external and internal physical characteristics, has the appearance of a single family dwelling. It is a split-level ranch-style house, and its exterior appearance is both similar to and compatible with the surrounding neighborhood. It was originally a single family dwelling and was converted to a group home by adding some bedrooms. The physical alterations necessary for this conversion were done by Mrs. Blount's ex-husband and are in full compliance with the building code of the City of Tacoma.

The city further admits that "[t]he existence of the home does not create any parking problems within the neighborhood, nor has it led to any undue burden on existing utilities, transportation systems, education, police or fire facilities."⁴⁶

The *J.W.* court also addressed whether the former mental institution residents had a history of violent or criminal behavior, which implies that criminal behavior can determine whether a proposed use could be restricted.⁴⁷ The *J.W.* court stated that the special use permit was denied "principally because of the heavy opposition of neighbors at the public hearing..."⁴⁸ Importantly, the *J.W.* court noted that the City of Tacoma failed to produce any "evidence to

⁴⁵ *Id.* at 1131-32 (describing that judicial review was heightened because the decision may have rested on inaccurate and stereotypic fears about former residents of a mental institution).

⁴⁶ *Id.* at 1131.

⁴⁷ *Id.*

⁴⁸ *Id.*

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support a blanket assertion that former mental patients as a class are particularly dangerous, disruptive, or otherwise undesirable neighbors. [FN] 2”⁴⁹ In footnote 2, the *J.W.* court described that if community fears are substantiated, that could provide a rational basis to restrict people on parole from living in a group home in a residential area:

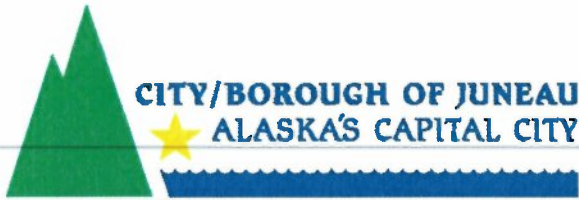
Other groups of persons burdened by the Tacoma ordinance, such as parolees, may be situated significantly differently. Although the record before us in this case does not address the issue, it is conceivable that community fears concerning such groups may rest on a sound factual basis. *But see Nicholson v. Connecticut Half-Way House, Inc.*, 153 Conn. 507, 218 A.2d 383, 385-86 (1976) (halfway house for parolees would not be enjoined as nuisance where fears of community residents, although genuinely felt, rested completely on supposition). Each group must, of course, be considered in light of its own peculiar circumstances.⁵⁰

Therefore, speculative neighborhood fear cannot be a basis to impose a zoning restriction, but neighborhood fear based on a sound factual basis may satisfy rational basis review.⁵¹

⁴⁹ *Id.* at 1130.

⁵⁰ *Id.* at 1120 at n. 2.

⁵¹ *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 172 (Alaska 1993) (“The recognized rule is that a planning board may always take evidence and testimony from community members into account in making its permitting decisions, but that it may not rely on neighborhood opposition alone as a reason to deny a permit.”); *Application of Volunteers of America, Inc.*, 749 P.2d 549, 552 (Oklahoma 1988) (perceptions of a pre-release prison halfway house cannot be used to deny a use permit).



**PLANNING COMMISSION
NOTICE OF RECOMMENDATION**

Date: July 16, 2015
File No.: AME2015 0008

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

Application For: Planning Commission Recommendation to the City and Borough Assembly
regarding Text amendment to Title 49 regarding Transitional Housing

Legal Description: Boroughwide

Hearing Date: July 14, 2015

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated July 1, 2015, and recommended that the City and Borough Assembly adopt staff's recommendation for a text amendment to Title 49 regarding Transitional Housing with the following amendment:

Transitional Housing means a residential use for people released from a correctional facility or similar facility. Residents live in transitional housing by choice. Residents may be on probation and parole. An owner or manager must live on site.

Attachments: Memorandum from Beth McKibben, Planning Manager Community Development, to the CBJ Planning Commission regarding AME2015 0008.

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ §01.50.020 (b).

Project Planner: Beth McKibben
Beth McKibben, Planning Manager
Community Development Department

Michael Satre
Michael Satre, Chair
Planning Commission

Beth McKibben 7/17/2015
Filed With City Clerk Deputy Clerk Date

cc: Plan Review

City & Borough of Juneau

File No.: AME2015 0008

July 16, 2015

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

**ASSEMBLY STANDING COMMITTEE MINUTES
LANDS AND RESOURCES COMMITTEE
THE CITY AND BOROUGH OF JUNEAU, ALASKA
MINUTES**

May 4, 2015, 5:00 PM.

Assembly Chambers

I. ROLL CALL

Jesse Kiehl called the meeting to order at 5:05pm.

Members Present: Jesse Kiehl; Jerry Nankervis; Mary Becker; Kate Troll

Other Assembly Members Present: Karen Crane; Mayor Sanford; Loren Jones; Debbie White

Liaisons Present: Bill Peters; Gerry Landry; Mike Peterson

Staff Present: Greg Chaney, Lands Manager; Jessica Beck, Lands Specialist

Public Present: Eric Clark, Representative from Christ Evangelical Lutheran Church

II. APPROVAL OF AGENDA

There were no agenda changes.

III. APPROVAL OF MINUTES

A. March 23, 2015

The minutes of the March 23, 2015 Lands Committee meeting were approved.

IV. PUBLIC PARTICIPATION

There was no public participation on non-agenda items.

V. AGENDA TOPICS

A. Land Trade with Christ Evangelical Lutheran Church to Provide Right-of-Way Access for Pederson Hill Subdivision

Mr. Chaney: Eric Clark, from the church, is in attendance. I've got a lot of information, but I'm going to run through it quickly. Let me know if you have any questions. The Pederson Hill area was recently rezoned from D1 to D10 and D10SF. There has been a lot of discussion on the D10SF area, but the D10 area is about twice the size. That is looking forward to the in the mid-to-long term future. In the near term, this property doesn't abut the right-of-way. First we need to get access. We have a major subdivision plat for the area, a concept, not drawn by an engineer. It gives an idea of the size of lots, about 100 ft. by 50 ft. wide. There is another area that could be turned into a multi-family area. 200 single-family homes is the grand vision. This access is critical for that. We have another access up here, but the problem is that it's on the uphill side. If you want to build gravity fed storm drainage and sewer lines, you have to work from the low point and start up. The drainage works well to that point. When talking to DOT, they wanted a four-way intersection. This proposed land trade is across from Sherwood Lane. The soil is a lot shallower farther up, but the church wasn't interested in trading property. We don't have enough money set aside right now to complete the whole thing. Phase I is the initial phase. Phase 2 would require the second access. Phase 3 would need enhanced water pressure. Phase 4 requires a partnership with the University. We could look at doing a public private partnership for some of it. The one thing we know for sure is that we need access. We looked at options for the intersection. One would be to go this way to the north of the church and the other would swoop down below the church. DOWL looked at both for soil depths and everything. One is muskeg-y. The other option is not as deep but it's longer, so costs for developing the routes are equivalent. We asked the

church. They preferred the option below the church. This is the proposed intersection. The church would be up on the hill with the road below. We talked about an equal area land trade. We would trade .9 acres of our property for .9 acres of their property. It gives them room to expand in the future and it gives us access. We reached a memorandum of understanding and had DOWL draw up a plat. It didn't turn out to be quite the rectangle I thought it would be. It's got a little jog, but it's still equal area. The Planning Commission heard this on April 14th and recommended in favor of the land trade. Fish and Game has mapped an anadromous stream that ends in the church. I imagine the fish sitting in the pews. It is an old map that has been digitized. We had a modern look at the drainage here. If you go there there's a lot of standing water, but over here it's full on streams. It's possible when the church was built, the water was a stream that has been diverted. This is another way to look at it. There's a general marshy area and this is the area we're proposing to build the road. There are topo lines showing the same thing. We'll have to look at how far up the fish actually swim when we do that subdivision. This is how far Fish and Game have said they swim. We'll have to work out those details. The Wetland Review Board was generally supportive of the idea. There are forested wetlands. We'll need to go through the Army Corps of Engineers at some point.

In November 2014 I wrote a memo about the subdivision and how we can stimulate the housing market. There are a lot of ways to go at it. At Lena we've been selling them by sealed competitive bid. To stimulate housing, we could sell by lottery where everyone would know the price. Then we could offer a rebate, if they build a house and get certificate of occupancy within 2-3 years of purchase, then we'd give a purchase refund of about 20%. For developers we could sell a block of 5-10 lots and also sell individual lots. If people want to buy them, build on them and then sell them, then great, the community would get more housing. The rebate would be a hit on the Lands Fund but it's also bringing in funds via property tax.

How does the equal area land trade pencil out? Based on old assessments, .9 acres of land, our land \$7,742 for .9 acres and the church \$11,262 for .9 acres. With sewer hookup being about \$3,500 it makes it about equal.

Mr. Nankervis: It's interesting to look at some of the way to get them out there. You're idea, 20% off the sale price. For the developers, the tax abatement for subdivision development - I'm wondering if this property would qualify for that.

Mr. Chaney: If you're the developer, you can subdivide but wouldn't pay tax until they sell or something like that. It doesn't affect us because we don't pay property tax.

Mr. Nankervis: If we have a developer buys 5 lots in a row. Would they be paying taxes on them?

Mr. Chaney: My answer would be that they pay taxes on it. I hadn't really thought about that.

Generally if you buy land you pay taxes.

Mr. Nankervis: If we subdivide it.

Mr. Kiehl: If we were to sell large blocks and then someone else subdivides it, then that would be applicable. Not something for tonight, but something we should discuss.

In terms of coming back to the question of access, is it still your understanding that we're going to build the road and utilities.

Mr. Chaney: Once we own the land, we could either build the road ourselves, or we could develop a public private partnership. What I'm concerned about with building the road is that there's no money in this. It's super expensive with no return. If they were to take a larger chunk, maybe it would pan out eventually. If they subdivide and build houses it's kind of a wash. We may be able to get a partner, may not, but we still need access. We'll still be on the hook for this part.

Mr. Kiehl: The analysis that previous Lands Committees looked at was City funding to build the road to the property lot to the subdivided pieces.

Mr. Chaney: That's the impression I've been moving forward under. We could entertain options from the private sector. The process for going to go out to get partners and developing those agreements takes time. I thought we wanted to get lots on the market. Or we can get proposals. If we were to do it in phases, the first phase is expensive. But as a private sector developer it would be more attractive to build around that. I can do some analysis if needed. As far as the access, I don't see another way around it.

Mr. Kiehl: This access vs. the other access. The rough estimate is that the two potential routes would have comparable costs to construct. Do you have a rough estimate of how much?

Mr. Chaney: I don't feel comfortable quoting the numbers. I've been told with a lot of variables. We don't know what we're going to get into in terms of soils. There will be a lot of engineering to get in there. It's probably 1/4 to 1/2 a million to get access to the site. We're going to have to

improve the intersection. The road has to be built to a high standard because it accesses the whole subdivision.

Mr. Jones: I don't want to delay the land swap, but DOT is getting ready to improve the road to Auke Bay. On that side of the highway there is the pedestrian path all the way out. How would that impact how the road might get designed for that intersection? Does that need to be part of DOT's plans? Is that an issue we need to think about now?

Mr. Chaney: We're already talking with DOT but they're already laying down the pedestrian path right now. That train already left the station.

Mr. Landry: PRAC was involved with that in getting the bike path. The bike path will be put in and part of development. I think it's in this year's funding.

Mr. Chaney: It won't be too difficult to re-engineer that area.

Mr. Landry: The new access that goes there is a trail that comes from Montana Creek access to within 50 yards of that. It dead ends at a closed gate. It would be nice to have a connection into that trail.

Mr. Chaney: This is a path here; it's intended to be a path for people from Swampy Acres to connect into the horse trail. It's not ideal to have a horse next to traffic. This will be the first part built. That is one feature. If you had school children, they could walk from here across the bridge to Riverbend or the high school.

Mr. Jones: Where are the nearest bus stops? The Comprehensive Plan there were some issues about incentives for developers for transit oriented development. There are some things CDD can do to enhance the development. I'm curious if this would be close enough to an area to be an asset to the development.

Mr. Chaney: I don't know exactly where it is. I think it's within a .25 mile.

Mr. Landry: There is one sign at the Sherwood Lane.

Mr. Chaney: It's definitely close to transit.

Mr. Nankervis: I think the church would prefer option 1. That makes the most sense to me as far as traffic flow. I know a city had a gravel pit and could get fill relatively cheap. Option 1 looks good to me.

Mr. Kiehl: Is that a motion?

Mr. Nankervis: I move option number 1 from this committee to the Assembly.

Ms. Becker: You wanted a motion on the exchange?

Mr. Nankervis: Option 1 would give us the property on the east side of the church.

Mr. Chaney: I should have included on my slide the last part of my staff report, the staff recommendation of the land trade of .9 acres between the City and the Christ Evangelical Church of Juneau.

Mr. Nankervis: I can reword that motion: We approve the .9 acres of land swap that provide option 1 access to the Pederson Hill site and forward that to the Assembly.

Hearing no objection, motion passes.

VI. STAFF REPORTS

Mr. Chaney: I have been working feverously with the Army Corps to get the wetland permit for Switzer. A month ago I was told we would have the permit in two weeks. I've been on the phone with Anchorage re-writing our report again. Today they said two weeks again. I remain skeptical but hopeful.

VII. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

Liaisons Reports:

Mr. Peters: No report.

Mr. Peterson: No report.

Mr. Landry: The PRAC had their annual meeting last month. I've put some feelers out last for things they want to bring to Lands. I may have some items in the future.

Committee Member Reports:

Mr. Nankervis: I would like to know if Ms. Troll is still with us.

Ms. Troll: I do have a comment. In a previous Lands Committee meeting we requested the Planning Commission to look at residential zones for more daycare options. Since that time, myself and Debbie White have had a chance to look at ways to advance getting daycare facilities. I want to build on our previous action to consider conditional uses for daycares in D1, D3 and D5. Mr. Kiehl: The previous motion was to start a process for allowing larger daycares in all residential zones. Are you asking we dial that back?

Ms. Troll: No. I'm suggesting we provide a little more insight to let the Planning Commission know that in these particular zones it makes good sense to consider conditional use permits. We've been looking at this and we think these are some workable areas. Maybe the liaison can carry that focus or interest forward to them.

Mr. Peterson: Title 49 is working on that. I missed the last meeting. There is another Title 49 meeting this week and I will carry forward that message.

Mr. Jones: I've been asked by a couple people and I spoke with Mr. Chaney this afternoon. After the rezone to the properties on North Douglas there was discussion about what some of the plans are for the bench road. It starts on 6th Avenue that doesn't exist and goes to Eaglecrest. There was concern about the first couple miles on North Douglas highway that the zoning in that area that we bring some other type of access. I am bringing it to the Lands Committee. Mr. Chaney said that none of that road has been platted, or how that would feed into the bridge, or how people would go up onto the bench and come down. Nothing has been surveyed, platted or anything. It might be good to get some kind of report or something that we can give the people with concerns. If people know that there's a plan for the bench road, if we're going to continue to up the zoning in that area.

Mr. Chaney: Really quickly. All the work was done in the 80s when they thought we would have twice the population that we currently do. They were trying to figure out where we were going to put everyone. They thought Douglas Island is a good spot. These are very loose alignments. It would start in Douglas Townsite and connect at the end at Fish Creek Road. All this dark green is City property and it would give us tremendous property for new projects. It would be an expensive road to build. It's a big project and visionary project. If we had millions of dollars it's a good way to go. If in the future we get more residents or revenue, it's a great place for more development. The downside is that the bridge is already marginal. We would have to look at another improvement the bridge or second access across the channel.

Ms. Becker: Hasn't some of this been started at Eaglecrest? Or is that another trail?

Mr. Jones: I think that's the Treadwell Ditch Trail.

Mayor Sanford: If you're going to make recommendation to staff along the way and it's going to change directions that the Assembly has given as a whole, make sure you bring the recommendations to the Assembly so we can all vote and it comes from the whole Assembly and not just four of us. Don't change the goals of the Assembly that are already set by all nine of us.

VIII. ADJOURNMENT

The meeting adjourned at 5:43pm.

TITLE 49 COMMITTEE

PLANNING COMMISSION, CITY AND BOROUGH OF JUNEAU

MAY 6, 2015 MEETING, 5:00 PM – 7:30 PM

DOWNTOWN LIBRARY, LARGE MEETING ROOM

MEETING MINUTES



Committee Members Present

Nicole Grewe, Chair

Paul Voelckers

Michael Levine

Bill Peters

Committee Members Absent

Gordon Jackson, Alternate

Staff Members Present

Beth McKibben, Planning Manager

Allison Eddins, Planner

Public/Guests

Nikki Love, Association for the Education of Young Children

Judie Klemmetson, Health and Social Services Childcare Licensing

Israa Kako-Gehring, Gehring Nursery School

Reading of Agenda

- Motion by Voelckers to approve the agenda for May 6, 2015 meeting was seconded by Levine.
- The motion passed and the May 6th Agenda was approved.

Approval of Minutes

- Laura Boyce was not present at the April 10, 2015 meeting and should be removed from the April 10th minutes.
- Motion by Voelckers to approve the minutes with amendments was seconded by Levine.
- The motion passed and the April 10, 2015 minutes were approved.

Non-Agenda Item

- The Committee agreed that the decision to allow public comment at meetings should be left up to the discretion of the Chair.
- The Chair decided not to open the May 6th meeting to public comment.

Agenda Item – Childcare Facilities

Childcare Centers:

- Committee agreed to restrict childcare centers from having direct access to major arterial roads.
 - CDD staff has concerns about relying on ADT numbers. State data on average daily traffic counts is usually 12 to 18 months behind and there is no data for City streets.
- In order to avoid redundancy, the Committee does not want to require outdoor space.
 - The State already requires 75 square feet of outdoor space per child.
 - The Committee does want to require that the outdoor space be fenced.
- No further vegetative requirements will be placed on childcare facilities beyond what is required in CBJ 49.50.300
- No further buffering requirements will be placed on childcare facilities beyond what is required in Title 49.
- The Committee agreed to require one parking space per employee and one space for every 10 children served.
- The Committee does not want to include language that requires childcare facilities to be licensed by the State.
- Childcare facilities would be required to submit a snow storage and removal plan.
- The Committee had no changes to Staff's recommended standards for Conditional Use Permits.

In-Home Childcare:

- Strike the following language from the definition:
 - "At no time shall there be present a total of more than 12 resident and nonresident children under the age of 12".
 - The State monitors this, so including the language would be redundant.
- The Committee agreed that any required outdoor space be fenced.
 - The State only requires outdoor space for in-home facilities caring for 9 to 12 children.
- No further vegetative requirements will be placed on in-home childcare facilities beyond what is required in CBJ 49.50.300.
- In-home childcare facilities will not be required to submit a snow removal and storage plan.
- In addition to the parking requirements for residential units, one space per non-resident employee must be provided. Parking plans will be approved by CDD staff.
- The Committee agreed that back out parking should be allowed.

Items for Further Discussion:

- Crafting a Purpose Statement that makes the intent of the new language clear.
- Potential locations for childcare centers – safety, congestion and neighborhood harmony are the key issues.
- Changing the current definition of a church to allow them to operate childcare centers five days a week.
- TPU Issues
 - Assessing the impact of a new in-home childcare facility vs. an established in-home childcare facility increasing capacity.
 - Include *Transitional Housing for Women* and *Salvage yard* to the TPU and include a definition for transitional housing

Committee Member Comments/Questions

- The preferred times for future meetings are during the lunch hour or before Planning Commission meetings.
- Beth will send an email with possible dates for the next meeting.

Meeting adjourned at 7:30 pm

**Assembly Standing Committee
Public Works & Facilities Committee Meeting
May 4, 2015, 12:00 – 1:00 p.m.
City Hall Assembly Chambers**

Members Present: Jerry Nankervis (Chair), Karen Crane, Mary Becker, Loren Jones

Other Assembly Members: Mayor Sanford

Planning Commission Representative: Dennis Watson

Staff Present: Kim Kiefer (City Manager), Rob Steedle (Deputy City Manager), Rorie Watt, John Bohan, Rich Ritter, Ron King, Greg Smith, Michele Elfers, Tina Brown, Dave Crabtree, Kirk Duncan, Ed Foster, Samantha Stoughtenger, Hal Hart, Beth McKibben, Carl, Uchytel

I. Call to Order

Meeting called to order at 12:00 p.m.

II. Approval of Minutes

April 13, 2015 - Approved as corrected.

III. Public Participation on Non-Agenda Items

IV. Items for Action

A. Glacier Highway Water

Mr. Bohan and Mr. Watt spoke on the need for an appropriation of \$240,000 for the Glacier Highway Water project. Staff drafted an estimate prior to ADOT's design, and ADOT's estimate came in higher due to unknown factors of the project by the CBJ. The City's portion of the project will include upsizing the water line, which will improve our water flows in the Back Loop and Glacier Hwy areas, as a part of CBJ's project in conjunction with ADOT road work in the Fritz Cove/Auke Bay area. CBJ's portion of the project will be imbedded in the ADOT project with will go out to bid through ADOT. CBJ will do a reimbursable services agreement with ADOT to pay for the CBJ's portion.

Mr. Jones moved to forward the appropriation request of \$240,000 from the Tanner Terrace Road Construction project to the Backloop/Auke Bay Water Line project to the full Assembly for approval.

Hearing no objections, the motion passed.

B. Gastineau Apartments Demolition Appropriation

Mr. Watt spoke on the need to appropriate of \$100,000 from the Pedersen Hill Land Development Plan to a fund for demolition of the Gastineau Apartments. This puts the

money in place to streamline the process with the pending decisions the Assembly will be making.

Ms. Crane moved to forward the appropriation request of \$100,000 from the General Government Fund Balance to a fund for demolition of the Gastineau Apartments to the full Assembly for approval.

Hearing no objections, the motion passed.

V. Information Items

A. 1% for Art for Cruise Berths Project

Mr. Watt explained that since this is a high profile art project with a high dollar amount, the City Manager asked that we put it on the Agenda in case there were questions at the Committee level. Michele Elfers clarified that the art project would consist of 8 to 10 sculptures, depending on the price of certain elements. If this project is approved by the Assembly, they will proceed to final design.

Ms. Becker had concerns with the design as far as visualizing each sculpture's intended symbol. She likes the idea of lighting in the area, but she is not sure this is the best solution.

Ms. Elfers replied it has been suggested by the Art Panel that they could do some interpretive signs for the sculptures.

Mr. Jones asked about the other designs that were submitted and if they could view them electronically. He wondered about the Gateway approach for the art on the downtown dock with the native theme previously talked about and the Planning Commission's interest in keeping the historical theme in the downtown area, in relation to this type of modern art.

Mr. Watt explained the process of selecting art and how previously Staff made an attempt to put together a group of people to discuss the Gateway approach for the art on the downtown dock with a native theme and that it proved to be difficult to find participation.

Discussion ensued.

B. Rock Dump Zoning

Mr. Watt stated that you think that you are doing something good and obvious with the Rock Dump zoning, but then it doesn't turn out quite that way. In a previous PWFC meeting we had a presentation on street maintenance in the Borough and we have been talking a lot about our biosolids solutions, and that one of the things the Assembly identified as a priority was finding more industrial land. Staff felt that rezoning some of the lands near the Wastewater plant at the Rock dump made a lot of sense.

Staff submitted an application for this rezoning to the Planning Commission in January, which you may only submit an application for rezoning requests twice a year. There are a couple of acres of waterfront industrial land near the Rock Dump. The application

included a memo which stated that Staff would like to see this acreage rezoned to industrial or if there were changes to the permissible uses table that might make sense. Industrial land is very expensive—in the realm of \$600,000 per acre; we want to make our decisions as we move forward based on the lands we have available. The Planning Commission rejected the rezoning request, thinking that there were options for amending the permissible uses table. Staff realized that if they did not appeal the Planning Commission's decision, they would lose the opportunity to pursue this issue for a while. He would like the PWFC to ask the Planning Commission's Sub-Committee to consider at its Title 49 Committee whether a change to the permissible uses table would be a good tool or not. Not only is industrial land rare, but also waterfront industrial land. Staff is looking for a way to step through the process and do it in a way that is productive and respectful of the Commission's efforts.

Mr. Watson spoke on the issue of waterfront industrial property being in high demand not only by the City but by others. This was the primary reason that the Commission rejected the zoning change. He felt that there could be other options included a Conditional Use Permit. In addition the Assembly can proceed with a rezoning request at any time.

Discussion ensued.

C. Vista Del Mar/Waydelich Creek Sewer

Mr. Watt spoke on a large tract of land in the Auke Bay/Statter Harbor area that a developer has an opportunity to buy from a property ownership group that presents some good possibilities for housing development. The developer is interested in municipal sewer. The City has done some preliminary design work for sewer in this area. There is not an easy way to do a small sewer project that would be affordable. An approximate estimate for sewer in this area would be about a 3 to 6 million dollar project, lower end more people pumping and higher end less people pumping. This piece of property is transitionally zoned, so the developer is trying to figure out if they can get the property zoned differently, which could only happen if the sewer is in. Staff has come up with a concept, which includes running a pipe trestle across Wadley Creek; which is a deep creek from where the current sewer ends; across the corner of the property and serve most of this property with gravity sewer. The City would provide the trestle, estimated to cost approximately \$50,000 to \$100,000. We feel this is in line with a Capital Improvement by agreement. The Auke Bay Treatment Plant can handle the new sewer load up to a certain point.

D. Right of Way Management/Maintenance Costs

Mr. Foster talked about continuing the view that Staff is trying to do the best they can on each project to save money, with the public having to realize that we have the best interest of the City when we request a resident to make changes to their mailbox area, in order to avoid rocks or other debris clogging up snowplows, which can be a costly fix. The Streets Department typically notifies residents of these hazards in the right-of-way.

E. Streets/Transit

Mr. Watt spoke on an internal restructuring and assignation of operational duties of both Street Maintenance and Transit to Ed Foster. This organizational change is based on

functionality: we are grouping like functions, vehicle maintenance, hiring and training of operators with commercial driver licenses. But, not all of Transit fits under operations. Episodically, the Assembly and public are interested in developing and changing the Transit system. The responsibility for coordinating with the Assembly and developing future Transit development plans will fall to the Department Director. Since the Department Director is very closely connected to the Manager and Assembly, this change will result in a better communication between Transit and the Assembly.

Ms. Crane feels that we need a Transit Professional who has worked previously with a transit system, someone who can come in and learn the system and who knows changes that are happening within the transit industry today. Ms. Crane would like to see any savings from the operational change go back to Transit system.

Mr. Watt believes that the State's economic situation makes it unlikely that there will be significant additional funding for Transit. We will continue to operate the two programs, which are doing nearly identical services; having one person overseeing both operations makes sense. We will continue to look for system efficiencies and will update the Assembly in June on a variety of Transit issues.

VI. Contracts Division Activity Report

Ms. Crane asked what the Juneau Energy Plan was.

Ms. McKibben spoke on the Climate Action Plan recommendation for an energy plan, which was included as one of the action items in the Sustainability Chapter from the 2013 update to the Comprehensive Plan. Ms. McKibben will write up a summary showing what the Juneau Energy Plan should include and provide it to the PWFC members.

Mr. Watt will send an email to the PWFC members describing the Change Order for the Library.

VII. Adjournment – Next Meeting Scheduled

Next meeting is scheduled for June 22, 2015.

TITLE 49 COMMITTEE

PLANNING COMMISSION, CITY AND BOROUGH OF JUNEAU

MAY 26, 2015 MEETING, 5:00 PM – 6:35 PM

MARINE VIEW BUILDING, 4TH FLOOR

MEETING MINUTES



Committee Members Present

Nicole Grewe (Chair)

Paul Voelckers

Michael Levine

Bill Peters

Assembly Members Present

Jesse Kiehl, District 1 Assembly Member

Loren Jones, District 1 Assembly Member

Staff Members Present

Beth McKibben, Planning Manager

Allison Eddins, Planner I

Reading of Agenda

- Motion by Voelckers to approve the agenda for May 26, 2015 meeting was seconded by Levine.
- The motion passed and the May 26th Agenda was approved.

Approval of Minutes

- Motion by Peters to approve the minutes with amendments was seconded by Levine.
- The motion passed and the May 6, 2015 minutes were approved.

Agenda Item – Childcare Facilities

- It was decided unanimously that this would be the last Title 49 meeting about child care facilities before the issue goes to the full Planning Commission.
- Following the May 6, 2015 meeting, CBJ Law Department amended slightly the definitions of *child care center* and *child care home*. Special use regulations and use specific standards related to child care will also be reviewed by Law.
- The Committee discussed at length the proposed amendments to the Table of Permissible Uses:
 - It was decided to leave *1.540 Adult; 9 to 12 people, 12 years and older* in the TPU.
 - Voelckers expressed concern about *7.300 Day Care Centers*.

7.300	Child and day care centers for children and adults	3	3	3	3	3	3	3	3	1,3	1,3	1,3	1,3			
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It was suggested by Voelckers to separate child care centers and adult care centers in the TPU. The Committee agreed unanimously and the following was recommended:

7.300	<u>Adult</u> Day Care Centers	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	3	3	3	3	3	3	3			
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7.350	<u>Child</u> care centers	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	3	3	3	3	3	3	3			
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- Levine expressed a strong preference to focus on child care centers and reserve further discussion on adult care centers until the Committee gets clarification on State licensing issues regarding adult care.
- Levine moved to adopt changes to 1.51 and 1.52 as drafted by CDD Staff. The motion was seconded by Peters. Grewe offered an amendment that would require Conditional Use Permits for child care homes in residential districts, stating the importance of public notice and public comment. The motion passed without Grewe's amendments. The Committee recommends the following:

1.500	<u>Child and</u> Day care homes															
	1.510 Child; <u>12</u> 8-or fewer under the age of 12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1.520 Child; 9 to 12 children under the age of 12	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>

- The Committee then discussed use specific standards related to child care centers:
 - The CUP process for child care centers will ensure that standards like fencing, parking, lighting and vegetative buffers are reviewed for neighborhood harmony and consistency.
 - The Committee would like to encourage child care centers in churches to operate five (5) days a week. Requiring these centers to go through the CUP process would allow Staff to analyze the impact of the surrounding neighborhood.

Meeting adjourned at 6:35 pm

Next Meeting will be June 12, 2015 at 11:30 am

**DRAFT MINUTES
CITY AND BOROUGH OF JUNEAU
MARIJUANA COMMITTEE
WORK SESSION**

**Thursday, May 21, 2015, 6:00 p.m.
City Hall Assembly Chambers**

I. ROLL CALL

The meeting was called to order by Chair Jesse Kiehl at 6:04p.m.

Committee members present: Chair Jesse Kiehl; Mary Becker; Maria Gladziszewski; Vice Chair, Mike Satre; and Debbie White (by telephonic participation). Bill Peters was absent.

Staff present: Kim Kiefer, Manager; Rob Steedle, Deputy Manager; Amy Mead, City Attorney; Chief Bryce Johnson; Deb Senn, Law Office Manager/Clerk; and Beth McKibben, Planning Manager, Community Development Department.

II. APPROVAL OF AGENDA

The agenda was approved as written.

III. APPROVAL OF MINUTES

The Minutes from the May 7, 2015 Marijuana Committee meeting will be presented at the next regular Committee meeting.

IV. PUBLIC PARTICIPATION

(Limited to 20 minutes, three minutes per speaker)

Benjamin Wilcox – Mr. Wilcox stated his concerns regarding space for the marijuana industry in areas zoned Waterfront Commercial. He had addressed the Planning Commission recently regarding the number and type of businesses in the areas zoned Waterfront Commercial. He walked from the Juneau-Douglas Bridge to the Twisted Fish Restaurant and counted over 35 different types of businesses, and he counted about 50 businesses altogether. He stated, by his count, only five businesses met the criteria of being water oriented, water dependent, or water related. He said that marijuana meets all three criteria, and marijuana establishments should be allowed in areas zoned Waterfront Commercial.

Mr. Wilcox went on to say that he was in Anchorage recently to attend the Northwest Cannabis Classic (NWCC), and had a wonderful experience. He has bartended for nearly 27 years. While at a party sponsored by Pot Luck Events in downtown Anchorage, he noted that the hosts had created an environment where marijuana was shared, samples were provided, and consumption rate was unregulated. Unlike issues he has typically seen in bars, there were no problems. Nobody passed out, nobody got sick, there were no fights, and nobody argued.

Adam Burke – Mr. Burke stated he also wanted to know more about the planning and zoning for marijuana establishments. He stated that tourists will be looking for such establishments. He thanked the Committee for their work on legalized marijuana issues and went on to explain his personal stance on use. He said it is a civil rights issue, and although some people may not care for marijuana, he “is cannabis” - he is a teacher, a husband, a father, and, at the end of the day, he smokes weed.

Gavin Burke – Mr. Burke agreed with the zoning concerns voiced by Mr. Wilcox and his brother, Adam Burke, particularly regarding waterfront zoning issues. He stated that all businesses need to be held to the same standard across the board as to zoning. He stated that zoning is a great concern to many people in the industry.

John Nemeth – Mr. Nemeth is a new Juneau resident from Phoenix, Arizona. He said he is very excited about the new legislation and he is also interested in zoning along the waterfront. He noted a need to attract people to downtown Juneau year-round. He said a huge focus of his business will be charity around the community, and also meeting the medical marijuana needs of people with illnesses. He stated that he is glad to see the State of Alaska being so progressive and that he is honored to be a part of it.

Ariel Chamberlin – Ms. Chamberlin stated she has been traveling around the country for the last three years observing medical and recreational marijuana issues. She stated that there is a great opportunity in Alaska. She stated she has seen what works and what has not worked in Colorado. She said she'd like to help the Committee with zoning issues. She stated the revenue generated will put money back into the community, draw people to Alaska, build up Alaska, and will improve schools and roads. She stated the money should stay in Alaska.

Chad Fishel – Mr. Fishel asked if the Committee had met with the citizens who offered to share their expertise on the industry.

Chair Kiehl requested that questions be posed after the public comment period.

Mr. Fishel stated that the other state ordinances within the meeting packet do not compare in any way to Juneau's land size and population. He stated that the buffer zones on the draft maps would eliminate half the property available for marijuana-related business. He stated a 200 foot buffer similar to that used for alcohol would provide for more business opportunity.

Mr. Satre stated that he has been reading the emails received via the Marijuana Committee email address. A lot of information has been sent to the Committee and he appreciates that information.

Mr. Satre continued by noting the first draft of the State regulations went out this week and the CBJ is waiting for those regulations to be finalized. There may be issues that the State takes out of the CBJ's (local government's) hands. What comes out of the Marijuana Committee will not be the end of the process. The portions that modify Title 49 will go before the Planning Commission, and there will also be a public process that goes through the Planning Commission. The Assembly will have a great deal of work pertaining to local licensing and taxation issues. The sample ordinances do not mean that is the direction the Committee is going, they were provided as samples of legislation from other jurisdictions. The draft zoning maps are to give the Committee a feel for what the community may look like with different buffer zone sizes.

V. AGENDA TOPICS

A. Community Development Department presentation, by Beth McKibben, Planning Manager - Marijuana Establishments and Buffers

See presentation materials at:

<http://www.juneau.org/clerk/ASC/MARIJUANA/20150521MC.php>

Discussion included review of the draft zoning district maps illustrating where marijuana related businesses might be allowed, by color (green is allowed, white is not allowed – primarily residential districts); also depicted are buffer zone determinations for sensitive areas, such as churches, schools, and licensed childcare facilities, and zoning for cultivation, testing and processing, retail and clubs, and conditional use applications.

Ms. Mead stated that for purposes of the Committee's work, CBJ is using the State of Alaska's Title 4 (Alcohol regulations) for determining sensitive areas.

Ms. McKibben stated that a childcare facility with up to 12 children is required to be in a home, and the majority will be in residential districts. A childcare facility with 13 or more children will likely be in a non-residential or other zoning district.

Mr. Satre stated that in Douglas the 200-foot buffer would provide land for marijuana-related businesses, a larger buffer would not. He stated that, potentially, there is land for cultivation businesses outside the Urban Service Boundary, which ends in the Auke Bay area, and in remote locations such as near Tee Harbor and out the road, and potentially on the north end of Douglas Island.

Ms. White stated that cultivation businesses would need a certain lot size and would need to consider the issue of odor.

Chair Kiehl stated that he needs to better understand how the Waterfront Commercial determination process works – determining a business to be water-related, water-dependent, or water-oriented.

Mr. Satre stated that determinations could have been made based on a property's Conditional Use Permit, or the old Allowable Use Permit, on a case-by-case basis on each individual permit, and may differ from property to property.

Ms. Mead stated that CBJ 49.25.250, the zoning designation for Waterfront districts, does specify types of activities in the Waterfront Commercial district to include retail services directly linked to a maritime clientele.

Ms. White requested that the map be modified for Waterfront Commercial (WC) and Waterfront Industrial (WI) to be shown in the green area.

Chair Kiehl stated the Committee requested revised maps with Waterfront Commercial and Waterfront Industrial included – each to be a different color.

Hearing no objection, Chair Kiehl requested staff to include 3^N in Waterfront Commercial (3^N = conditional use permit – the 'N' is language tied to the waterfront or waterfront clientele) for marijuana retail on the draft Table of Permissible Uses, with the understanding that these proposed changes will be sent to the Planning Commission for their expertise.

Ms. Gladziszewski requested that the 1,000-foot buffer be removed from the buffer maps, as it is too large for the Juneau area.

Hearing no objection, Ms. Gladziszewski requested a Retail and Club map showing WI and WC in different colors, a Cultivation map, and a Testing and Processing map. The buffers requested were 200-foot and 500-foot.

Ms. Mead asked the Committee if they wanted to limit sensitive areas to those listed in Title 4, which would be different than how Washington and Colorado regulate.

Mr. Satre stated he preferred to keep sensitive areas the same as those listed in Title 4. He stated that the CBJ can always add to the list later.

Ms. Becker requested that childcare remain a buffered zone on the maps.

Hearing no objection, Chair Kiehl directed staff to retain the childcare facilities on the maps as a buffered zone for future discussion.

Hearing no objection, Mr. Satre requested staff to include D1 lands for cultivation outside of the Urban Service Boundary on the Cultivation map, and to change the TPU to include the D1 lands as well.

Chair Kiehl stated the Committee will vote on a recommendation to the Planning Commission at the next Marijuana Committee meeting on June 8th.

B. Marijuana Regulation and Licensing - Colorado and Washington Legislation

- City of Telluride, Colorado - Ordinance No. 1394
- Town of Pagosa Springs, Colorado – Ordinance No. 825
- Steamboat Springs, Colorado – Chapter 12, Art. III
- City of Bellevue, Washington – Ordinance No. 6133 B-1
- City of Union Gap, Washington – Ordinance No. 2861

See presentation materials at:

<http://www.juneau.org/clerk/ASC/MARIJUANA/20150521MC.php>

Ms. McKibben stated that the sample ordinances are meant to provide an array of different approaches by other municipalities. One primary difference is that Colorado uses local licensing as a primary source of regulating marijuana-related businesses and Washington does not. Local licensing can go far beyond what land use codes can regulate.

Ms. Mead stated that the majority of sample codes provided do relate to licensing. There are pieces from each of the codes that may relate to CBJ's potential Special Use chapter, such as regulations relating to public health, safety, and welfare. These are things that could be contained in CBJ's Land Use Code (such as regulations on signage, odor, security, and bookkeeping requirements).

Ms. Mead stated it would be helpful to compile a list of issues that other communities have regulated, detailing those that aren't addressed in the TPU, and provide those to the Committee to consider.

Hearing no objection, Chair Kiehl requested that the list specify what can be done through the Land Use Code and what can be done only through licensing. Valuable examples would be the bookkeeping requirements and the inspections to premises.

Ms. Mead stated there are provisions for the inspections within Title 49 and also in Title 19. Depending on what the inspectors are looking for (marijuana-related), additional provisions for inspection could be included in Title 49.

VI. COMMITTEE MEMBER COMMENTS AND QUESTIONS

Mr. Satre stated he will name a new Marijuana Committee member at Tuesday's Planning Commission meeting to fill the vacancy left by Mr. Jackson.

Chair Kiehl stated that the first round of draft regulations from the State primarily covers local options of opting in or out, and licenses. He encouraged the Committee to review the draft regulations. If there is some portion of the draft regulations that the CBJ needs to weigh in on, please bring that forward to the Committee. The Committee will then take those comments to the Assembly and the Assembly, as a body, will comment on the State regulations. Those in the public can talk to the State individually as needed.

Chair Kiehl pointed out one very interesting regulation to flag – one that lets a municipality opt out of the sale of marijuana and marijuana products, except on premises operated by the municipality under a retail marijuana license. That contemplates a smaller community where the city wants to run the marijuana product store. Possibly, a city would contract out operations to a licensee. He asked that the Committee think about this for discussion at the next meeting.

Ms. Becker complimented Chair Kiehl on his presentation on marijuana at the Chamber of Commerce meeting on May 21st.

VII. ADJOURNMENT

The meeting was adjourned at 7:18pm

**DRAFT MINUTES
CITY AND BOROUGH OF JUNEAU
MARIJUANA COMMITTEE
WORK SESSION**

**Thursday, June 4, 2015, 6:00 p.m.
City Hall Assembly Chambers**

I. ROLL CALL

The meeting was called to order by Chair Jesse Kiehl at 6:06 p.m.

Committee members present: Chair Jesse Kiehl, Vice Chair Mike Satre, Debbie White, Bill Peters, Mary Becker (telephonically), Maria Gladziszewski (telephonically). A new Marijuana Committee member from the Planning Commission will be selected at the next Planning Commission meeting. The new Committee member will fill the vacant seat left by Gordon Jackson.

Staff present: Loren Jones, Assemblymember; Kim Kiefer, Manager; Rob Steedle, Deputy Manager; Amy Mead, Municipal Attorney; Hal Hart, Director, Community Development Department (CDD); Beth McKibben, Planning Manager, CDD; Chrissy McNally, Planner I, CDD.

II. APPROVAL OF AGENDA

Chair Kiehl requested that review of the May 21, 2015 draft minutes be deferred until next regular Marijuana Committee meeting.

The agenda was approved as presented.

III. APPROVAL OF MINUTES

MOTION by Mr. Peters to approve the May 7, 2015 draft minutes and asked for unanimous consent.

Ms. Becker noted one non-substantive change to the May 7, 2015 draft minutes.

Chair Kiehl stated that the minutes from the May 7, 2015 meeting are approved with one non-substantive change from Ms. Becker.

IV. PUBLIC PARTICIPATION *(Limited to 20 minutes, four minutes per speaker)*

Ariel Chamberlin – Ms. Chamberlin stated that she had reviewed the Committee's zoning maps and noted that no crossover existed between cultivation and retail. While she was in Colorado she spoke with a number of dispensary operators who stated they had a choice by law whether to cultivate on-site or off-site, but they had to be within the same district. For example, an owner of one store in Denver had to have their cultivation facility within Denver proper. If an owner had

stores in multiple locations, in Boulder and Fort Collins for example, they had to have separate grow facilities.

Ms. Chamberlin stated many small grows (100 plants approximately) were located in the same facility with the retail store. She stated that there is great opportunity to grow the local economy and throughout Alaska.

Ms. Chamberlin stated that keeping grow operations local rather than shipping product from one community to another within Alaska made sense. She stated that establishing facilities on the islands in the Juneau area, such as Lincoln Island, could be an option depending on ownership of the islands. The island location would help with the odor and fears of theft.

Ms. Chamberlin stated again that crossover between retail and cultivation could be included within the Valley and Lemon Creek/brewery areas. She also noted that a business related to medical marijuana could be established near the hospital area and requested discussion in relation to medical tests for epilepsy or cancer, rather than recreational use.

Adam Burke – Mr. Burke stated that odor has been a concern during discussions. He stated that at the cultivation level odor will not be an issue due to the use of large carbon filters. He stated that users smoking in public will be the primary source of odor. He stated that in Seattle the obvious marijuana odor is from users who are smoking in public not from marijuana facilities. Mr. Burke thanked the Committee for their part in making Alaska history with the implementation of legalized marijuana.

V. AGENDA TOPICS

A. Community Development Department presentation, by Chrissy McNally, Planner Marijuana Establishments and Buffers

- Staff Memo
- Downtown Juneau – Douglas Zoning Map
- Mendenhall Valley – Lemon Creek Zoning Map
- Auke Bay – Tee Harbor Zoning Map
- Tee Harbor – Echo Cove Zoning Map
- Draft Marijuana Cultivation and Retail Buffer Zone Maps
 - Downtown Juneau – Douglas – Lemon Creek Cultivation Map
 - Mendenhall Valley – Amalga Harbor Cultivation Map
 - Downtown Juneau – Douglas – Lemon Creek Retail and Club Map
 - Mendenhall Valley - Auke Bay - Tee Harbor Retail and Club Map
 - Downtown Juneau – Douglas – Lemon Creek Testing and Processing Map
 - Mendenhall Valley – Auke Bay Testing and Processing Map
- Church Buffer Zone Map
- Current Table of Permissible Uses
- Revised Table of Permissible Uses including Marijuana

See presentation materials at:

<http://www.juneau.org/clerk/ASC/MARIJUANA/20150604MC.php>

Ms. McNally discussed the materials provided to the Committee. She stated that clarification was needed regarding Title 4 and the regulation of liquor establishments.

Ms. McNally stated that Title 4 creates a 200 foot buffer around schools and churches. Schools and churches are measured differently. Schools are measured from the property line to the front door of the alcohol establishment; and churches are measured from the front door of the church to the front door of the alcohol establishment. This applies only to package stores and bars, the brewery for example would not have a buffer around it.

Ms. McNally stated that the revised map for Cultivation illustrates the D1 district for cultivation outside of the Urban Service Boundary (USB), including Thane, North Douglas, Tee Harbor, out the road past the Shrine of St. Therese, and Shelter Island. Discussion continued regarding the Table of Permissible Uses (TPU) and how the TPU would be amended to allow for cultivation in certain districts.

Ms. McNally stated that there were no changes made to the proposed TPU for processing and testing. The Processing and Testing map was not changed except to eliminate the 1,000 foot buffer at the recommendation of the Committee. The 200 foot and 500 foot buffers remain on the proposed map.

Ms. McNally stated that the Retail and Club map(s) have several additions, which include the elimination of the 1,000 foot buffer and the addition of Waterfront Industrial (WI) along the Rock Dump area and Waterfront Commercial (WC) along the Downtown waterfront and on North Douglas at the Channel side in front of Bonnie Brae Subdivision.

Ms. McNally stated that out the road there is an area in Tee Harbor that is WC, and an area in Auke Bay which is also WC. A 3^N was also added to the TPU.

Ms. McNally recited various land use definitions found in Title 49, which are provided in the materials for this meeting.

Chair Kiehl stated the Assembly will review the Committee's recommendations before moving to the Planning Commission.

Chair Kiehl asked the Committee for discussion on buffer zones, an opinion on the allowable zones illustrated on the maps, and amendments to the TPU for moving forward to the Planning Commission.

Ms. White stated that a decision was needed regarding the buffer zone from the front door or property boundary.

Mr. Satre stated that the State will tell CBJ what the minimum buffers will be. He stated that the Committee currently has the 200 foot and 500 foot buffer options. The decision on buffer zones can be decided once the State law is finalized.

Chair Kiehl requested that the Committee recommend a minimum buffer for the Planning Commission's consideration.

Chair Kiehl stated that buffers for marijuana establishments should be from the property boundary to avoid "straw buyers" and advertising signs – he stated that distance is important.

Ms. Gladziszewski stated that the CBJ geography would eliminate much of the area from schools. She stated that she is in favor of a 200 foot buffer from the property boundary, the same as the current 200 foot buffer from the boundary for alcohol.

Ms. Becker stated that she agrees a minimum buffer should be from the property line boundary.

Chair Kiehl stated that the current alcohol buffers are actually split. The alcohol buffers are from the front door of an alcohol establishment to the property line of a school, or from the front door of an alcohol establishment to the front door of a church.

MOTION by Mr. Peters to use the property boundary and not the front door, and that we look to the 200 foot minimum, or to the minimum established by the State when the regulation is adopted, and forward this recommendation to the Planning Commission.

OBJECTION to the motion by Mr. Satre. Mr. Satre stated that the intent of the initiative was to regulate marijuana like alcohol, and that the State regulation will reflect that.

Roll call:

Aye: Ms. Becker, Ms. Gladziszewski, Chair Kiehl, Mr. Peters, Ms. White

Nay: Mr. Satre

Motion passed, 5 ayes, 1 nay.

Chair Kiehl asked for consensus from the Committee to forward the current working draft buffer zone maps to the Planning Commission.

Ms. Mead stated that there is a separate category for marijuana clubs, and there are two issues for the Committee or the Planning Commission to address regarding marijuana clubs 1) the Assembly will need to address the second-hand smoke code for smoking clubs, and 2) whether or not there is a basis to regulate marijuana clubs differently from smoking clubs. The issue of marijuana clubs may be broader than simply amending the TPU.

Chair Kiehl called on Ms. Becker for her comments regarding the issue of marijuana clubs.

Ms. Becker stated she is concerned that the smoking ordinance may be jeopardized by giving a club to one particular group of people. She stated that she is not in favor of the Committee discussing marijuana clubs at this time. She stated it will take more discussion.

Ms. Gladziszewski stated that she agrees with Ms. Becker. She stated that the club issue could take a lot of time to sort out. She suggested that the Committee revisit the marijuana club issue later.

Ms. White stated that the marijuana club issue will take one entire meeting of its own, and agreed to hold discussion until a later meeting.

MOTION by Chair Kiehl to table Committee discussion regarding marijuana clubs until a future meeting.

Hearing no objection, the motion passed by consensus.

Chair Kiehl asked Ms. McNally to refresh his memory regarding cultivation in Rural Reserve – specifically why would CBJ not allow processing in the Rural Reserve district for onsite drying, trimming, and processing.

Ms. McNally stated that in talks with other communities, processing was most like manufacturing within the TPU, with low intensity (drying processes) and high intensity (extraction). Definitions are established to allow some cross-over within Rural Reserve districts up to the point where it would have impacts on surrounding properties.

Chair Kiehl stated that precise definitions will be a point for the Planning Commission to reflect on.

MOTION by Mr. Satre to move the draft buffer zone maps and draft TPU, with the exception of the marijuana clubs as previously discussed, to the Assembly for its review and forwarding on to the Planning Commission.

Hearing no objection, the motion passed by consensus.

Mr. Satre complimented staff on the draft maps and the draft TPU, both of which illustrate the addition of marijuana establishments within the TPU and CBJ zoning districts.

Mr. Kiehl stated that he will work with staff to draft a short memo to the Assembly for their consideration, and potentially forwarding on the Committee's recommendations to the Planning Commission.

Ms. McNally inquired if the 500 foot buffer should be included on the maps.

Chair Kiehl clarified that per the earlier motion by Mr. Peters, the 500 foot buffer should be excluded from the maps to be forwarded to the Assembly and Planning Commission. He thanked staff for their work and stated that this may not be the last time staff hears from the Marijuana Committee.

- B. Law Department materials, provided by Municipal Attorney, Amy Mead
- Draft ordinance entitled 'An Ordinance Amending the Land Use Code Relating to Marijuana Establishments
 - CBJ 49.70.905 Coastal development

See presentation materials at:

<http://www.juneau.org/clerk/ASC/MARIJUANA/20150604MC.php>

Ms. Mead stated that the purpose of the draft ordinance was to give the Committee an idea of what the ordinance would look like. There will be amendments to the TPU and also a specific use chapter related to marijuana establishments.

Ms. Mead stated that other materials included in the packet were from the Coastal Management Plan, CBJ 49.70.905 Coastal development. She stated her legislative research topic was water-oriented uses and commercial retail in waterfront areas, and the research went as far back as 1987. She stated the concepts are currently embodied in CBJ 49.25 as illustrated by Ms. McNally, and the concepts in the Coastal Management Plan in CBJ 49.70 have all been

consistent. She stated research showed that since 1987 if an industry catered to cruise ship passengers the industry was properly in the Waterfront Commercial area.

Mr. Satre asked if a retail shop is allowed in Waterfront Commercial would that shop owner specify in their application that their industry delivered to a water-dependent clientele.

Ms. Mead stated that this would be something the Planning Commission and Assembly would consider in general. She stated that if the marijuana retail industry will receive business from the cruise ship passengers, and if that business enhances the waterfront area, then that area is open to those types of businesses.

Chair Kiehl stated the draft regulations from the State provided for possibility to allow a municipality to hold all retail licenses to operate businesses themselves, or to contract to commercial businesses. He stated that all of the examples from Colorado are instances of dual licensing – they have both state and local licenses. He stated that local license allows a local government to act more quickly if there is a ‘bad actor’ in the industry. He stated that local licenses do not exist as the law is currently written. He asked what would be legally necessary from CBJ to write those contracts, would CBJ need the same special use permit process?

Ms. Mead stated that the initiative is very specific on when a municipality can issue a license. As a Home Rule Municipality CBJ can do anything not prohibited by law. She stated that the initiative does not prohibit a dual license. She stated there could be a contract between CBJ and the operators tailored to the types of operations. Ms. Mead stated that the CBJ would be the applicant and would obtain the permit to operate the facility, and CBJ would stand in the shoes of the operator.

Chair Kiehl stated that he is not interested in running warehouses or retail shops with CBJ employees.

Ms. White stated that her alarm bells were sounding off in regards to Risk Management.

Ms. Kiefer stated CBJ will look at the use of business licenses for operators of marijuana establishments. She stated that if the contract includes language that the facility is operated by the municipality then risk management is involved – a business license to independent operators mitigates that risk.

Chair Kiehl scheduled the next meeting for June 18, 2015. He stated that Fire Chief Etheridge and Fire Marshal Dan Jager will attend the next Committee meeting to discuss fire codes, and answer questions about fire safety, especially with regard to extraction processes, and the current CBJ Code application.

VI. COMMITTEE MEMBER COMMENTS AND QUESTIONS

No further comments.

VII. ADJOURNMENT

The meeting was adjourned at 6:59 p.m.