

# Agenda

## Planning Commission - Regular Meeting City and Borough of Juneau

August 28, 2018  
Assembly Chambers  
7:00 PM

- I. ROLL CALL
- II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA
- III. APPROVAL OF MINUTES
  - A. July 10, 2018 DRAFT Minutes - Regular Planning Commission
  - B. June 26, 2018 Draft Minutes - Regular Planning Commission
- IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS
- V. ITEMS FOR RECONSIDERATION
- VI. CONSENT AGENDA
- VII. UNFINISHED BUSINESS
- VIII. REGULAR AGENDA
  - A. **\*\*CASE HAS BEEN WITHDRAWN\*\*** First Hearing of APL2018 0001: An appeal of a Director's decision regarding BLD2018 0055
  - B. First Hearing of APL2018 0003: An appeal of Director's determination regarding USE2011 0015
- IX. BOARD OF ADJUSTMENT
- X. OTHER BUSINESS
- XI. STAFF REPORTS
- XII. COMMITTEE REPORTS
- XIII. LIAISON REPORT
- XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS
- XV. PLANNING COMMISSION COMMENTS AND QUESTIONS
- XVI. EXECUTIVE SESSION
- XVII. ADJOURNMENT

Agenda  
**Planning Commission**  
***Regular Meeting***  
CITY AND BOROUGH OF JUNEAU  
*Ben Haight, Chairman*  
July 10, 2018

**I. ROLL CALL**

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:11 p.m.

**Commissioners present:** Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Percy Frisby, Dan Hickok, Dan Miller, Andrew Campbell, Carl Greene

**Commissioners absent:** None

**Staff present:** Jill Maclean, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Tim Felstead, Planner II; Robert Palmer, Assistant Attorney II

**Assembly members:** Loren Jones, Beth Weldon

**II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA - None**

**III. APPROVAL OF MINUTES**

A. June 12, 2018 Draft Minutes – Regular Planning Commission Meeting

**MOTION:** *by Mr. LeVine, to approve the Planning Commission, June 12, 2018, regular meeting minutes, with any minor edits by Commission member or staff.*

***The motion passed with no objection.***

**IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None**

**V. ITEMS FOR RECONSIDERATION - None**

**VI. CONSENT AGENDA - None**

VII. **UNFINISHED BUSINESS** - None

VIII. **REGULAR AGENDA**

**APL2018 0002:** Appeal of Director's determination regarding Condition 5 of USE2018 0001

**Appellant:** Ken Williamson

Mr. Palmer presented to the Commission the four different decisions it can make regarding this appeal. The appeal before the Commission stems from the June 4, 2018, Community Development Department Director's decision regarding parking requirements. The Commission has one primary decision to make, and depending upon what that decision is, there may be three subsequent decisions, said Mr. Palmer.

- *Does the Commission want to accept or reject the appeal?*  
Title 49 provides fairly strong language suggesting that an appeal should be accepted unless it presents only minor or routine issues. It should be clear from the notice of appeal and any evidence offered that the decision of appeal was supported by substantial evidence and involved no policy error or abusive discretion, said Mr. Palmer. If the Commission is leaning towards rejecting the appeal, then both the Community Development Department (CDD) and Mr. Williamson have the right to influence the Commission with their opinions, said Mr. Palmer. If the Commission does decide to hear the appeal, then three other factors need to be considered, said Mr. Palmer.
- *The Commission needs to decide what exactly is entailed in the nature of the appeal.*  
Mr. Palmer said this is an appeal of the June 4, 2018, decision regarding parking. The Commission needs to decide if it wants to hear the entire appeal or if it wants to hear only certain aspects of the decision that is on appeal, said Mr. Palmer.
- *Assuming the appeal is accepted, the Commission needs to decide whether it wants to review the appeal de novo (when a body decides all issues in a case, as if the case was being heard for the first time), or on the record.*  
There are times when a *de novo* review is pertinent, said Mr. Palmer, such as if circumstances arise when the Planning Commission is concerned about fairness problems, such as if it detected issues between the department and the applicant. In general, appeals of land use decisions are heard on the record, noted Mr. Palmer.
- *If the Commission decides that it is hearing the appeal, than one way to address this is for the Commission to appoint a presiding officer from within its body.*  
That person would work with Mr. Palmer and help resolve any preliminary issues such as questions about the record, or briefing schedules, and standards of review, he said.

Mr. Palmer said it takes between three and nine months to resolve an appeal.

*Commission Comments and Questions*

Mr. Voelckers asked if Mr. Palmer could elaborate more on the timeline of three to nine months.

Mr. Palmer said if an appeal is heard on the record, CDD needs time to actually compile the record. The parties then have time to communicate with each other to draft their briefs, said Mr. Palmer. Once the CDD prepared its record, which would take three to four weeks, it would then share that with Mr. Williamson, who would then have a few weeks to review that record and to draft his opening brief, said Mr. Palmer. The CDD would then have the same amount of time to draft its opposition brief. Mr. Williamson would then have a couple of weeks to draft a new response if he desired, said Mr. Palmer. Both parties would then come before the Commission and it would hold an oral argument, where both sides would present their case, he said. The Commission would then go into executive session to decide how it would like to resolve the appeal, said Mr. Palmer.

If the Commission decides to do a *de novo* review, both sides would need time to find their witnesses, compile their facts and craft the arguments, said Mr. Palmer. A hearing would then be held which would be more “trial-like”, where both sides could present their evidence, and witnesses could be called and cross examined, said Mr. Palmer.

Mr. Voelckers asked if a *de novo* case would be a shorter time length of time, such as a month compared to the three to nine months for an “on the record” appeal.

The time period would be roughly the same, said Mr. Palmer.

Chairman Haight clarified for Mr. LeVine that the first step in this process would be for the Commission to decide if it would accept or reject the appeal.

Mr. LeVine said he is struggling with exactly what is being appealed. He said when the Commission approved the Conditional Use Permit it accepted the staff’s findings. He said he is concerned about whether the Commission has already made a decision about the substance of the appeal and whether there is some possibility that by appealing the CDD determination that Mr. Williamson would in effect be determining the Conditional Use Permit decision. That would therefore undermine the Conditional Use Permit which he already has, said Mr. LeVine.

If the appeal is accepted, said Mr. Palmer, the Planning Commission and the parties all have unfettered opportunity to terminate the appeal if at any point it is determined that this is not an appeal of the Director but an appeal of the Planning Commission decision for the Conditional Use Permit, said Mr. Palmer. If that was decided, then the Commission would lack jurisdiction to hear the appeal, he added.

Mr. LeVine said if the Commission decides that this is actually an appeal of the Conditional Use Permit, with the Commission therefore lacking jurisdiction, then the next step would be for Mr. Williamson to make his appeal to the Assembly. Mr. LeVine said he wanted to clarify that throughout this process that Mr. Williamson would not lose the Conditional Use Permit which he has been granted.

That could be an outcome, said Mr. Palmer.

Mr. Miller said he recalled that one of the conditions within the CUP (Conditional Use Permit) was that the staff was going to determine parking requirements, said Mr. Miller. The Commission accepted that the department was going to do that as one of the conditions, he said. Mr. Miller clarified that Mr. Williamson is appealing the specific Director's decision related to parking requirements.

Mr. Palmer concurred with Mr. Miller.

**MOTION:** *by Mr. Voelckers, to accept the appellant's appeal of APL2018 0002 of the Director's determination and to go through the process of a hearing.*

Speaking in favor of his motion, Mr. Voelckers said he recalled that the parking issue was getting too specific for the Commission to decide, and that it deferred to the staff to make that determination, he said. He said there appears to be substance to this appeal, and that he felt the Commission should accept the appeal.

***The motion passed with no objection.***

Mr. Palmer said that the Commission now needs to decide what is being heard. Does the Commission want to decide if it wants to hear all aspects of the parking decision, or if it would like to hear only parts of the decision? He added he did not really think there was a way to break up the appeal.

Mr. LeVine asked who would be representing the CDD in this appeal.

Mr. Palmer said CDD does have the ability to consult with another attorney within the CBJ law Department if it has the need to do so. Mr. Palmer clarified that he is the advisor for the CDD on this matter.

Mr. Voelckers said it appeared to him that the Commission needs to see the full, underlying argument which has led to the requirement for parking.

**MOTION:** *by Mr. LeVine, to hear the appeal in its entirety.*

***The motion passed with no objection.***

**MOTION:** *by Mr. Voelckers, to hear the appeal as an open meeting on the record.*

Mr. LeVine said he concurs with this motion if it is meant that the Commission review the existing record and that it is not a fact-finding mission.

Mr. Miller said he agreed with Mr. LeVine's analysis, and that he agreed to the motion that the Commission hears the appeal on the record and not *de novo*.

***The motion passed with no objection.***

***Mr. Dye was named as the presiding officer for this appeal.***

***Appellant***

Mr. Williamson said he felt the Commission should consider whether the appeal be heard on the record or *de novo* with public input. He said he felt this was important because it has been somewhat misstated that the Commission's decision is being appealed. That is not the case, said Mr. Williamson. This is an appeal of the Director's determination of parking requirements, he said. There is no record of how the Director formulated that decision on parking requirements, he said. Mr. Williamson said he believed that the appeal should be heard *de novo*. Otherwise, he said, the only record is the Planning Commission's decision which removed the requirements for the parking, he said. That decision certainly did not grant broad authority to the Department to do anything that they wanted to, he said.

Mr. Palmer said if Mr. Williamson wants to make a motion for the presiding officer as to how this issue is to be heard, the next piece would be the duty of CDD to present the record of every piece of information that CDD looked at to make its decision. The presiding officer could make the decision as to how long CDD has to compile this information, said Mr. Palmer.

Mr. LeVine said there would be the opportunity for Mr. Williamson to decide if the information presented by CDD was comprehensive once it was presented and he had a chance to review it.

Mr. Williamson said he requested a basis for this decision several times. He said the ordinance indicates that prior to 2006 the PD1 zone has zero parking. He said he had asked for clarification from the Planning Department because they had some undocumented date apparently set from the original PD1 ordinance. None of that is documented and none of that is on the record, he said. And none of the questions were answered that he had presented on these issues, he said. Therefore, the record will be sparse, and it will be hard to ask for more record or to challenge it. *De novo* would appear to be the proper approach for this appeal, said

Mr. Williamson.

Mr. Voelckers said that his understanding was that whether this appeal is heard *de novo* or on the record, that there would be a healthy exchange of factual material that underpins this decision. He said his understanding was that there will be plenty of opportunity for information to be requested and presented. Even though this would be on the record, he said he did not think this would be simply limited to current information. He said he thought there would be new material for the Commission to review by the hearing officer.

Mr. Palmer agreed with Mr. Voelckers. He said as Mr. LeVine explained, regardless of the type of review, there would be opportunity for both parties to make their factual arguments.

Chairman Haight said they will proceed with an on the record appeal noting that if there would be additional evidence brought forward that it would be addressed with the hearing officer.

**AME2018 0001:** A text amendment to Title 49, Land Use Code  
49.25.510(k), Accessory Apartments  
**Applicant:** City & Borough of Juneau  
**Location:** Borough-wide

#### **Staff Recommendation**

Staff recommends that the Planning Commission review and consider the proposed ordinance and forward a recommendation for approval to the Assembly.

Ms. McKibben explained that this ordinance review involves no changes to policy. She said when the Planning Commission proposed amendments to the accessory apartment code that when the Assembly adopted the ordinance it created some redundancy. This amendment to the code provides the opportunity for larger accessory apartments up to 1,000 square feet and up to two bedrooms, said Ms. McKibben.

For example, in the current code one apartment at 1,000 square feet allows both the Planning Commission and the Planning Director to have approval, she said. That was not the initial intent, she noted. One apartment is Director approval, clarified Ms. McKibben. It is the same situation for two single-family dwellings per lot, she noted. The code has been amended to state that it is Director approval, she said.

#### ***Commissioner Comments and Questions***

Mr. Miller reviewed the ordinance. He noted there is a gap where the Planning Commission can approve one 600 square foot apartment on a lot less than minimum size. On a lot twice the minimum size there could be two 600 square foot apartments, said Mr. Miller. He said perhaps a 1,000 square foot accessory apartment could be made to fit along those lines within the ordinance.

Mr. Miller prefaced his next statement by saying that he does own a duplex, that he consulted with the City Attorney and that he wanted to bring this up before the Commission as a potential conflict.

***The Commission found there was no conflict.***

Mr. Miller said he has long been an advocate of having accessory apartments for duplexes. He said he thought he found a place on the chart where this would fit very nicely. He said it could fit into the code as a single family dwelling if it met the minimum lot size, then there could be one 600 square foot apartment with director's approval, and if it was 125 percent over the minimum lot size, then there could be a 1,000 square foot accessory apartment with Director's approval. If it was less than the minimum lot size, then the Planning Commission could approve a 600 square foot accessory apartment, said Mr. Miller.

Mr. Voelckers said Mr. Miller has made a compelling case where extra attention may need to be paid within the ordinance. He asked if Mr. Miller had a motion he would like to make or language supporting the issue which has just been raised. He said he thought it may be best to hold this tonight and put this ordinance through the Title 49 Committee to address these issues that Mr. Miller has just raised within this ordinance.

Ms. McKibben said the intent with presenting this amendment to the Commission this evening was simply as a housekeeping issue, to eliminate the inconsistency within the code. She said Mr. Miller's suggestions deserve some attention by the Commission. She said her suggestion would be that this ordinance be moved to the Assembly for approval and that Mr. Miller's suggestions be added to the Title 49 committee's list for more consideration. The staff could then bring forward a researched and polished amendment after they make sure they were no inconsistencies elsewhere in the code to be added to the ordinance.

Mr. Miller said somewhere on the chart from 125 percent 150 percent of the minimum lot size that the Commission should be able to grant a 1,000 square foot apartment.

Ms. McKibben said:

- 🏠 If there is an undersized lot Planning Commission approval is necessary for a 600 square foot accessory apartment.
- 🏠 A single family home on a lot at 125 percent of the minimum lot size can have one, 600 square foot apartment with Director's approval.
- 🏠 If the lot is more than 125 percent of the minimum lot size an accessory apartment of up to 1,000 square feet is allowed with Director's approval.
- 🏠 Two accessory apartments are allowed when there are two single-family homes on a double-sized lot. Each single-family home on this lot could have up to one accessory apartment at 600 feet.

- 🏠 If there are two single-family homes on a lot less than the minimum lot size, with Commission approval they can have one small accessory apartment. This is a quirk in the code, noted Ms. McKibben.
- 🏠 If there are two single-family homes on a double-sized lot one of those homes can have up to a 1,000 square foot accessory apartment. They could also have one small accessory apartment and one 1,000 square foot accessory apartment.
- 🏠 In a multi-family and commercial zoning district if there is a single family home on an undersized lot they could apply for a regular sized accessory apartment with Planning Commission approval. It would be the same for common wall dwellings, she noted.

Mr. Miller asked when two single-family homes detached would be allowed on a lot.

Ms. McKibben said that would be allowed when the homes were on a lot twice the minimum lot size in RR, D-1 and D-3 zones.

Mr. Miller clarified that minimum lot size for two single-family homes is actually twice the minimum lot size.

When a lot is 250 percent of the minimum lot size there could be one 600 square foot accessory apartment on one home and a 1,000 square foot accessory apartment on the other home, said Mr. Miller. He asked why two 1,000 square foot accessory apartments would not be allowed on a lot that is 250 percent of the minimum lot size. If a single-family home is on a lot that is 125 percent of the minimum lot size, a 1,000 square foot accessory apartment is allowed. Then why wouldn't two 1,000 square foot accessory apartments be allowed on a lot that is 250 percent the minimum lot size, asked Mr. Miller.

Ms. McKibben said she does not recall where the language originated as this was quite a few years ago, but this is for the language fell down, she said.

Mr. Dye noted that on page five, line six of the proposed ordinance, that if the accessory apartment was changed from 600 square feet to 1,000 square feet in this section, then it would reflect what Mr. Miller just suggested.

Mr. LeVine said his preference is to look at the entire ordinance holistically and not just make piecemeal changes. He said he would prefer to see that the staff provides them with evaluations of all proposed changes. He said he is fully confident they will end up exactly where Mr. Miller and Mr. Dye suggested, but that he would like it to be reviewed in one piece.

Mr. Dye noted that several times in the past changes by the Commission have been put off with the thought that it would be addressed more thoroughly at a later time, and that list seems to grow all the time, he commented. If one 1,000 square foot accessory apartment can be added to a home that is located on a lot with the minimum size of 125 percent, then it logically tracks that two 1,000 square foot accessory apartments should be allowed on each home located on one lot of 250 percent of the minimum lot size or larger.

Mr. Miller said section F of the ordinance tells him that when you have two residences on a lot that is 250 percent of the minimum lot size that there can be two 1,000 square foot accessory apartments, but that subsequent language within the ordinance contradicts this language. He said he felt the Commission could move forward with cleaning up this language and the current contradictions within the ordinance.

Agreeing with the previous statements, Mr. Voelckers said that he did not feel the Commission should deal with these changes at this point. He said he felt they should schedule dealing with this ordinance at the earliest possible opportunity to rectify the inconsistencies within the ordinance.

Mr. Dye asked Mr. Voelckers and Mr. LeVine if their intent was to approve the draft ordinance as it stands tonight to be sent to the Assembly and then subsequently deal with changes to the ordinance, or if their intention was to first deal with the changes and then forward the ordinance to the Assembly.

Mr. Voelckers said he did not think they should send the current draft ordinance to the Assembly. He said he felt they should first deal with the inconsistencies and then forward the ordinance to the Assembly.

Mr. Campbell asked if he could be given some idea of how many of these actual situations existed within the community. He said he is not familiar with any single lots that have two separate single-family dwellings on them where this would apply.

Ms. McKibben said she could not tell Mr. Campbell the answer to his question at this time. She said she did know when they provided the opportunity to add the larger accessory apartments up to 1,000 square feet on larger lots that there were a number of what were previously illegal accessory apartments that could then be properly permitted and could then come on the market.

Mr. LeVine said it is pretty clear to him that this is not a dire emergency since it has been in development since February. He said at this point he agrees with Mr. Voelckers that they not forward this draft ordinance to the Assembly since they know it has areas which need to be addressed. He said he felt it should first go to the Title 49 Committee as soon as possible for review.

**MOTION:** *by Mr. Miller that this draft ordinance be forwarded to the Title 49 Committee for housekeeping and for other possible changes.*

Mr. Campbell asked Ms. McKibben what the negative effect would be if this ordinance is delayed.

Ms. McKibben said they have been using the code as it exists and making it work. They can continue to do so, she added.

Mr. Campbell said then he speaks in favor of the motion.

***The motion passed with no objection.***

**IX. BOARD OF ADJUSTMENT** - None

**X. OTHER BUSINESS** - None

**XI. STAFF REPORTS**

Ms. MacLean said that there is a Title 49 meeting on July 16, (2018) at noon. There will also be an Auke Bay meeting on August 9, (2018). She said they will confirm that with an email to the committee members. On July 24 they would like to hold a committee of the whole meeting instead of a regular Planning Commission meeting, as there are not items which need to be addressed at a regular meeting.

The Commission agreed to a Committee of the Whole meeting at 7:00 p.m. on July 24, 2018.

**XII. COMMITTEE REPORTS**

*Comp Plan Ad Hoc Committee Report*

Mr. LeVine reported that the ad hoc Comprehensive Plan Committee met several times and reviewed comprehensive plans from other communities and compared the CBJ's existing comprehensive plan with those plans. They have crafted a draft memorandum which would go to the Assembly from the chair of the Planning Commission recommending that the Assembly proceed with a full update of the Comprehensive Plan. Direct the staff and the Commission to come up with some recommendations about how to proceed, he said. He said he had several small edits of the memorandum which he will provide to the staff.

Mr. Hickok said he thought this process of updating the Comprehensive Plan had to happen regardless.

Chairman Haight said the Comprehensive Plan needs to be reviewed every two years according to code.

**MOTION:** *by Mr. Voelckers, to forward the memorandum to the Assembly on the Comprehensive Plan under Chairman Haight's signature incorporating the edits proposed by Mr. LeVine.*

Mr. Campbell said he wanted to compliment Mr. LeVine and Ms. McKibben on the memorandum they crafted on the Comprehensive Plan to be forwarded to the Assembly. He said he also appreciated the well-researched and comprehensive presentation provided with all of the information from the other plans that were reviewed. He said it is evident that Juneau's

current comprehensive plan is significantly behind those of other communities.

***The motion passed with no objection.***

*Auke Bay Plan Committee*

Mr. Miller said at their recent meeting they heard public testimony, and he thought they made some good progress at the meeting. He said in the future they will try to limit public testimony and they will be ready to make substantial progress at the next meetings. The next meeting is scheduled for August 9, he said.

**XIII. LIAISON REPORTS**

Ms. Weldon reported that at its June 25, (2018) meeting the Assembly approved four lots to be purchased by the Alaska Brewing Company. Progress is being made on the Pederson Hill project, but they have found more organic top material than anticipated which will slow up the development somewhat. The Assembly approved an ordinance for sobering centers, and the CIP for the 2019 fiscal year, and it kept the mill rate at 10.66.

**XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None**

**XV. PLANNING COMMISSION COMMENTS AND QUESTIONS**

Mr. Miller said at the conclusion of the last meeting the Commission approved the Conditional Use Permit for the boat condominiums near Vintage Park. He said the requirements for parking in landscaping should have been turned into the Department prior to the Conditional Use Permit being issued. Because of the mistake made by CDD, the Commission wanted to be fair to the applicants on this issue, he said. He asked if they have received be parking and landscaping information from the applicants, and if the CDD had communicated with the applicants since the meeting.

Ms. McKibben said the applicants met with the planner yesterday to go over the details such as the vegetation. She said the applicants are working towards fulfilling those requirements.

**XVI. EXECUTIVE SESSION - None**

**XVII. ADJOURNMENT**

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

Agenda  
**Planning Commission**  
**Regular Meeting**  
 CITY AND BOROUGH OF JUNEAU  
*Ben Haight, Chairman*  
 June 26, 2018

**I. ROLL CALL**

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:02 p.m.

**Commissioners present:** Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Dan Miller, Dan Hickok, Andrew Campbell, Carl Greene

**Commissioners absent:** Percy Frisby

**Staff present:** Jill Maclean, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Teri Camery, Senior Planner; Tim Felstead, Planner II; Amy Liu, Planner I; Amy Mead, City Attorney; Robert Palmer, Assistant Attorney II

**Assembly members:** Loren Jones

**II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA - None**

**III. APPROVAL OF MINUTES**

**A.** May 22, 2018 Draft Minutes – Regular Planning Commission Meeting

**MOTION:** *by Mr. LeVine, to approve the Planning Commission, May 22, 2018, regular meeting minutes, with any minor edits by staff or Commission member.*

***The motion passed with no objection.***

**IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None**

**V. ITEMS FOR RECONSIDERATION - None**

**VI. CONSENT AGENDA – None**

**VII. UNFINISHED BUSINESS - None**

**VIII. REGULAR AGENDA**

**AME2018 0008:** A text amendment to revise Title 49.65, Article 1, the Exploration and Mining Code

**Applicant:** City & Borough of Juneau

**Location:** Borough-wide

**Staff Recommendation**

Staff recommends that the Planning Commission forward a recommendation for approval to the Assembly.

Ms. Boyce told the Commission that the ordinance before them is a clarification and reorganization of the existing mining ordinance. There are few changes within the ordinance, and since it remains consistent in substance with the previous version, it remains in compliance with Title 49, explained Ms. Boyce.

Chairman Haight said that both he and Mr. Voelckers were on the mining subcommittee, and that the goal of the Commission is to review the document for detail and clarity, and to ascertain that the intent of the Assembly is clear on the maintenance of a solid policy regarding mining exploration. The subcommittee spoke extensively on the socio-economic issues, and how that is addressed with the permits, said Chairman Haight. They also discussed reclamation and the warranty, said Chairman Haight. He said these are the three areas which were addressed at length by the committee.

Mr. Voelckers said they had significant public input on this item. This came about because a group of citizens felt the ordinance was possibly stifling the mining industry, he explained. Opportunity was provided for public input, and Municipal Attorney Amy Mead streamlined the ordinance and removed redundancies, he said. The major policies such as the socio-economic analysis remain in place, said Mr. Voelckers.

***Public Comment***

Juneau resident Guy Archibald said that within 49.65.120 (g) there is reference to section 49.65.120 (b) and that there is no section “(b)”. This is referring to the requirements to satisfy the release of the bond under the notice of intent, said Mr. Archibald. He suggested that it be substituted for the Conditional Use Permit requirements within 49.15.330. He added that at 49.65.120 (c) it sets out the necessary information for a notice of intent. He said the applicant should probably submit additional information on surrounding land interests if their exploration is going to impact surrounding land owners. The exploration itself may not result in any

significant harm or degradation to the land but in conjunction with other activities it may cause some type of environmental harm, he said.

Mr. Archibald also said that he felt that 60 days was far too short of a time for reclamation of explored land. He suggested that all or part of the financial warranty be retained at least through an annual rain cycle, to make sure that the land would not require extra maintenance. Mr. Archibald said that at 49.65.155 (b) (*Mitigation agreements for large mines*) it appeared to him that the CBJ would be responsible for any mitigation that exceeds any type of revenue it had received from the mine. He said in his opinion there needs to be consideration of any incentives provided that the City may wish to give a mining company such as a property tax break or a land transfer. Those would definitely be a part of a monetary incentive which should be figured into the calculation, he added.

#### *Commission Comments and Questions*

Mr. LeVine said he was a little confused about the intent of 49.65.120 (g) (*Procedure for release of financial warranty*). He said the first sentence states that the director may inspect the area of exploration to determine whether reclamation has been completed in accordance with CBJ within 60 days of receiving notification of completion. There is no time limit attached to that, stated Mr. LeVine. He asked if the intent was to limit the inspection to 60 days with no time limit on when the bond gets returned.

Ms. Mead stated that is how it currently appears in the code. She added that the reference to 49.65.145 (b) should be 49.65.149 (b). She said there is not currently a timeline within the current code and if the Commission wanted to add a timeline that was certainly within its purview.

Mr. LeVine said the word “may” at 49.65.120 (g) (*The director may inspect...*) seems strange to him. Mr. LeVine said this would be a substantive change and perhaps something that was not discussed to state something like, “The bond may be held for up to 12 months to assure compliance...”. Mr. LeVine said he thought this was the intent of Mr. Archibald’s suggestion.

Ms. Mead concurred that this was not discussed by the committee. She said she felt the Assembly was looking to the Planning Commission to make any recommendations that it felt would be appropriate. She said if this is something that the Commission would want to recommend that it could be forwarded in a draft to the Assembly. She said she would provide the Assembly with a copy of the ordinance as they last saw it, with a strike-through version indicating the recommendations from the Planning Commission.

Mr. Voelckers said he concurred with Mr. LeVine that the word “may” seems singular. He added that 60 days seems to be accelerated. He said perhaps the Commission would prefer the word “shall” in the place of “may”, and 120 days placed within the ordinance instead of 60 days.

Ms. Mead said that she could make this portion of the ordinance less discretionary. She said the only caveat is that the CBJ does not always have the authority to order reclamation. If there is a reclamation order by the state that fully encompasses what the state believed to be the amount of reclamation, or if this is a project on state or federal land, the CBJ would be precluded from enforcing those mandates, said Ms. Mead. She said they can tighten up the language to make it clearer.

Mr. LeVine said his thought is that one way to accomplish this would be to say that the ordinance could state that this applied to reclamation areas of which the CBJ had authority. He said he agreed with Mr. Archibald that only one inspection may not be adequate.

Ms. Mead said her recommendation would be to take out the timeframe, require the inspection to the extent that the CBJ has the authority to do so, and set a period for when the CBJ must release the financial warranty.

Mr. Campbell asked if it would be within the Director's discretion to determine that the reclamation is not completed until the vegetation had established itself. He said he did not think it was absolutely necessary to add another year onto the reclamation time.

Mr. Voelckers asked Ms. Mead if establishing vegetation was part of the reclamation requirement.

Ms. Mead responded that state or federal law aside, revegetation of the tailings of the affected surface areas with plant materials that are capable of self-regeneration without the continued dependence upon irrigation and equipment where appropriate. She said this is one of the standards under 49.65.149 (b).

Mr. Voelckers said it still may be prudent to establish some timeline sidebars. There may be a period of three years for example, for vegetation to be reestablished, he added. There could be large amounts of money tied to the reclamation portion of the ordinance so it would be helpful to provide some sort of time frame, said Mr. Voelckers.

Ms. Mead said that the Commission may want to keep in mind that this section of the ordinance pertains to exploration notices and is not on reclamation related to the full mining operation. The impact caused by the exploration would be significantly less than the full mining operation, she added. She said she did not know if given this situation if these would be legitimate concerns.

Mr. Voelckers and Mr. LeVine acknowledged that given this particular section of the ordinance that Ms. Mead raised a good point.

Mr. LeVine said the way this section of the ordinance is written is confusing, so he would suggest that in the instance in which the City has the authority over state or federal reclamation that the director may inspect the property to determine if reclamation has been satisfactorily

accomplished and that the warranty would return upon completion of the reclamation. Mr. LeVine said that six months seemed like a reasonable time to him, but that he did not have specific knowledge about the process.

***The Commission agreed to leave the time period for reclamation from exploration at six months.***

Mr. LeVine noted that at 49.65.135 (g) *(If the director determines that proper review of the application will require the department to retain outside professional assistance, the director may, in the director's discretion, obtain an outside professional consultant. The fee for the consultant shall be borne by the applicant.)* He said his question was who gets to choose the consultant. Mr. LeVine said he did not have strong feelings either way, but that he felt it could be clearer within the ordinance.

This portion of the ordinance was offered by the proponents of the amendments, noted Ms. Mead. She said she felt the intent was that the director got to choose the consultant. She added that she could clarify that point. There was a concern by the proponents of the amendments that the CBJ Community Development Department did not always have the necessary expertise to evaluate all of the requirements. The purpose of this portion of the ordinance was that the CBJ could hire a consultant if it did not have the necessary expertise within its own staff.

Mr. Voelckers said it sounds like there are a few drafting and wordsmithing issues raised by the Commission for Ms. Mead to address within the ordinance. He asked if the ordinance should come back to the Commission or if the revised ordinance reflecting the Commission's comments could go directly to the Assembly without coming back to the Commission for review.

Mr. LeVine said he was comfortable forwarding the ordinance reflecting the Commission's comments directly to the Assembly without coming back to the Commission for review.

**MOTION:** *by Mr. LeVine, that subject to the suggestions made by the Planning Commission which the municipal attorney would incorporate into the draft ordinance, that AME2018 0008 be approved to be forwarded to the Assembly for approval with staff's findings, analysis and recommendations.*

***The motion passed with no objection.***

Mr. Voelckers said that Ms. Mead deserved a lot of credit for both helping the mining committee and the Planning Commission with very flexible and capable drafting.

**PWP2018 0001:** A Parking Waiver of one (1) residential space for a detached accessory apartment

**Applicant:** Jeffrey Martinson

**Location:** 811 4<sup>th</sup> Street, Douglas

### **Staff Recommendation**

It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the parking waiver permit. This would allow one parking space to be waived and obligate the property to provide two parking spaces as currently provided on site.

USE2018 0008 (*A Conditional Use Permit to allow a 220 square foot detached accessory apartment*) will be included in the staff analysis for the Commission, said Commissioner Haight.

Ms. Liu said she would address the Conditional Use Permit first as that is what has triggered the parking requirement. Ms. Liu told the Commission that the total parking requirement for this dwelling with an accessory apartment is for three spaces. She added there are currently two parking spaces. The Street's department has confirmed that encroachment would not be allowed. A parking waiver is the only option for the property, said Ms. Liu. There are no other options.

The property is on the uphill side of Fourth Street, and is zoned D-5, noted Ms. Liu. The surrounding area has on-street parking along the side of the street, and that is often utilized by neighbors for parking, she noted. The property is close to a transit stop. Existing parking does provide for two parallel parking spaces, but there is no room for the third parking space, she added.

The Comprehensive Plan supports compact urban development, said Ms. Liu. It also supports more diverse housing which is supported by more pedestrian movement, she said.

The two conditions are:

1. Prior to issuance of a Temporary Certificate of Occupancy, the applicant must submit revised plans showing the three required parking spaces per CBJ 49.40 or must have a parking waiver approved by the Planning Commission per CBJ 49.40.210 (D) (G).
2. Prior to issuance of a final certificate of occupancy, the applicant must provide the three required parking spaces per CBJ 49.40 or must have a parking waiver approved by the Planning Commission per CBJ 49.40.210 (D) (G).

PWP 2018 0001: (A parking waiver of one residential space for a detached accessory apartment).

The existing gravel pad already provides two parking spaces, said Ms. Liu. There is no room for a third parking space, she said. A parking waiver is the only option, said Ms. Liu. The staff anticipates that eliminating the one space parking requirement would have minimal impact on the nearby street parking, she said. The surrounding neighborhood has on-street parking on one side, she said. Spaces are often available within a reasonable walking distance, she said.

Waiving the parking requirement for the accessory apartment would prevent encroachment on the CBJ right-of-way, said Ms. Liu.

#### *Commission Comments and Questions*

Mr. Miller asked why the two conditions for the Conditional Use Permit for the property stated the same thing.

Ms. Liu said the first condition just requires that the Community Development Department (CDD) have documentation showing that the grading and building permits are already in place. The second condition is to make sure that the improvements have actually been done, she said.

Mr. Dye said the CBJ would inspect the plans which are required. If the plan existed to obtain the Temporary Certificate of Occupancy, the second condition is still redundant because they would be reviewing the plan on file for the final Certificate of Occupancy.

Ms. Liu said the inspection for the second condition would be to make sure that the improvements have actually been made and the plans completed.

Mr. LeVine asked if another option had been explored which allowed homeowners to use the right-of-way for parking on a temporary basis with the recognition that it granted no permanent rights.

Ms. Liu said it was her understanding that this was not an avenue which the CBJ wished to pursue.

Ms. McKibben said they could not approve a parking plan for on-site parking that is not on site without an encroachment permit from the City. In answer to a question by Mr. LeVine, Ms. McKibben said she did not know if the encroachment permit granted a permanent encroachment right to the applicant. They also cannot approve an encroachment permit on a City right-of-way, she added.

Mr. Greene asked if a third parking space would be possible or if the rock wall prevented that.

The rock wall precluded that option, said Ms. Liu, without the expenditure of considerable funds.

Mr. Voelckers said he favors the waiver in this case. Street parking in the flats area seems to work well in a very harmonious and high street parking area, he added. With possible space available on site, there is the question of the possible loss versus the possible gain, said Mr. Voelckers. Some degree of on-street parking has been available for older Juneau neighborhoods for decades, noted Mr. Voelckers.

Speaking in favor of the waiver, Mr. Campbell said he believed this area has more than enough available on-street parking. He added that this location is very close to the Mount Jumbo facility which has available parking on two sides. He added that he feels it is consistent with the current use of the neighborhood.

*Applicant*

Jeff Martinson said he was available to answer any questions the Commission may have.

Mr. Voelckers asked Mr. Martinson to elaborate on his site plan.

Mr. Martinson said he hoped to retain the rock wall in place so that the landscape and gardens may remain. There are also rock steps which lead up to the accessory apartment, he said.

**MOTION:** *by Mr. LeVine, to approve staff's findings, analysis and recommendations and approve PWP 2018 0001 and grant the parking waiver.*

***The motion passed with no objection.***

**MOTION:** *by Mr. Dye, to approve staff's findings, analysis and recommendations and approve USE 2018 0008 and remove Condition 2.*

Mr. Miller asked to make a friendly amendment to the motion. He said he did not think they needed Condition One, but instead needed Condition Two to remain in place, which would then be renumbered as number one as the sole condition.

Mr. Dye accepted the friendly amendment made by Mr. Miller.

Mr. LeVine said he is in support of the motion. However, he added he did not see why they actually needed a condition at all. They just granted the parking waiver, he said. He asked if they could just eliminate both conditions.

Mr. Dye said if the permit was questioned at some time in the future, it may be good to have that condition in place.

Mr. Palmer said if it was a concern, they could definitely leave the condition in. However, he

said, he did not think there would be unforeseen negative consequences if both conditions were removed.

Mr. Dye said he changed his motion to eliminate both conditions.

**FINAL MOTION:** *by Mr. Dye, incorporating a friendly amendment by Mr. LeVine, to approve staff's findings, analysis and recommendations and approve USE 2018 0008 and remove both conditions.*

***The motion passed with no objection.***

**USE2018 0008:** A Conditional Use Permit to allow a 220 sq. ft. detached accessory apartment  
**Applicant:** Jeffrey Martinson  
**Location:** 811 4<sup>th</sup> Street, Douglas

**Staff Recommendation**

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the development of a detached 220 square foot accessory apartment on an under-sized lot in the D5 zoning district.

The approval is subject to the following conditions:

1. Prior to issuance of a temporary certificate of occupancy, the applicant must submit revised plans showing the three required parking spaces per CBJ 49.40 or must have a parking waiver approved by the Planning Commission per CBJ 49.40.210(D)(6).
2. Prior to issuance of a final certificate of occupancy, the applicant must provide the three required parking spaces per CBJ 49.40 or must have a parking waiver approved by the Planning Commission per CBJ 49.40.210(D)(6).

**Commission Action:** *See PWP 2018 0001, above.*

**USE2018 0007:** A Conditional Use Permit for a 23 dwelling unit Condominium development  
**Applicant:** R&S Construction, LLC  
**Location:** 3005 Clinton Drive

Mr. Miller said he wanted to disclose to the Commission and the public that he sold his boat to one of the applicants last October, and is a general contractor and builds similar buildings to the applicant.

***The Commission and the public voiced no objections to Mr. Miller remaining on the panel for this issue.***

Mr. Hickok said he has been acquainted with one of the applicants, and they both have wives that work at Auke Bay School.

***The Commission and the public voiced no objections to Mr. Hickok remaining on the panel for this issue.***

Mr. Campbell said he has direct personal involvement in this project and would like to recuse himself.

***Mr. Campbell was excused from the Commission for this item.***

Mr. Felstead told the Commission that this lot was recently consolidated from several lots into one lot. The combined lot is 70,594 square feet, he added. The lot is across the street from Safeway and adjacent to the Vintage Business Park. The zoning is Light Commercial, said Mr. Felstead. The lot was rezoned in 1984 from a residential use to Commercial, he said. A number of conditions are added regarding building design, site layout and landscaping, said Mr. Felstead. In 1987 the lot was changed to Light Commercial zoning which in effect removed the previous design conditions, said Mr. Felstead.

The Light Commercial zoning would allow other uses than those currently being proposed by the applicant, said Mr. Felstead. Some of those other uses would require a Conditional Use Permit, he said. The applicant has provided the staff of the draft copy of the homeowners agreement which further restricts the uses which would be allowed on the subject lot, he said.

The site consists of four buildings with six dwelling units in three of the buildings and five dwelling units in the fourth building, said Mr. Felstead. The front of each building will face either Clinton Drive or Egan Drive, said Mr. Felstead. Vehicle access to the site will be a two-way entrance on Clinton Drive, he said. The applicants have chosen a one way entrance on Vintage Boulevard, said Mr. Felstead.

Each two-bedroom dwelling will require 1.75 parking spaces, said Mr. Felstead. Each garage which is located under each dwelling will be able to accommodate two vehicles side-by-side, he said. There will be adequate parking spaces for the dwellings, he said. If in the future additional parking is required to any change in uses, a condition has been recommended that a building permit review would be undertaken, said Mr. Felstead. The requirement for that building permit review has been added to the home owner association agreement, said Mr. Felstead.

There are a few locations on the lot where CBJ standard parking spaces and the required access aisle would not be able to be accommodated, said Mr. Felstead in particular in front of building

C and in front of building D. Additional parking could be provided as parallel parking around the perimeter of the property, noted Mr. Felstead. The two required ADA spaces are provided for the site, he added.

Full cutoff lighting fixtures will be provided at the entrance ways of each of the dwellings, and around the side of the buildings, said Mr. Felstead. However, any development which would require a Conditional Use Permit must include a lighting plan provided by an architect or an engineer, he added. There will be concrete sidewalks in front of each of the buildings with pedestrian connections through a vegetative strip along Vintage Boulevard, said Mr. Felstead.

All setbacks are met and the minimum vegetative cover requirement is two square feet less than what is required, said Mr. Felstead. To match the landscaping on the opposite side of Clinton Drive, the staff has recommended a condition that a five foot landscaping strip be provided on the property, he said. The applicants have shown a three foot planting strip, said Mr. Felstead. The staff feels that a three foot planting strip would be too limited a space to provide matching trees and shrubs, he said.

Drainage has been approved by general engineering, said Mr. Felstead. The CBJ fire Department has no issues with this proposal, and the CBJ building division has no issues with the proposal, said Mr. Felstead. One adjacent property owner did have some concerns about the appearance of the development, said Mr. Felstead. They were concerned that it would impact their own property values, he added. They have since reviewed the proposal and have reached an understanding with the applicants, he said. The owner of the land surrounding the development stated that they are in support of this project, said Mr. Felstead.

The CBJ Assessor noted that the buildings may even be helpful to the adjacent properties because it would block the vision of traffic from Egan Drive, said Mr. Felstead. However, there may be some impacts of the view of Douglas Island, he added. The assessor also noted that some sort of buffer between the buildings and the right-of-way would be helpful, he said.

The buildings will be facing the right-of-way with a garage below and the dwellings above, said Mr. Felstead. Each of the units would be about 22 feet wide and 50 feet deep, said Mr. Felstead.

The Vintage Park area has been developed with a number of landscaping strips along the perimeter of the parking lots, noted Mr. Felstead. Most of those vegetative strips are over seven feet in width, he noted. It is not clear at this point how much distance there is between the sidewalk and the actual property line, said Mr. Felstead.

There are eight conditions for this permit and Mr. Felstead said he has modified condition Two slightly. The five foot vegetative strip would be from the property line on Clinton Drive, he noted.

Mr. Felstead reviewed the conditions as follows:

1. Prior to a Certificate of Occupancy, a minimum of 15 percent of the lot shall be planted with landscaped vegetation or the installation of landscaped vegetation must be bonded for. A revised landscaping plan shall be reviewed and approved by CDD staff prior to issuance of any for the further building permits for buildings C or D.
2. In addition to the vegetative cover requirements, the landscaping plan shall be amended to show a minimum of five feet of vegetative strip separating the parking and circulation area parentheses (except for access points) from the sidewalk property line on Clinton Drive.
3. The landscaping plan shall include vegetative areas along Clinton drive in Vintage Boulevard planted with vegetation that matches other street-side plantings of trees and or shrubs at other developments in the immediate vicinity. Any additional space between the subject property line and edge of sidewalk should be landscaped with grass.
4. Prior to issuance of a building permit for buildings C or D, the applicant shall submit a lighting plan by a professional engineer or architect illustrating the location and type of exterior lighting proposed for the development. Exterior lighting shall be designed, located, and installed to minimize offsite off-site glare. Approval of the plan shall be at the discretion of the Community Development Department Director, according to the requirements of CBJ 49.40.230(d)
5. Prior to CBJ acceptance of sidewalk improvements, appropriate "no exit" signs shall be placed at the ingress only access on Vintage Boulevard.
6. Prior to issuing a Certificate of Occupancy for the first dwelling unit on the subject lot, a homeowners association agreement shall be submitted for review and approval by CDD (Community Development Department).
7. The homeowners association agreement documents shall specify how common facilities shall be operated and maintained. The documents shall require that the governing body of the association adequately maintain common facilities including snow removal, approved landscaping, and signage and striping.
8. For any change of use for any of the 23 dwelling units and accessory garages from Multi-Family Residential, a revised parking plan shall be submitted and approved prior to the issuance of a building permit or change of use review. Additionally, this condition shall be incorporated into the HOA documents.

*Commission Comments and Questions*

Mr. Palmer said the Commission can maintain the conditions, it can modify the conditions, or the Commission could also remove conditions altogether.

Ms. McKibben said she wanted to remind the Commission that the Riverside condominiums were required to provide the Community Development Department with a copy of their home owner agreement as well.

Mr. LeVine asked if the intention of Condition Two is to provide additional vegetative cover in addition to the required 15 percent, or if of the required 15 percent is a portion of that would be the required vegetative strip.

Mr. Felstead said it was the latter interpretation voiced by Mr. LeVine.

Mr. LeVine said the wording of that condition as it currently stands is ambiguous.

Mr. LeVine asked if there was a redundancy between conditions Two and Three. He said he said he felt that it would be helpful to combine conditions Two and Three into one condition addressing the vegetative cover.

Mr. Felstead said he believed that the conditions could be combined.

Mr. Dye asked if Condition One was for only buildings C and D or if it was for the whole development.

Mr. Felstead replied that it was for the entire site.

Mr. Dye said he would appreciate some clarification on the discussion of phasing within the recent memo issued to the Planning Commission.

Mr. Felstead said the phasing was a misreading by the staff of the land use code requirements. When reviewing the two building permits the Conditional Use Permit it had been interpreted that a major development Conditional Use permit was not triggered until more than 12 dwelling units were on the location, he said. The applicant has indicated that while they have provided a master site plan providing 23 dwelling units, that they were not certain that they would actually construct the additional two buildings, said Mr. Felstead.

Mr. Dye asked if the building permits are currently active or not active.

Mr. Felstead said they are inactive until they are reactivated.

Mr. Dye said when he reads 49.15.220 he wonders how a small business being established in the garage would not trigger phasing.

Mr. Felstead said that phasing is a gray area.

Mr. Palmer said that the big concept to keep in mind at this stage is that the Commission has before it a Conditional Use Permit that gives the Commission very broad authority to review all aspects of this development. If the Commission reviews this differently than the staff and is more concerned about potential commercial uses, the Commission has the authority to review any concerns about vegetative cover or parking and any other building standards that it may be concerned about, said Mr. Palmer. If something comes up in the future with one specific unit, that can be dealt with at that time, said Mr. Palmer.

Mr. Voelckers said that it has been brought up that the Community Development Department does not usually review structures for aesthetic aspects such as color or design of the building. However, he said, this information has been provided to the Commission. He said he is confused by the various graphics and color agreements and the extent of the landscape. He asked what specifically is within the purview of the Community Development Department.

Mr. Felstead clarified that the material submitted to the Planning Commission on Friday was public comment which needs to be passed to the Planning Commission.

Mr. LeVine asked if they have solved the phasing problem by revoking the building permits which were initially issued in error. He said this is keeping in mind that the construction was already well underway for these units.

Mr. Palmer replied that his understanding is that there was no bad faith by the applicant. He said it is unusual to have buildings already partially constructed and to then have the building permits revoked. The issue before the Commission is to cure the errors which have occurred, said Mr. Palmer. They need to protect the community's interests and to determine what is reasonable and necessary, said Mr. Palmer, as the Commission does with any other Conditional Use Permit.

Mr. LeVine clarified that the Commission's job is to review the Conditional Use Permit application as if nothing has already transpired with the construction of the dwellings. He said even without a Conditional Use Permit the applicant could continue construction on the 12 dwellings which it has already begun to construct.

Mr. Palmer concurred. He added that if there are parking or landscape requirements those would need to be reviewed to make sure they work with the structures which have already been put in place.

Mr. Miller said what concerns him the most is that these are residential uses which could feasibly add some commercial uses. This makes perfect sense, he said. The developers did not have the opportunity to appear before the Planning Commission prior to construction to resolve this issue, said Mr. Miller. The fact remains that the buildings have started to be constructed and now the commission has to go back and resolve the residential/commercial/parking issues, said Mr. Miller.

Mr. Felstead said the applicants have been aware all along that there were some physical constraints with the site with the way the site plan had been laid out.

Mr. Hickok asked if the condominiums could be developed as two separate pieces of property.

That comes down to the gray area of phasing, said Mr. Felstead. Two adjacent developments under the same ownership could be considered as a phased project, said Mr. Felstead.

*Applicant (Rob Warden and Scott Jenkins)*

Mr. Warden said he wanted to first address condition number eight within the Conditional Use Permit application. He said this was new to him, and that he had not even seen it until just now. They have completed the same project a couple of times and never in the past have they had to submit a completed Housing Owner Association (HOA) document to the CBJ, he said. He said they feel that the home owner association as a whole will monitor the area. For example if someone wanted to do something commercially with their property that would be the first thing that would be voted down if it required parking, because parking is always tough, he said.

Mr. Jenkins said that prior to the first permit they went to the Community Development Department and had a preplanning meeting as they always do. They discussed the units. Prior to doing any project of this scale would require a certain amount of theoretical presales before they would proceed with construction, he said. When they received a letter about the building permit being revoked last week, it was a shock, he commented.

Even if someone decides to have a small personal accounting business within their condominium unit, there will not be a big influx of parking spots because the site simply does not allow for additional parking, he said. This is spelled out in the HOA, which prevents high density businesses such as a cab company for example, he said. They cannot be businesses which will create a lot of traffic, he added.

The entrance off of Vintage Boulevard is a slight mistake. It was displayed incorrectly by the surveyor, said Mr. Jenkins. That entrance is also supposed to be an exit, he noted. They would like that condition rewritten to state that it has to meet standards, he said.

The 15 percent vegetative cover is something that they battle with on all of their projects, said Mr. Jenkins. That is a lot of land which requires them to put vegetative cover on, he said. They

will meet that condition, he said. Their original plan and what works best for the use is to landscape both sides of the entrance, the corner on Vintage Boulevard and Clinton, said Mr. Jenkins. They would also landscape all along Vintage Boulevard and in between the buildings, and along the far side of buildings C and D, he said. That is what was originally proposed, he said. The vegetative strip proposed by the staff is over the requirements, he said. Their landscaping plans already meet the requirements, he said. A five foot strip from the property line would be a massive impact for the owners in buildings A and C, he said.

When they met with the neighbor who is concerned about the project, the neighbor did not understand that the applicants already had to meet many of his concerns to construct the buildings, said Mr. Jenkins. They presented their plans to the neighbor and had to match colors and they had to make changes to it, do landscaping and show all their plans, said Mr. Jenkins. The neighbors accepted the building plans at that point, said Mr. Jenkins. Once the adjacent property owner understood what they had already accomplished to meet neighborhood architectural and aesthetic harmony, he did not have any more concerns, said Mr. Jenkins.

Mr. Jenkins said the staff keeps referring to their dwelling units as apartments. They are not apartments, he said. They are condominiums.

Mr. Warden added that they really feel that three feet is ample room for landscaping along the front side of the building. The area across the Street which house vegetative areas twice that width were built in 1987, said Mr. Warden. A project in the area that was just completed last year has three feet, he said.

They would like to do strategic landscaping along Clinton, said Mr. Jenkins.

Ms. Maclean said she wanted to remind the Planning Commission that Trillium Landing and the assisted living complex adjacent to it were rezoned to Mixed-Use (MU) or Mixed-Use 2, she said. Mixed-Use would have zero vegetative cover required, and Mixed-Use Two only has a five percent vegetative cover requirement, she said. When those two buildings were constructed last year they worked collaboratively to provide a campus complex between the two buildings and they also did significant work along the riverfront, she added. When they presented their plans to the Commission, that was one of the reasons that the Planning Commission permitted them to shift their developments a little closer to the road, said Ms. Maclean.

This could not have been presented as two separate projects, said Ms. Maclean. It is one property. It is not two separate lots, she said. If they were two separate lots there may have been a different scenario, she said.

Mr. Voelckers asked the applicants if in their other building projects if the underlying zoning was the same as for this complex.

The applicants responded that the underlying zoning was the same for their previous projects.

Mr. Voelckers asked how the home owners association exerted its authority.

If one of the residents wants to have a small business for example, the home owner association would vote on that request, said the applicants. They have to get 50 percent of the votes, and the first question posed to them would be if their endeavor would require additional parking, said the applicants. The applicants added that it is not popular with condominium owners or potential condominium owners to view striped parking in front of their dwelling units.

Mr. LeVine asked the applicants if they have any sense from sales which have already been made if owners are planning for businesses.

The applicants said they are sure that within 23 units there will be owners who will utilize their space for businesses such as for a small office downstairs. Out of 12 units they currently have four small businesses, said the applicants.

Mr. Warden said the only reason they made it one lot is because it is easier for the language which goes into the homeowners association agreement. And then they had to put in only one water line, he added. Since they are already meeting the 15 percent vegetative coverage requirement they feel that the five foot wide row of vegetative cover is excessive, said Mr. Warden.

Mr. Dye said he understands that it is the intent of the HOA to self-police. He added at some point a buyer is going to purchase one of these condominiums and at some point all potential parking will be gone. Mr. Dye asked the staff at what point additional parking is required for an accessory use in a residential zoning district in contrast to a commercial use.

A home occupation is limited in that they cannot have any employees, and it can only be 25 percent of the main floor area or 500 square feet, whichever is greater, said Ms. McKibben. So this is very different from an office that might be created in a light commercial zone, she said.

Mr. Dye asked if he was to buy one of these condominiums and put a 500 square foot office space on the first floor and had no one working for him if that would trigger additional parking requirements.

Ms. McKibben said it would meet the criteria of home occupation, but that she would need to explore the nuances for home occupation in the different zones.

If the applicant did strategic planting, said Mr. Miller, would the applicant be able to provide quality planting in those areas rather than just grass seed, such has been done in other recent projects in the area by other contractors.

They would like to do strategic placement such as lining up with the common walls between the units, said the applicant. That would be a lot more useful than instead having a big strip that could possibly get in the way of vehicles, said the applicants. They said that most of their early sales right now are owner occupied.

Mr. Greene asked if a condominium owner converted their garage into office space if they would then need to seek two parking spaces elsewhere.

The applicant said the garage is 50 feet deep and that typically an owner would utilize the attached mezzanine area for an office, for example, and enclose it and still have room for two parking spots within the garage.

In answer to a question of Mr. Dye's, the applicants said that buildings A and B meet all the requirements for parking spots in front of the units. There was an issue raised by the staff about meeting the minimum parking requirement in front of building C, said the applicants. They do meet the parking requirements for the use that they are proposing, they added.

Mr. Miller asked if they have to separate the uses from the top floor and the garage and if this needed to be done if it was a home office.

It is not necessary, but the big reason for this is so that someone can buy a condominium, store their boat in the garage downstairs, and rent the dwelling unit upstairs, said the applicants.

That is a good answer, replied Mr. Miller.

Mr. Greene asked if a change in use would be triggered if the dwelling unit was rented above with storage for the owner below within the garage.

Ms. Maclean said she was not sure at this point if a change in use would be triggered or not.

The applicants said they have tried to set this up so that if an owner wanted to they could set up a small business and it would be legal and it would be run through the homeowner's association for approval.

Mr. Greene asked how a fairly large boat with the trailer would be backed into the garage.

The applicants said they would need to be good at it.

Mr. Dye said given the scenario that someone would purchase a condo unit, store their own equipment downstairs in the garage and rent the upstairs dwelling, where would the residents in the dwelling park.

The applicants said as owner of the condominium it could be dictated to the residents that only one parking space in front of the garage was available to them.

Mr. Dye stated that 1.75 parking spaces (two spaces in practice) needed to be available for the unit. Another parking space would then need to be added for the storage space which is separate from the residence, he added.

The applicants asked why an additional parking space would need to be added for the storage space with no resident.

Mr. Dye said according to Title 49 a thousand square feet of storage space requires one parking space. With the apartment intentionally split from the garage that additional space could be triggered, said Mr. Dye.

The bottom line is that the owner will not be able to achieve more than the housing association would allow in terms of parking, said the applicants.

Mr. Hickok asked if parking was allowed along Clinton Drive.

The applicants responded that parking was allowed along both sides of that street.

Mr. Miller asked if the home occupation would require a change of use.

Mr. Felstead said the Change of Use Permit is a building permit associated with the change of occupancy according to the building code. It does not have to do with the land use code, he clarified. He added there are a number of options to provide the required parking. Parking waivers are available and there is parking along the street. Joint use parking is available as well as off-site parking, said Mr. Felstead.

If the Change of Use Permit is not required for home occupation, then the owner of that unit actually has control of two spaces, said Mr. Miller, however they may deal with it.

Mr. Felstead concurred with Mr. Miller's analysis.

Mr. LeVine asked if two additional outside parking spaces could be provided in front of the garage except for a few of the units which did not have that room.

There are two outside parking spots in front of the garage for every unit except for every third unit which has an additional guest parking spot, explained the applicants. For every six units there are three guest parking spaces against the building with the two spots for each dwelling outside of the garage, explained the applicant.

The applicant said maybe they should request a waiver for those few spaces which were cramped and could be reduced to accommodate the parking.

Mr. Voelckers commented that parking spaces in front of the garages would remove the garages as effective parking spaces.

Mr. Miller asked who was requiring the 24 foot two way parking spaces.

The staff answered that it was the Land Use Code. The 24 foot wide access aisle is required for two-way traffic, said Mr. Felstead. If it was only one-way traffic with angled parking , then it could be reduced, he added.

Mr. Miller asked the staff if the 24 foot two-way parking spaces could be waived.

Mr. Felstead said he was not sure what the new variance language stated. It may be a design standard which could be subject to a variance, he said.

#### *Public Comment*

Wesley Bauer said he was representing the majority land owners at Vintage Business Park of the undeveloped land. He said he believed that these condominiums would increase the value of the property at Vintage Business Park.

#### *Commission Comments and Questions*

Mr. Miller asked Mr. Bauer for his opinion on the strip landscaping versus strategic landscaping.

Mr. Bauer said he felt that strategic landscaping was fine.

Mr. LeVine asked if it was possible for the Commission to request that the home owners association prohibit businesses that require additional parking on those few units which could not support the complete parking spaces.

Ms. Maclean said she did not think they would be able to do that since there were other methods for those businesses such as the parking waiver or the shared use.

Mr. Miller said most of his reticence about the project has been relieved upon being notified that the residence could be rented with the garage retained for use by the owner. This makes the project way more acceptable for him, said Mr. Miller. He said he was still not sure how they got into the phasing situation which they did. He said he was sure they would be having conversations about that at a later time.

Mr. Voelckers asked what treatment the land in front of the condominiums facing Egan Drive would receive, if any.

It will be grass, said Mr. Felstead.

**MOTION:** *by Mr. Miller, to move USE2018 0007*

Mr. Miller said he felt Condition One was adequate regarding the landscaping. He said he felt Condition Two requiring five feet of vegetative strip was not necessary and that strategic landscaping would be far nicer. He said he would like to eliminate Condition Two and supplant the language to state “strategic plantings” in Condition Three. Mr. Miller said he agreed with Condition Four and that they eliminate Condition Five. Given the phasing issue with this permit Mr. Miller said he was in agreement with Condition Six. They could get rid of Condition Seven since that information will be within the documents anyway. Mr. Miller said he was going to pass on Condition Eight awaiting input from the other commissioners on that condition.

Based upon the site plan with the parking, for Condition Eight, Mr. Dye suggested that they stipulate 56 parking spaces and leave it to the developers to fit them in how they desired. Mr. Dye said he did not think the building inspectors would care about the exact placement of the parking spaces as long as there were enough spaces.

Mr. Felstead said when building permits come in they are always reviewed for zoning compliance at that time.

If that is the case, said Mr. Dye, he asked what the point was of Condition Eight.

Condition Eight was added in response to a Commissioner question, said Mr. Felstead.

Mr. Dye acknowledged that was in response to his question about parking.

Mr. LeVine asked if Mr. Dye was suggesting that Condition Eight state that a parking plan be submitted that showed the availability of 56 parking spaces including the two per unit inside the garage.

Mr. Miller said when a Change of Use Permit comes in it is going to be reviewed for zoning compliance. Since that is going to happen anyway, the only part that would not happen is where Condition Eight states that this condition shall be incorporated into the HOA documents. Perhaps they should put conditions six, seven and eight together and simply state at the end of the current number seven that the documents are going to require maintaining common facilities, snow removal, approved landscaping and signage, striping and any change of uses in the development.

Ms. Maclean said maybe in a perfect world everyone would come into the office for a Change of Use Permit but unfortunately that is not the case. The applicants have the site plan which shows the utilities and the parking spaces and if this was submitted and it is the 56 spaces that Mr. Dye mentioned, her preference would be that this would be made part of the Conditional Use Permit. This would make it much easier down the road if someone did not obtain a Change of Use Permit, the Planning Department would have something to fall back on, she said.

Mr. Miller said the amount of traffic which will go to the three units on the end will be minimal. Perhaps the Commission could approve changing the lane to 20 feet on that and give all residents two spaces in front of their units with the addition of a guest parking space for every two units.

Mr. Dye said it would be 55 spaces instead of 56 parking spaces. He said he would be happy to leave the condition at 55 spaces without going into details because the developer can figure out the placement of the spaces.

The one-way entrance had been offered to the applicant previously but then it would require two entrances to the project off of Clinton Drive, said Mr. Felstead.

Mr. Voelckers said he liked the idea of stipulating a parking plan with X number of spaces. He said he thought it was better to leave it as a number of parking spaces and not try to dictate their placement.

Mr. LeVine said he would suggest as a friendly amendment to Mr. Miller's motion that they replace condition eight with a condition that says, "Applicant shall have an approved parking plan that shows a minimum of 50 parking spaces outside of the condominiums," and leave it at that.

Mr. Miller said he accepted that as a friendly amendment.

Mr. Dye suggested 49 spaces instead of 50 spaces.

Mr. Miller accepted Mr. Dye's friendly amendment.

Mr. LeVine added that he would like to see Condition Seven say "striping" instead of "stripping".

Mr. Voelckers said Mr. Miller suggested blending conditions six and seven, striking Condition Two and adding "strategic landscaping" to Condition Three.

Mr. Dye said on Condition One instead of “building permit” they could put “Temporary Certificate of Occupancy” (TCO). Mr. Dye said Condition Four only addresses buildings C or D. He said he would suggest that Condition Four apply to all four buildings.

Mr. LeVine said he is of the opinion that the mistake in the premature issuing of the permit was the mistake of the Community Development Department (CDD) and they should not “punish” the developer for a mistake that CDD made. He said he agreed with Mr. Miller in that these conditions should be left to buildings C and D which have not yet undergone construction.

Ms. Maclean said she would be comfortable with phrasing that it would be needed before any new TCO’s were issued.

Mr. LeVine reviewed that the amendment to Mr. Miller’s motion would be to change the language in Conditions One and Four that the words “building permits” be changed to “Temporary Certificates of Occupancy”.

Condition three should be worded that; “The landscaping plan shall include strategically placed vegetative areas along the Clinton Drive and Vintage Boulevard”, said Mr. Miller.

**FINAL MOTION:** *by Mr. Miller, with friendly amendments from Mr. LeVine and Mr. Dye, that USE 2018 0007 be approved with the following adjustments:*

- 🏠 *Condition One - That ‘Temporary Certificate of Occupancy’ replace ‘Certificate of Occupancy’ and that ‘Buildings C or D’ be removed*
- 🏠 *Condition Two – Removed*
- 🏠 *Condition Three – ‘strategically placed vegetative areas’ to replace ‘vegetative areas’*
- 🏠 *Condition Four – ‘Temporary Certificate of Occupancy’ to replace ‘Building permit for buildings C or D’*
- 🏠 *Condition Five – Removed*
- 🏠 *Conditions Six and Seven are combined with the word ‘striping’ to supplant the word ‘stripping’*
- 🏠 *Condition Eight - A parking plan shall be submitted with no fewer than 49 outside parking spaces*

***The motion passed with no objections.***

**IX. BOARD OF ADJUSTMENT - None****X. OTHER BUSINESS - None****XI. STAFF REPORTS****A. Flood Map Revision Presentation**

Ms. Camery told the Commission that the national flood insurance program allows participating communities to purchase insurance as protection against flood losses. The CBJ is a qualified participant in this program, she said. The CBJ regulates building development and flood zones through its land use and building code regulations, said Ms. Camery.

Flood insurance can be reduced by elevating your home, explained Ms. Camery. Duck Creek, Jordan Creek and Lemon Creek were the primary areas reviewed, she said. Over 160 people attended the April 4, 2018 meeting on this topic, she said. The commentary period ends July 9, 2018, said Ms. Camery.

This coming winter FEMA will issue the final determination, and the Commission and the Assembly will have six months to adopt the revised flood maps, said Ms. Camery. If the maps are not adopted within that six-month period, Juneau will be removed from the program and will not be eligible for aid should there be a flood, she said.

Information about the [flood insurance program](http://www.juneau.org/cddftp/JuneauFloodZoneMap.php) (<http://www.juneau.org/cddftp/JuneauFloodZoneMap.php>) can be obtained from the Community Development Department website where interested parties can plug in an address and find both the current and proposed maps, said Ms. Camery.

**XII. COMMITTEE REPORTS***Title 49 Committee*

Mr. Dye reported that unit development was the sole topic at the Title 49 committee meeting.

*Comprehensive Plan Standing Committee*

The Comprehensive Plan Standing Committee met and composed a draft letter of recommendation which will go to the Commission in July, said Mr. LeVine.

**XIII. PLANNING COMMISSION COMMENTS AND QUESTIONS***Parking Spaces*

Mr. Miller said recently he has completed a few projects in which he had to meet parking requirements. There is no consideration given for compact vehicles at all, said Mr. Miller. Every single parking space must be 8.5 feet by 17 feet, he said. They had to have 19 parking spaces at the last project which he completed, said Mr. Miller. That is a lot of property, he said. He said it appeared that at least a third of the parking spaces were taken up by smaller vehicles which

were at the most perhaps 13 feet long. He said he would like to see an adjustment in the code so that perhaps a third of the parking places could be for compact vehicles up to 13 feet in length. Mr. LeVine added that electric vehicle parking requirements should also be considered for review.

*Missing the Conditional Use Permit Requirement at the Pre-Application Meeting*

Mr. Miller said if the development permit is reviewed, there were 23 units on it at the very beginning of the process. This is a project which has been built several times previously, said Mr. Miller. This could have been a nightmare, said Mr. Miller. He asked how the CDD staff missed that a 23 unit project does not need a Conditional Use Permit. Mr. Miller asked if the director reviews all of the applications for accuracy.

Ms. Maclean said not all applications are reviewed personally by the director. It goes through the staff and the planning manager, she said. She added not all of the permits are always reviewed up front. She said they do have Mr. Palmer coming on Friday for a meeting with the planners to provide training on phasing, said Ms. Maclean. They will be taking notes so this information will be available in the folder for the staff, she said. They then may need to review how the process is handled at the front counter and who reviews permits, said Ms. Maclean.

Mr. Miller said he could understand how the planning manager or the director does not look at every single building permit. He suggested that maybe any project that requires a pre-application which is usually a higher level project should receive those reviews by the supervising staff.

Chairman Haight said he was thankful for the patience awarded the Commission this evening. He said it was awkward. He said he did not think this would occur again.

Mr. Voelckers said he would appreciate the Commission being refreshed on some of the nuances of phased development after the staff has met with Mr. Palmer.

Mr. Miller asked if the applicants with the revoked permit had been personally contacted by phone before they received the revocation letter.

Ms. Maclean said the applicants were not called prior to the sending of the letter late Wednesday.

She did speak with the applicants when they phoned her on Thursday, she said.

Mr. Voelckers said he is a little concerned that they have received a few applications such as the parking waiver application addressed by the Commission tonight in Douglas in which the graphics which are interpreting critical pieces of the application are just about unreadable. It was a pretty inaccurate and difficult site plan to decipher, said Mr. Voelckers.

XIV. EXECUTIVE SESSION - None

XV. ADJOURNMENT

*The meeting was adjourned at 10:35 p.m.*

DRAFT



# NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

To be completed by Applicant	<b>APPELLANT'S CONTACT INFORMATION</b>			
	<u>Leah Svetlich</u>		<u>leahsvetlich@hotmail.com 321-3218</u>	
	<small>Appellant's Name (please print)</small>		<small>E-mail Address</small>	<small>Phone</small>
	<u>1125 Glacier Ave</u>		<u>Juneau</u>	<u>AK 99801</u>
	<small>Mailing Address</small>		<small>City</small>	<small>State Zip</small>
	X <u>[Signature]</u> <small>Appellant's Signature</small>			
	<b>DECISION THAT IS BEING APPEALED*</b> traffic flow approved by BLD-2018-0055 for Capitol Brew  Date of Director's Determination <u>April 16, 2018</u> Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.). <small>* Notice must be submitted within 20 days of the date of the decision being appealed.</small>			
	<b>APPEAL SPECIFICS (please fill in all that apply)</b> Parcel Number <u>1C060C270050</u> Zoning District <u>Light Commercial (LC)</u> Case Number <u>BLD-2018-0055</u> Title 49 Code Section _____ Current Use of Land or Buildings <u>vacant lot, zoned light commercial</u> Proposed Use of Land or Buildings <u>drive-through coffee shop</u> Other _____			
	<b>ALL REQUIRED MATERIALS ATTACHED</b> <input type="checkbox"/> Complete Application <input type="checkbox"/> Appeal Decision <input type="checkbox"/> Narrative including: <input type="checkbox"/> Grounds for Appeal <input type="checkbox"/> Specific questions you would like the Planning Commission to address			

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

APPEAL FEES	Fees	Check No.	Receipt	Date
Notice Fees	\$ _____			
Refund (Yes/No)	\$ _____			
Total Fee	\$ <u>200.00</u>			

This form and all documents associated with it are public record once submitted.

**INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED**

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number	Date Received
<u>APL18-001</u>	<u>5/4/18</u>

\* NOTE: "Building Permit" is a generic term which includes Building Safety Inspection, Grading Permits, and permits for Electrical, Plumbing and Mechanical work.

## Your special attention is called to the following:

This permit is granted on the express conditions that the construction shall, in all respects, conform to the ordinances of the City and Borough of Juneau. It may be revoked at any time upon violation of any of said ordinances.

The granting of this permit does not authorize the violation of any federal, state or local law regulating construction for the violation of the terms of any deed or covenant or any zoning or other regulation.

If plan review was required, this permit must be attached to the approved drawings. The permit, plans and record of inspections must be available on site at all times while the construction is in progress and before final inspection.

The yellow posting notice must be prominently displayed to show a permit has been issued and to assist the inspectors in location of the project. This permit becomes null and void if work or construction authorized is not commenced within one year or if work or construction is suspended or abandoned for a period of one year at any time after work has commenced.

Note: City Ordinances REQUIRE a Final Inspection be approved for every Building Permit.

## Inspections

Inspections can be arranged by telephoning **586-1703** or by written or faxed notification.

The Online Building Inspection Request Form is at: [www.juneau.org/permits/inspect\\_request.php](http://www.juneau.org/permits/inspect_request.php).

Work shall not proceed until the inspector has approved the various stages of construction. An approved Final Inspection is required.

Call before 7:00 AM for same day inspections.

Please provide the following information: 1 Permit Number, 2 Address, 3 Type of Inspection, 4 Date and Time and 5 Contact Name and Phone Number.

Job Address: **730 W ELEVENTH ST**

Issued Date : **04/16/2018**

Permit Number: **BLD20180055**

Parcel No: **1C060C270050**

Project Description: **New coffee shop "Capital Brew" modified for foundation only 03/16/2018, modified 03-20-2018 for complete structure.**

Parcel Information : **CASEY SHATTUCK BL 227 LTS 6 & 7**

Setbacks: Zone: LC:  
Front: 25.00 Ft. SE Side 1: 10.00 Ft. SW  
Rear: 10.00 Ft. NA Side 2: 10.00 Ft. NE  
Street Side: 17.00 Ft. NW

Comments:

Owner : **HARRI PLUMBING & HEATING INC**  
**809 W TWELFTH ST**  
**JUNEAU AK 99801**

Applicant : **CAPITAL BREW**  
**1503 2ND ST**  
**DOUGLAS AK 99824**

Fee Type	Date	Receipt	Amount Paid
BLD- Bldg Permit Fee	03/16/2018	51664	\$366.84
BLD- Comm Plan Review	02/14/2018	51484	\$238.45
Total Fees Paid:			\$605.29

## Valuation for Permit Fee Calculations:

S.F.	Type	Rate	Amount
			25,000.00
Total Valuation:			\$25,000.00

## Project Conditions and Holds:

**Asbuilt Survey May Be Req'd** - Asbuilt Survey may be required before final inspection if CBJ inspector is unable to verify setbacks.

**Foundation Setback Verification** - Foundation Setback Verification (yellow form) must be on site when pour inspection or placement of other foundation systems occurs.

**Approved Plans On Site** - CBJ approved plans must be on site and available to the inspector. Inspections will not be performed and additional fees may apply if approved plans are not available to the inspectors.

**DEC Approval** - DEC approval to operate shall be submitted to building department before Certificate of Occupancy is issued.

**Public Use Lavatories** - Hot water delivered to public use lavatories shall be limited to a maximum temperature of 120 degrees Fahrenheit by a device that conforms to ASSE 1070 or CSA B125.3. The water heater thermostat shall not be considered a control for meeting this provision per 2009 UPC section 413.1.

Inspections Required: Call for inspection before covering or concealing any of the work described below. Inspections may be combined.

B-Electrical Final	B-Plumbing Final	B-Foundation, Forms and Reinforcing Steel
B-Framing	B-Rough Electrical	B-Service/Panel
B-Rough Plumbing	B-Insulation/Vapor Barrier	B-Ventilation/Plenums & Ducts
B-Meter Yoke with Meter	B-Cross Connection Control	B-Building Final
E-General Engineering Final	F-Fire Final	

May 4, 2018

RE: traffic flow approved by BLD-2018-0055 for Capital Brew

Dear Planning Commission,

The appeal filed by the below to BLD-2018-0055 is filed on behalf of the following Flats Neighborhood Residents:

Leah Svetlich  
1125 Glacier Ave.  
Juneau, AK 99801

Alex and Ellen Andrews  
1133 Glacier Ave.  
Juneau, AK 99801

Arnie Weimer  
635 W. 12<sup>th</sup> St.  
Juneau, AK 99801

Craig Good  
629 W. 11<sup>th</sup> St.  
Juneau, AK 99801

Sante Lesh  
338 W 10<sup>th</sup> St.  
Juneau, AK 99801

Matt and Naomi Davidson  
521 W. 9<sup>th</sup> Ave,  
Juneau, AK 99801

Julie Scheurer  
529 W. 12<sup>th</sup> St.  
Juneau, AK 99801

Aurah Landau  
626 W. 11<sup>th</sup> St.  
Juneau, AK 99801

We are writing as concerned residents of the Casey Shattuck neighborhood (aka “The Flats”) regarding the approval of a permit to allow Capital Brew to operate a drive-through coffee shop in our neighborhood without any conditions on how the additional traffic generated by this business will affect the safety and quality of life of its neighbors.

We support Capitol Brew operating a business on the periphery of the neighborhood, but we are concerned that there was no public process to help mitigate the potential and likely negative effects of this new business on nearby residents and residences. We are appealing the issuance of Capital Brew’s permit. We would like the Planning Commission to require a conditional permit that would regulate how the traffic flow in and out of this business will be managed to minimize disturbance to, and safety concerns of, local residents and school children.

A drive-through coffee shop thrives on increasing traffic. That is to say, more traffic means more business. The values of this business strategy directly contradict the values of our neighborhood. The Flats is one of the most desirable neighborhoods in Juneau because of its safety and walkability. To local residents, less traffic means a safer and more livable neighborhood. Compounding our concerns is the fact that the busiest time of day for a coffee shop coincides with the time period when many children are walking to nearby schools and adults are walking to work. Drivers entering and exiting the coffee stand have the potential to cross the paths of children walking to school in at least 11 different places.

We regret having to negotiate mutually acceptable terms with Capital Brew through this formal appeal process and would have preferred if there had been some sort of good-will outreach earlier in the planning process. We hope that with a few minor conditions on the permit, Capital Brew will be able to thrive as a local, neighborhood business, while maintaining the characteristics of our neighborhood that make it such a great place to live.

While we are not endorsing specific traffic control measures, we would like the Planning Commission to consider traffic control methods such as and not limited to:

1. Allow directional traffic into the coffee stand via the Glacier entrance the alley between 11<sup>th</sup> St. and 12<sup>th</sup> St., allow traffic to exit the coffee stand via 11<sup>th</sup> St. with a right turn only, and only allow a left turn onto Glacier from 11<sup>th</sup> St.
2. Direct traffic exiting onto 11th to turn right toward Glacier Ave.
3. Direct traffic exiting onto the alley between 11<sup>th</sup> St. and 12<sup>th</sup> St. to turn left toward Glacier Ave.
4. Put stop signs at the alleys before the sidewalks.
5. Install Children at Play signs in the alley between 11<sup>th</sup> St. and 12<sup>th</sup> St.
6. Use paint on Glacier and 11th intersection to direct drivers on Glacier not to block the intersection - this will help drivers exiting the coffee stand to access Glacier.

Thank you for your consideration.

August 8, 2018

Re: Case Number BLD-2018-0055

Dear Planning Commission,

The appeal filed by the below appellants to BLD-2018-0055 is being withdrawn. We understand that this appeal was scheduled to be reviewed at the August 28, 2018 Planning Commission Meeting. Though some of our originally stated concerns remain to be resolved, we are (as a group) foregoing this review.

We are appreciative of your consideration and attention with our concerns.

Alex and Ellen Andrews

Arnie Weimer

Matt and Naomi Davidson

Craig Good

Aurah Landau

Sante Lesh

Leah Svetlich

A handwritten signature in black ink, appearing to read "Julie Scheurer". The signature is fluid and cursive, with the first name "Julie" and last name "Scheurer" clearly distinguishable.

Julie Scheurer

August 8, 2018

Re: Case Number BLD-2018-0055

Dear Planning Commission,

The appeal filed by the below appellants to BLD-2018-0055 is being withdrawn. We understand that this appeal was scheduled to be reviewed at the August 28, 2018 Planning Commission Meeting. Though some of our originally stated concerns remain to be resolved, we are (as a group) foregoing this review.

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Alex and Ellen Andrews



Arnie Weimer



Matt and Naomi Davidson



Craig Good

Aurah Landau

Sante Lesh

Leah Svetlich

Julie Scheurer

August 8, 2018

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Alex and Ellen Andrews

Arnie Weimer

Matt and Naomi Davidson

Craig Good

A handwritten signature in blue ink that reads "Craig Good".

Aurah Landau

A handwritten signature in blue ink that reads "Aurah Landau".

Sante Lesh

Leah Svetlich

Julie Scheurer

August 8, 2018

Re: Case Number BLD-2018-0055

Dear Planning Commission,

The appeal filed by the below appellants to BLD-2018-0055 is being withdrawn. We understand that this appeal was scheduled to be reviewed at the August 28, 2018 Planning Commission Meeting. Though some of our originally stated concerns remain to be resolved, we are (as a group) foregoing this review.

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Alex and Ellen Andrews

Arnie Weimer

Matt and Naomi Davidson

Craig Good

Aurah Landau

Sante Lesh


 for Santo P. LESH

Leah Svetlich

Julie Scheurer

August 10<sup>th</sup> 2018

I have decided to drop the appeal  
thank you,

Leah Sretlow  


# NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

Project Number	Project Name (15 characters)	Case Number <b>APL 20180003</b>	Date Received <b>7/30/18.</b>
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## APPELLANT'S CONTACT INFORMATION:

E-mail Address		Fax Number	
Appellant's Name <b>P.O. Box 32403</b>		Home Phone <b>JUNEAU</b>	
Mailing Address		City	State Zip <b>AK 99803</b>

X   
Appellant's Signature

**DECISION THAT IS BEING APPEALED** *Directors Decision to issue violation notice.*  
*The Directors decision to stop our permitted project.*  
*The Directors decision to force the appellant to change*  
*our Plats & Declarations. the decision to force regulation on*  
*Condominiums.*  
 Date of Director's Determination **7/10/18**

\*\*\*\*\*Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.)\*\*\*\*\*

## GROUND FOR APPEAL

*New CDD Director has wrongfully stopped a legally permitted*  
*Condominium project Mid course, based on her misinterp-*  
*retation of state & local code. the CDD Director*  
*also fails to accept that our project is fully permitted.*  
*and has followed CDS requirements.*

## SPECIFIC QUESTIONS YOU WOULD LIKE THE PLANNING COMMISSION TO ADDRESS

*Does CDS Regulate Condominiums? Is the directors*  
*interpretation of SUBDIVISION wrong?*  
*does state law regulate condominiums?*  
*is Sunset Meadows a subdivision or condominium?*  
*is the Directors actions a paper way to handle this situation.*

## APPEAL SPECIFICS (please fill in all that apply):

Parcel Number	<b>SB1601090081</b>	Zoning District	<b>L.C.</b>
Case Number		Code Section	<b>AS 34.08</b>
Current Use of Land or Buildings	<b>Condominium</b>	<b>AS 34.08.990 (7) (8)</b>	
Proposed Use of Land or Buildings	<b>Condo mium</b>		
Other	<b>Title-49 does not apply to Condominiums</b>		
<b>Title-49 Definitions do not apply to condominiums</b>			
<b>SEE ATTACHED Response to Violation Notice dated 7/11/18 &amp; 7/12/18</b>			

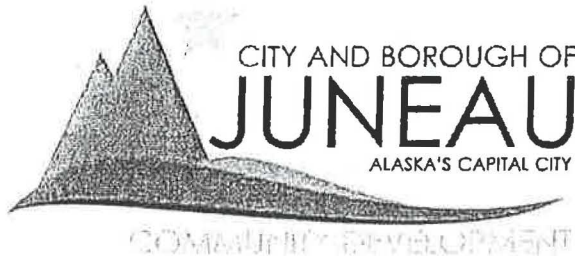
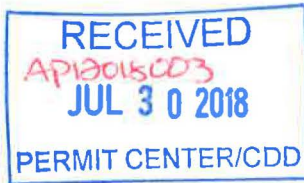
For more information regarding the process and the submittals required, please see the reverse side.

## APPEAL FEE

	Fees	Check No.	Receipt	Date
Notice Fees	<b>\$200</b>			
Refund (Yes/No)	\$			
Total Fee	\$			

Please attach a cover letter to fully explain the appeal if there is not adequate space on this form.

# Violation Notice



(907) 586-0757  
Jill.Maclean@juneau.org  
www.juneau.org/CDD  
155 S. Seward Street • Juneau, AK 99801

July 10, 2018

Parcel No.: 5B1601090081  
Case No.: USE2011 0015

**Certified Return Receipt Number**  
**7010 2780 0000 7478 1354**

RH Development  
Attn: Richard Harris  
P.O. Box 32403  
Juneau, Alaska 99803

**RE: Sunset Meadows Development - Subdivided Lots**

Dear Mr. Harris,

Sunset Meadows Plat No. 2018-7 and the associated Declaration of Covenants, Conditions, and Restrictions (dated April 10, 2018) on record with the State of Alaska's Recorder's Office indicate that a subdivision has been recorded without the required review and approval by the local Platting Authority, in this case the City and Borough of Juneau (CBJ).

The Planning Commission approved a Conditional Use Permit (USE2011 0015) for a 48-unit, multi-family complex on August 18, 2011. Subsequent to that approval, you testified at the May 13, 2014, Planning Commission meeting during *Public Participation on Non-Agenda Items*. At this meeting, you stated that you were seeking a change from a four-building, multifamily development to a single-family condo development, with fewer units, with only the design of the buildings changing. (Enclosed May 13, 2014 Minutes excerpt and PowerPoint Presentation.)

However, since the Planning Commission approved USE2011 0015, CDD has learned that your project is being developed and sold outside of what was reviewed and approved by the Planning Commission. Notably, the site plan and declarations have changed, and they purport to sell land with the condominium units by subdividing what was supposed to be common ownership property into multiple sites, which is a violation of:

**A.S. 40.15.010**

*Before the lots or tracts of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be approved by the authority having jurisdiction, as prescribed in*

RH Development  
 July 10, 2018  
 Page 2 of 3

*this chapter and shall be filed and recorded in the office of the recorder. The recorder may not accept a subdivision or dedication for filing and recording unless it shows this approval.*

**A.S. 40.15.900**

**(5) Subdivision**

*(A) Means the division of a tract or parcel of land into two or more lots by the landowner or by the creation of public access, excluding common carrier and public utility access;*

*(B) Does not include cadastral plats or cadastral control plats created by or on behalf of the United States Department of the Interior, Bureau of Land Management, regardless of whether these plats include easements or other public dedications;*

**CBJ 49.80.120**

*"Subdivision" means the division or redivision of a tract or parcel of land into two or more lots, sites or other divisions and the act of developing, constructing or improving property with a subdivision as required by CBJ Title 49.*

Any associated land being sold with the condominium units is considered a subdivision and requires review and approval by the local Platting Authority before any subdivided property may be sold (A.S. 40.15.010).

The concept that was applied for, reviewed by staff, and approved by the Planning Commission was a 48-unit, multifamily project. No mention of a subdivision to create individual lots for each unit was discussed or reviewed during the Conditional Use Permit process. Additionally, the building permits applied for and the resulting Certificates of Occupancy that you seek, do not depict the lot(s) created and depicted on the recorded condo plat. The recorded condo plat and associated declarations demonstrate that a portion of land is being sold along with each condo unit, which is a subdivision of land.

No additional Certificates of Occupancy (CO) or Temporary Certificates of Occupancy (TCO) may be issued until the development is in compliance with Title 49, the Land Use Code. There are two courses of action to remedy this:

- 1) You may either re-file your condo plat and associated declarations that were reviewed and approved (USE2011 0015) and then sell your units consistent with that approved project. Your project would then be in compliance with your development approvals; or
- 2) You may submit an application for a major subdivision, and staff and the Planning Commission will review and consider the subdivision concept. This option will require a public process and the Planning Commission will decide to approve or deny the request. If the Planning Commission approves the subdivision and upon the final plat being approved and recorded by the State Recorder's office, then you may then begin to sell any lots that are created.

As you are aware, CDD is currently in the process of amending the Land Use Code, Title 49, in order to accommodate development concepts such as Sunset Meadows through a 'unit site condo' ordinance. This code amendment process still has multiple layers of review before it is presented to the Assembly for consideration.

RH Development  
July 10, 2018  
Page 3 of 3

In summary, the condo plat and associated declarations (A Condominium Plat of Sunset Meadows Lot 1, Faith Lutheran Subd., dated February 3, 2018) demonstrate that a subdivision of the land has occurred, which was not reviewed and approved by the CBJ.

Please call me to discuss this matter and how you plan to remedy the situation, so that we may facilitate a solution, rather than seek enforcement action.

You may also appeal this decision by filing a notice of appeal within 20 days, consistent with CBJ 49.20.110(a).

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Maclean".

Jill M. Maclean, AICP, Director  
Community Development Department

cc: Beth McKibben, AICP, Planning Manager  
Charlie Ford, Building Official  
Laura A. Boyce, AICP, Senior Planner

Enclosures:

Minutes Excerpt, Planning Commission, May 13, 2014  
PowerPoint Presentation, Planning Commission, May 13, 2014

MINUTES

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

May 13, 2014

**I. ROLL CALL**

Michael 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:** Michael Satre, Chairman; Dennis Watson, Vice Chairman; Karen Lawfer, Ben Haight, Bill Peters, Paul Voelckers, Dan Miller, Gordon Jackson, Nicole Grewe

**Commissioners absent:**

**Staff present:** Hal Hart, Planning Director; Travis Goddard, Planning Manager; Beth McKibben, Senior Planner; Laura Boyce, Senior Planner; Chrissy McNally, Planner I; Jonathan Lange, Planner I; Sarah Bronstein, Planner I; Robert Palmer, Assistant Attorney II; Jane Sebens, City Attorney; Rob Steedle, Deputy City Manager; Greg Chaney, Lands and Resources Manager

**II. APPROVAL OF MINUTES**

- April 8, 2014 – Committee of the Whole Meeting
- April 8, 2014 – Regular Planning Commission Meeting
- April 15, 2014 – Committee of the Whole Meeting
- April 15, 2014 – Special Planning Commission Meeting
- April 22, 2014 – Regular Planning Commission Meeting

**MOTION:** *by Mr. Miller, to approve the minutes of the Committee of the Whole Meeting and the Regular Planning Commission Meeting of April 8, 2014, the Committee of the Whole Meeting and the Special Planning Commission Meeting of April 15, 2014, and the Regular Planning Commission Meeting of April 22, 2014, with any minor modifications by any Commission members or by staff.*

The motion was approved by unanimous consent.

### III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Richard Harris, with RH Development, said he was asked to provide an update to the Planning Commission on a project which was previously approved and which he wanted to change. The project was a 48 unit residential project on Sunset Street. It was originally set up as four 12-plexes. He said he wants to change the design to a single family condominium project. He said the project would probably be less intensive than the original project.

Mr. Goddard said the site was approved for a Conditional Use permit in 2011 to construct a 48 unit apartment in four, two story buildings. Mr. Harris has modified his plans, lowering the number of units in the first phase, and separating the units into single family dwelling units separated by six feet to meet the fire code, said Mr. Goddard. This is permitted in the Code, said Mr. Goddard. The resulting density is less than the previous application, said Mr. Goddard, resulting in less density than was previously approved.

The question, said Mr. Goddard, before the Commission, is whether this change is significant enough to warrant the applicant coming back before the Commission for another Conditional Use permit. Since the existing permit carries more impacts than the new proposal, and has already been approved by the Commission, the staff feels another Conditional Use permit is not necessary, said Mr. Goddard.

Mr. Voelckers asked if there was any increase in lot coverage or any other impacts which could be perceived as more harmful than the initial project.

Mr. Harris said there were none. Everything remains the same, he said, except the design of the buildings.

Mr. Miller asked if there has been any neighborhood outreach.

Mr. Harris said there has not been any neighborhood outreach; that the current proposal fits the neighborhood better than the previous proposal.

Travis  
Goddard

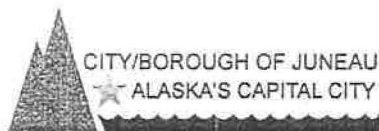
# **Revised Site Plan**

**USE2011 0015**

To construct a 48-unit apartment complex consisting of 4, two-story buildings.

CBJ Planning Commission

May 13, 2014



USE2011 0015

Site Location



Zone: LC

Lot size: 2.67 acres

Current use: Vacant

Access: Sunset Drive

Surrounding land use:

North, South and East – LC

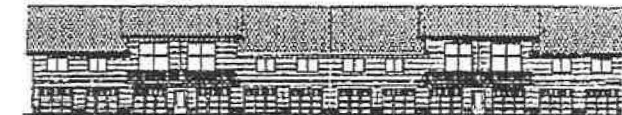
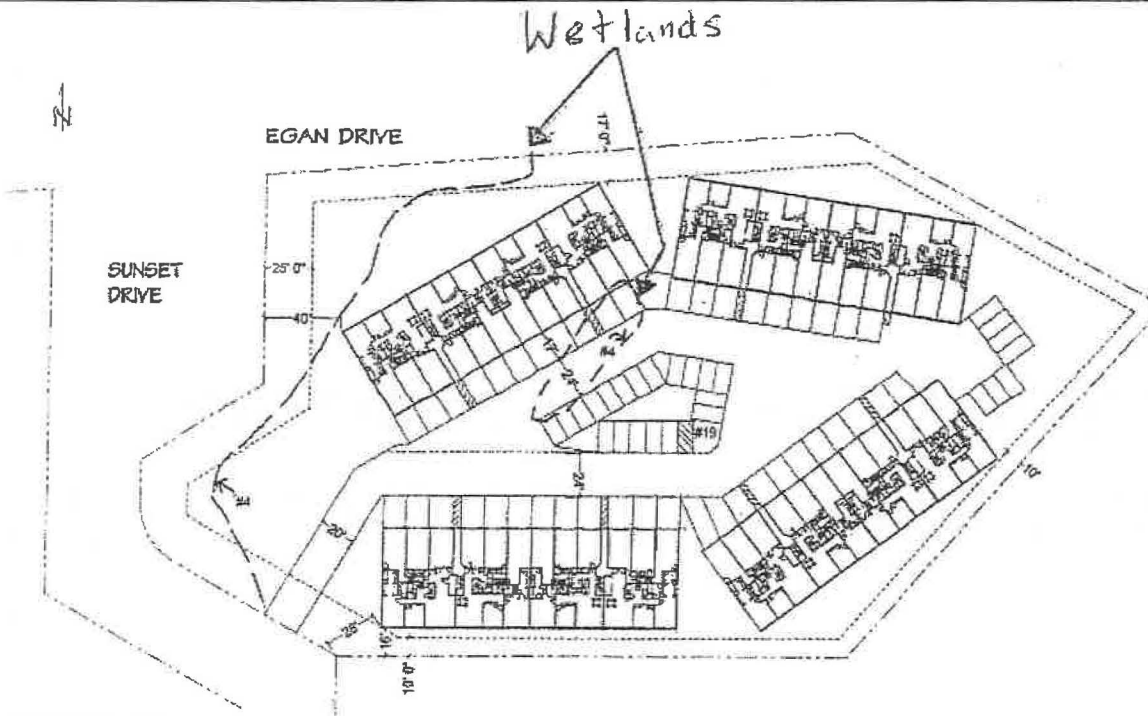
West – D15

## Project Description:

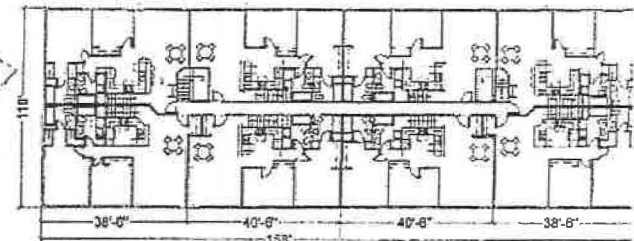
To construct a 48-unit apartment complex consisting of 4, two-story buildings.

# USE2011 0015

# Approved Site Plan



FRONT ELEVATION 1"=30'



SECOND FLOOR PLAN 1"=30'

## SITE PLAN 1"=60'

### PROPOSE DEVELOPMENT

#1. 48 UNIT APARTMENT COMPLEX

#2. Site Location - LOT 1 FAITH

FAITH LUTHERAN SUBDIVISION

#3. LOT Size - 116.198± (2.87 Acres)

#4. Wetlands - YES - SEE PLAN &

J.W. BEAM & SURVEYOR

#5. Zoning LC

#6. Setbacks - 25' Front Yard, 17' Min Street

Side Yard - 10' Min Side Yard & Rear

Yard

#7. Building Height Proposed 33'

Building Height Allowed 35'

#8. Vegetative Coverage proposed

42.243 ±

Vegetative Coverage required

15% x 116.198± = 17,430 ±

#9. Development Proposed 2 STORY

APARTMENT UNITS

Allowable use - REQUIRES CONDITIONAL

USE PERMIT - WETLAND PERMIT

### #11. Typical Building Concept

(12) UNITS - 2 BR UNITS = (12) GARAGES

#12. Number of buildings proposed = 4

Number allowed = NOT REGULATED #5

#13. Density Proposal - (48) 2BR APARTMENT

UNITS

Density Allowed = 18 UNITS/ACRE ±

2.87 ACRES = 48 UNIT

#14. Parking Proposal = 116 SPACES

(COUNTING GARAGE PARKING)

Parking Required = BEDROOM FACTOR

x # OF UNITS = 1.75 SPACES x 48

84 SPACES REQD

#15. Parking Standards

80 SPACES 8.5' WIDE x 17' DEPTH

24' BACK OUT FOR 2 WAY TRAFFIC

#16. Accessible Space Proposed 9

Regulated 5

Size 6' x 17' + 5' AISLE FOR

VAN 8' WIDE AISLE

#17. Water & Sewer CBL

#18. Fire Access - SEE PLAN

#19. Trash + DUMPSTER + SCREEN

48 UNITS APARTMENT COMPLEX  
RH DEVELOPMENT  
JUNEAU, ALASKA

1 of 1  
5-28-1011  
7-1-1011 rev



ABC/ THOMAS HUNTINGTON, ARCHITECT  
2314 Douglas Highway, Douglas, AK 98024-6077-384-3036 & fax

**USE2011 0015**

**Site Plan**

Significant work done  
since Conditional Use  
Permit approved:

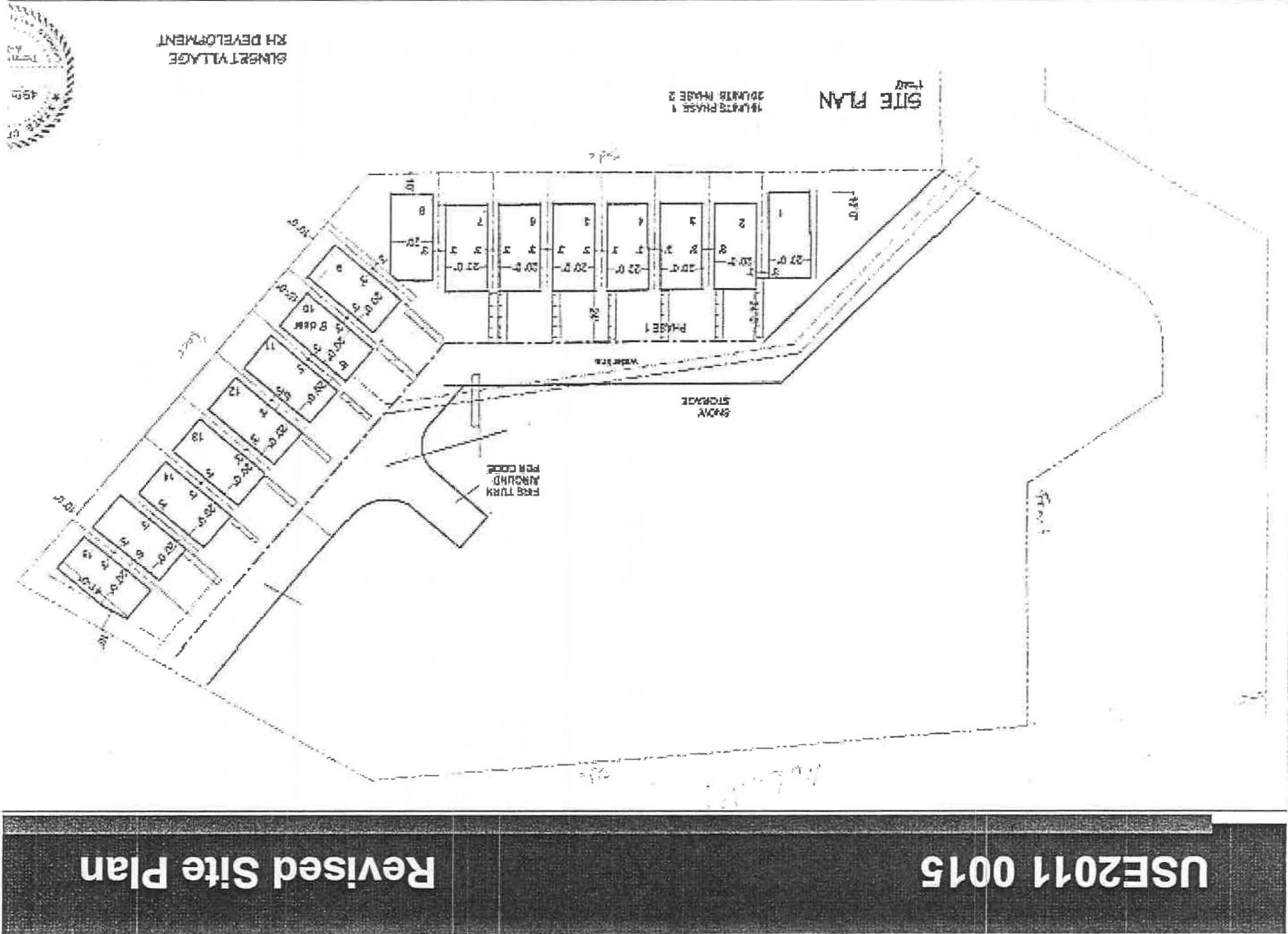
Grading permit- 3/27/2012  
Last inspected- 8/31/2012



USE2011 0015 Revised Site Plan

USE2011 0015

Revised Site Plan



The form is allowed in the LC zone:

49.25.520 Multiple buildings; Density determinations

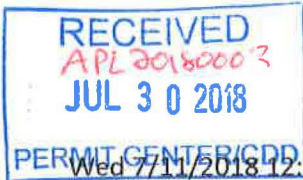
*The number of dwelling units allowed on a lot in a multifamily zone shall be determined pursuant to this chapter without regard to whether the units are constructed in the same building or different buildings.*

However, it varies from the number of lots and the building form that was approved in 2011.

**USE2011 0015**

Question:

Does the revised site plan require additional review by the planning commission? Can this revision be approved with department approval only?

*Response to violation notice*

Wed 7/11/2018 12:00 PM

Hello Jill , congratulations on the new position as Community Development Director. I am sorry that my project is the subject of your first violation letter. I am quite surprised by your accusation that I have done something wrong. Possibly you are missing some information. In your letter you clearly show that we went back before the PC in 2014 where the question was asked if changing the housing units to single family from a multi family would require re review by the Planning commission, the answer to this question was "No". The planning commission stated the new single family proposal has less impact than the original multifamily proposal, and is better suited for the neighborhood; this gives staff permission to approve the new single family development. Approval was done when all permits for the construction of our sunset meadows single family project were approved. This project has been under construction since April of last year 2017 with all required permits approved by staff, and with all inspections being completed including the building, grading, and site plan inspections. All of which have been going along quite nicely until this devastating letter sent yesterday. Our current project looks almost identical to the revised site plan on page 12 of your letter. our current project also looks almost identical to the plans approved by planning department staff in May of 2017. I can't figure out what we are doing that is any different than what we were approved for. I clearly stated in the May 13<sup>th</sup> 2014 PC meeting ( page 5 of your letter under Public Participation) that I wanted to build a single family condominium project, and that is exactly what we have done. On page 2. a.) of your letter you mention approved condo plats, and declarations from the original 2011 PC meeting. There are no approved declarations and condo plats from that meeting, as the CBJ does not review condominium plats, nor do they review condominium declarations.

I hope you realize the severity of your withholding our certificates of occupancy. We have a project that is well beyond the planning stage, some certificates of occupancy have been issued and some homes are occupied, We have closing scheduled this week with lenders waiting for the CO's, there are multiple people who are wanting to move into their new homes this weekend. And now are threatened with some form of delays, which could lead to financial burdens on all involved.

The short answer to this is that there has been no subdivision of Lot 1 Faith Lutheran as all of the condos are located on that one lot. Lot 1 has not been divided into two or more lots. What has happened is that condos in accordance with State statutes (AS 34.08) have been created on that lot 1. The City fails to make the relevant and material distinction between the division of one lot into two or more lots, versus what has occurred at Sunset Meadows which is the creation of condominiums on one lot in accordance with State statutes.

I urge you to reconsider the actions and consequences of this letter ,

I would be happy to meet and discuss this further, I also would like to request if the city law department has not been involved please ask them to review these accusations.

Sincerely

*Richard Harris*

**GRUENING & SPITZFADEN**

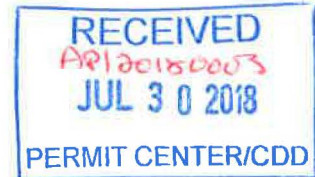
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
217 SECOND STREET, SUITE 204  
JUNEAU, ALASKA 99801  
(907) 586-8110; Fax (907) 586-8059

Robert S. Spitzfaden

Clark S. Gruening (RET.)

July 12, 2018

Jill M. Maclean, AICP, Director  
Community Development Department  
155 S. Seward Street  
Juneau, AK 99801



Re: July 10, 2018 Letter

Dear Ms. Maclean:

I have been asked by Richard Harris to respond to your letter of July 10, 2018. Request is hereby made that you withdraw the July 10, 2018 letter of violation. The following reasons support that request.

1. Sunset Meadows Condominiums is a condominium organized pursuant to AS 34.08., located on Lot One (1), Faith Lutheran Subdivision, according to Plat No. 2002-26, Juneau Recording District, First Judicial District, State of Alaska. There is no plat further subdividing lot 1.
2. "Common interest community is real estate with respect to which a person by owning the unit, is obligated to pay taxes, insurance, maintenance or improvement of other real estate describe in the declaration. AS 34.08.990(7). AS 34.08.990(8) defines a condominium as a portion of the real estate designated for separate ownership with the remaining real estate designated for common ownership. "Real estate" is defined as a leasehold, estate, or other interest in, over or under land, including parcels with or without upper or lower boundaries, and space that may be filled with air or water. AS 34.09.990(27). A "unit" means a physical portion of the common interest community designed for separate ownership or occupancy. Units are created by the declaration or plat specifying boundaries. AS 34.08.130(5). The Alaska Supreme Court has describes condominiums as follows:

The term condominium refers to a form of ownership in which a buyer owns a unit with an additional property ownership interest in the development's common property." This "common property" can be either a common element or a limited common element. Limited common elements are portions of the common property that are "reserved for the use of one or more, but less than all, owners." Limited common elements, like common elements, are owned by the condominium association members themselves. "In the condominium form of ownership, the owners own their property individually in fee simple or other fee interest.... In addition, however, the owners also have an undivided interest in the common property, an interest that is appurtenant to the unit." Black v. Municipality of Anchorage, 187 P.3d 1096, 1099-1100 (Ak. 2008)(footnotes omitted).

Ms. Maclean  
July 12, 2018  
Page 2

It is clear from these citations that condominium units include surface, subsurface and airspace, carved from the underlying fee simple estate by specifying unit boundaries, with owners then having a fee simple or other ownership interest in the resulting unit. Nothing in AS 34.08 states that the creation of a condominium unit is a subdivision within the meaning of AS 34.40.010 or .900. Nothing in AS 34.08 requires review and approval by the City of the condominium declaration or plat. Nor does any City ordinance require review and approval of a condominium plat or declaration.

3. The plat and declaration of Sunset Meadows created condominiums. As the declaration specifically states, the declaration did not subdivide the proper but instead created units consisting of blocks of airspace, just like any condominium:


The boundaries of the Unit do not create a tract or parcel of land described as a "subdivision" as in AS 40.15.209 (sic should be .900). The block of airspace for the Phase One Units are described as follows: UPPER BOUNDARIES: The horizontal plane forty five feet (45.0') above the Unit floor elevation and parallel to the lower boundary and extending to the vertical perimeter boundaries. LOWER BOUNDARIES: The horizontal plane extending to the vertical perimeter boundaries at seven feet (7.0') below the Unit floor elevation extending to the vertical perimeter boundaries. VERTICAL-PERIMETER BOUNDARIES: The vertical planes extending between the upper and lower boundaries and located by reference to the measurements to the unit boundary lines as shown on the Plat. Each Unit will include space and improvements lying within the boundaries described in this subsection (b) and any man-made improvements serving only the Unit subject however to the Party Wall set forth in Paragraph C section 1(b)(ii).

4. The owner/declarant of lot 1 owns the fee simple estate, meaning the owner/declarant is entitled to the entire property. Black's Law Dictionary defining fee simple. The fee simple includes the airspace. 2A CJS Aeronautics & Aerospace Section 2. As with any condominium, Sunset Meadows Condominiums simply created condominium units on lot 1 in accordance with AS 34.08 composed of subsurface, surface and airspace.
5. That the declaration and plat created condominium units which included some surface, subsurface and airspace does not create a subdivision within the meaning of AS 40.15.010 or .900 or CBJ 49.80.120. The Sunset documents created condominium units, not a subdivision. If the Sunset declaration and plat was a subdivision within the meaning of the cited laws, every condominium would be a subdivision by creating unit boundaries. Furthermore, if creating boundaries within a lot is a subdivision, then the leasing of offices or apartments in an office building or fourplex would be a subdivision – something no one thinks is the case.
6. The City has never reviewed condominium plats because they do not subdivide a tract or lot, and hence do not fall within the requirements for City approval.
7. That Sunset Meadows is a site condominium does not mean it is any different from any other condominium governed by AS 34.08.
8. The City has previously not objected to a site condominium in which the units included surface and airspace. See declaration and plat for Salmon Falls Park dating to 2004. That the City is doing so now is a selective prosecution aimed at preventing Sunset Meadows from competing with the City's own subdivision near to Sunset.

Ms. Maclean  
 July 12, 2018  
 Page 3

9. In 2014, Mr. Harris indicated that he was changing his project condominiums to create single family dwelling units. The Planning Commission did not require that it reconsider USE 2011-0015. Subsequently the City has received the Sunset Meadows drawings showing the single family units, received applications for the project, approved necessary permits for construction of the units, and issued certificates of occupancy for two units which have been sold, closed and the new owners are occupying the units. At present, three units have necessary certificates of occupancy, are under contract, and are set to close within a matter of days and weeks. Four units still lack certificates of occupancy which the City is refusing to issue. Two of the units without certificates of occupancy are under contract with two units unsold. The project that the City is now objecting to is the same that was brought to the Planning Commission in 2014 and for which the permits and certificates were issued. Now the City claims there is a violation. The City is bound by its prior determinations in issuing permits and certificates of occupancy for the units.
10. The City's actions are accruing damages to the buying public who are awaiting closing and move-in's, and who have expended substantial amounts to get to that point, including appraisals, energy inspections, title reports, home inspections, etc.
11. Furthermore, the withholding of further certificates of occupancy is threatening the financing of phases I and II, which could result in the loss of untold tens of thousands of dollars.

Cordially,

  
 Robert S. Spitzfaden

RSS:gw  
 CC: Harris