

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

November 21, 2016, 6:00 PM.
Municipal Building - Assembly Chambers

Assembly Worksession - No Public Testimony

I. ROLL CALL

Deputy Mayor Jerry Nankervis called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Maria Gladziszewski, Norton Gregory, Loren Jones, Jesse Kiehl, Ken Koelsch, Jerry Nankervis, Beth Weldon and Debbie White.

Assemblymembers Absent: None.

Staff present: Rorie Watt, City Manager; Mila Cosgrove, Deputy Manager; Amy Mead, Municipal Attorney; Laurie Sica, Municipal Clerk; Robert Palmer, Assistant Municipal Attorney; Rob Steedle, Community Development Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Roger Healy, Engineering / Public Works Director.

II. APPROVAL OF AGENDA

Hearing no objection, the agenda was approved.

III. APPROVAL OF MINUTES

A. October 31, 2016 Committee of the Whole Minutes

Hearing no objection, the minutes of the October 31, 2016 Committee of the Whole meeting were approved.

IV. AGENDA TOPICS

A. ADEC Cruise Ship Waste Water Update

Michelle Hale, Director, Division of Water at the Alaska Department of Environmental Conservation, reported on the effluent water sampling program from cruise ships in 2016. She said effluent sampling is done from all cruise ships, as well as from wastewater facilities. They require the cruise agencies to do the receiving water monitoring, which is contracted out. This ensures that water quality is met at the boundaries of the mixing zone. Dissolved copper and ammonia are the two things that they are looking for. She provided tables with sampling results and explained the meaning of the tables. There was one incidence of copper contamination in the results. The results for ammonia were below the criteria for concern in the 2015 and 2016 years. She said they expect to see ammonia and copper in low concentrations in seawater. The levels present are comparable to when the ships are in and when they are not in the harbor. Sampling for dissolved metals can be difficult and unlike a stationary source like the JD plant, where the sample location is always the same, cruise ships need to figure wind, tide and location into the study factors. We are working with the same people year after year to refine the program and to avoid contamination in the samples. We use these results to inform the next permit cycle. We will start to work on the next five year permit in the next year or two, and this data will inform our decisions.

Ms. Weldon asked the size of the mixing zone. Ms. Hale said she thought the underway mixing zone was 60 feet, but their rule is to make them as small as possible. The limit for underway is higher, and the stationary ships have smaller zones because they are in harbors.

Mayor Koelsch asked how long the samples could be kept viably. Ms. Hale said six months for metal samples. They don't generally degrade. Ammonia samples have a holding time of 28 days.

Mr. Kiehl asked for clarification and Ms. Hale said "field blank" meant taking deionized/distilled water and processing it the same way as a field sample, to test to see if the equipment is contaminated. An ambient sample is taken of the background level. These are all Gastineau Channel stationary discharge samples provided in the report. Each ship that discharges while stationary are required to take samples. While underway it is too dangerous to take samples.

Mr. Gregory asked about the timing of the samples. Ms. Hale said that the samples were taken during the cruise ship season while the ships were tied up at the dock. The green line on the report referred to ambient water quality samples taken while the ships were not in the harbor. Mixing zones are done by modeling. There is testing during the shoulder seasons, when ships are not here but not during the middle of winter.

Ms. Gladyszewski asked about time of day and location. Ms. Hale said the samples were taken by the contractor while the ships were in town and the samples are taken virtually at the same time each time. Ships are required to sample twice per season when they are discharging.

Mr. Kiehl asked how two ships tied at the same time could be differentiated in their mixing zone. Ms. Hale said that was part of the complication. She spoke about upstream and downstream levels and said that receiving water sampling is very broad and it is just confirmatory and they did not expect huge precision. Mr. Kiehl asked what happens if there is an exceedence of levels. Ms. Hale said DEC would work with the contractor and they have a separate contractor for the ambient sampling, so they can compare notes and address field contamination. She said that they can't know definitively based on test results and it was basically a judgment call. There was no follow up to the sampled vessel in the case of the one exceedence.

Mayor Koelsch asked if there was anything to indicate that kids should not dive off the docks. She said she did not believe so, other than jelly fish.

B. Cruise Ship Season 2016 Update

Kirby Day spoke on behalf of the Tourism Best Management Practices program. He has been involved with tourism in Juneau for 30 years. Overall the season was positive, for passengers and for the region. Juneau welcomed the one millionth cruise ship passenger this summer and 2016 saw the highest numbers since 2008. The southern berth of 16b was completed on time with a positive experience for all. This opened the dock for the public. In 2017, there will be four docks that will have the ability to handle the 1000 foot ships. It is a world class facility and no issues are anticipated with the one under construction. The additional infrastructure minimizes the days that ships need to lighter their passengers to the dock, which translates to more time at shore, and more sales and sales taxes. There are only 11 calls at anchor next summer. There were 1,050,000 passengers in 2016, and last year was 1,040,000. This is a positive trend. This also brings challenges, and in 1996 we began the TBMP program, which is 20 years old. In 1996, there were 500,000 passengers. The industry was behind the eight ball when the program began to address the impacts of more people in a small area in a short period of time. Hot topics were flightseeing, helicopter and float plane noise, trail maintenance, whale watching, wake from boats, emissions, and traffic. He distributed the 2016 report and there are 96 guidelines for businesses to follow. The complaint hotline allows residents to call in and provide feedback. Wake damage at Auke Bay, litter, smoking refuse, and retail business conduct are some current issues. He spoke about awareness efforts. He provided a sample of the narrative regarding the hotline calls and responses. They have a call volume log back to 1996, and the number of calls is going down, particularly in cruise ship noise and emissions, and flightseeing noise. The program has made a

difference, people continue to participate, and we plan to sustain the program. The program was recognized by Georgia Tech for best practices in sustainable tourism, and other communities have emulated the program. Challenges include managing vehicular traffic in Marine Park, as we will be doubling the traffic coming into that area with the new dock. We are working on wayfinding and getting pedestrian traffic moving in the right direction. They will be adjusting crossing guard locations. The lightering dock will be moved to 16b South. He thanked the Assembly for the support of the program, which has come a long way.

Ms. White asked about the monthly report to understand it and she agreed that the boat wake issue was problematic. Mr. Day said they have met with many boat operators to discuss this issue and issues regarding whale watching.

Ms. Gladziszewski thanked Mr. Day for keeping this program going and she thought if he had not been its champion the program probably would not continue. They discussed anchoring ships in the harbor and he said that there is no longer a situation in which there is a boat lightering while there is an empty dock.

Mr. Kiehl thanked Mr. Day for encouraging companies to participate and asked what the Assembly could do in that area. Mr. Day said the allocation of money to the program to do outreach, ads and staffing the hotline was helpful.

Mr. Gregory said he had a concern about buses with bad emissions. Mr. Day said buses should be in the right lane unless turning, and there are guidelines regarding emissions and fluid leaks, but the only way they know about that is if someone calls the hotline. People need to be specific with details when they call.

Mr. Nankervis thanked Mr. Day for his work for the program and Mr. Day said it was a group effort.

C. Ordinance 2016-36 An Ordinance Amending the Animal Control and Protection Code Relating to Potentially Dangerous and Dangerous Domestic Animals.

Mr. Watt said an ordinance, along with a memo from Matt Musslewhite, Executive Director of the Gastineau Humane Society, were in the packet and Mr. Musslewhite and an animal control officer were present to answer questions.

Mr. Jones asked about page 2 of 6, items 4, and 5, focused on the "keeper's history" as the major criteria for determining that a specific animal was dangerous. He thought it should be an "and" and the stricken language should remain. He still has some concerns that this is allowed. Mr. Watt said the first three points were about the animal specifically, and items 4 and 5 were about the keepers compliance. If a person has an animal that presents improper behavior in items 1 and 3, you can use the keepers compliance as a factor in the decision. Mr. Jones said if the owner has never had any other complaints, would it be a mitigating factor for the keeper? Mr. Watt said that the director had to make a decision on all the facts. Ms. Mead said that prior bad acts can be considered in this code section. It is a policy call. She said the owner's behavior could not mitigate the bad act of the animal.

Mr. Jones asked about page 3 of 6 line 7, to have a dangerous dog under the control of a person 18 years of age or older for clarification, and asked if the keeper had to be 18 years or older to have the keeper's behavior considered in the determination. Ms. Mead said that she believed the keeper responsibilities would flow to the parent.

Mr. Kiehl asked if the goal is to define suitability to control a domestic animal - what does age 18 get us vs. a suitability standard. Ms. Mead said it was not illegal, but it was a policy question. Mr. Musslewhite said the intent is that the animal is controlled by someone who has legal responsibility. Mr. Kiehl asked to whom legal responsibility flows if someone unsuitable was allowed to take the dog. Ms. Mead said that the age did not make sense in this case. Mr.

Musslewhite said he had taken parts of the code from other cities' codes. Ms. Mead said the person that can be cited is the owner of the dog.

Ms. White asked if on Page 3, line 16, the signs need to be issued by Animal Control at owner's expense was creating a profit center for GHS. Mr. Musslewhite said no, the signs were charged at cost.

Mr. Jones, on page 2, asked if the timing to microchip should take into account the time to appeal the decision to the board and perhaps on to the Assembly. He asked if the animal would be spayed/neutered or chipped before an appeal ran its course. Mr. Musslewhite said that in the interest of public safety, microchipping an animal at the earliest convenience was in the best interest because we have had dangerous dog owners give away their animals and make identification difficult.

Ms. Gladziszewski asked why micro-chipping is necessary. Mr. Musslewhite said that if an animal is given away, which has happened a handful of times in his experience, that was a main reason to assist with identification. She asked how an animal would come off the dangerous list. He said by moving the animal out of town, or going through the reclassification process. He said there were currently 16 dangerous dogs in Juneau on the list that they were tracking.

Ms. Becker asked the difference between dangerous and potentially dangerous. Mr. Musslewhite said a dangerous dog has a previous violation or has killed another animal. A potentially dangerous animal has a history of an aggressive nature that has been identified.

Mr. Gregory asked about a special license that was issued on January 1 each year. Mr. Musslewhite said all licensing in CBJ is based on the calendar year. Mr. Norton asked for the reason of a one year license. Mr. Musslewhite said this allowed for vaccination history.

Ms. Mead said if it is the Assembly's desire to allow for micro-chipping during the pendency of an appeal, which is now limited to confinement only - anything further would be stayed unless the code was changed to allow more than confinement to occur during the course of the appeal.

Mr. Kiehl asked about the costs and issues of liability insurance on page 3 of six, lines 24 and 25. Why strike "if reasonably available" if it is reasonably available. Mr. Musslewhite said the complaints he has heard was that the cost was not reasonable, and the definition is too broad. The average settlement for a dog bite in the US is about \$32,000. He said this is a public safety issue. There was a discussion about the cost of micro-chipping, which is a standard rate at \$40 by GHS.

MOTION, by Gladziszewski, to forward the ordinance to the Assembly.

MOTION, by Koelsch, to amend by deleting the section "18 years of age or older" on page 3 of 6.

Ms. Becker said suitability is a subjective standard.

Hearing no objection, the amendment passed.

Mr. Jones asked if there was a sufficient definition for "suitable." Ms. Mead said it is not necessarily subjection, because if an action happens, then the person was unsuitable. The evidence is the person fails to control the animal. Ms. Gladziszewski said it was still the owners fault, no matter who causes the problem, the owner is still responsible.

Mr. Nankervis asked about a carve out for requiring micro-chipping within 15 days on page 2, subsection d. Mr. Jones said he wanted actions, other than quarantine, to be stayed during appeals, so it was fine as written.

Mr. Gregory asked about 08.30.010 - the special license - was it for only one year or the life of the dog and Mr. Musslewhite said it is for the time the dog is considered dangerous.

Hearing no further objection or amendment, the ordinance, as amended, was forwarded to the Assembly.

D. Ordinance 2016-26 An Ordinance Amending the Land Use Code Relating to Access Standards.

Mr. Watt reviewed the ordinance as one way to amend the land use code to make development easier. The staff worked hard to find some balance. He said this is an effort to provide some education on the topic with new Assemblymembers and it is unlikely that the work can be finished tonight on this ordinance. The code deals with the idea of creating access options that allows shared private access and there are big policy issues the Assembly should focus on. The Planning Commission (PC) deliberated on this matter for quite a while. Mr. Steedle, Ms. Mead and Mr. Palmer had worked on the matter.

Mr. Steedle said as part of bringing the subdivision ordinance through its process, it showed a light on how creating subdivisions with shared access differed from existing code. The reading of the code became closer in recent years and there was a desire on the part of community development to make development happen. The code doesn't allow for shared access and we have been working on codifying that. Our thinking has evolved during the discussion. The Assembly's push was to get more development, but we realized we weren't following code.

Ms. Mead said that prior to the subdivision ordinance, the code required that all lots required direct access onto a public right of way. The new code allowed private access. CDD was allowing small subdivisions to have frontage and be accessed by a private drive in a private easement, and the marching orders from the Assembly were to change the code to allow this to encourage infill development, where the costs to develop were prohibitive, and where topography would cause a hardship for a typical public access, or for lots, such as on North Douglas, where DOT won't allow the access onto the public right of way. At the last PC meeting there were significant policy shifts to the ordinance from what it was to what it is now, so you need to hear the change and give the staff direction.

Mr. Steedle said that in an ideal situation every lot has access onto a public right of way, but we find that there are a lot of properties out there that can't be developed economically without changing this to allow private shared access. As this ordinance began it mirrored practice, allowing shared access when there was a barrier to development - but now the matter has been flipped to development by right, not by hardship. You do not have to prove that you can't build a public road, and the PC said that this type of development should be allowed community-wide.

Ms. Gladziszewski asked if staff and the planning commission are in agreement with the change or what is the debate. Mr. Steedle said the debate is whether we want the public to evolve to the gold standard of roads, or if the need for development is so strong that we are willing to go with less than that for development as a standard. Ms. Mead said that the previous hardships were topography and access restricted by government. Public rights of way are required for public safety, utilities, drainage, to minimize neighbor disputes and adequate maintenance. These shared access ways can lead to neighbor disputes that CBJ has no control over, and that is why it was not a matter of right. We will have to determine what is required for utilities. Ms. Gladziszewski asked about what happens in the future if there is a privately maintained access that the property owners ask for the city to develop. Ms. Mead said these are on private property, so the right of way would need to be wide enough for city standards. She gave the example of Dunn Street. Yes, in the future, CBJ could be asked for upgrades.

Mr. Watt said that if the Assembly takes the hardship requirement away and makes this available to all, some could possibly request upgrades, but some may not work in the future. The ones that are hardship are candidates for access that would never be developed otherwise.

Mr. Jones said that Dunn Street did have a platted right-of-way so it was not a similar example. He recalled that when Title 49 was amended, the practice of CDD at the time was that they were doing something through a process of variance and we struggled with that method. It is an issue of a design standard or another standard. If we pass what is coming from the PC does it allow for variances? Ms. Mead said no. CDD has a practice of allowing using the variance process, and we made big changes in the subdivision ordinance and decided to stop using variances and put in strict design standards.

Ms. Weldon said that the suggestion to have narrow private roads as a norm is backwards to her as a former fire truck driver. Ms. Mead said that the Fire Department still has to review the plans to ensure that it is suitable for the firetrucks but it is not a public street. Ms. Weldon asked if CBJ would have to worry about private fire hydrants, as those are difficult to maintain. Ms. Mead said that matter needed further consideration in Title 75.

Mayor Koelsch asked how much new housing will this provide if we change the code to allow a relaxation of the requirements. Mr. Steedle said it was a good, unanswerable question. There is a lot of property that can't be developed to public road standards. We can see undeveloped land in Juneau and if you approve this ordinance, I hope that people will realize that property that is now too difficult to develop will be easier to develop.

Mayor Koelsch said that having a guesstimate would help him make up his mind. Dealing with people that are on a shared access driveway that no longer like each other and are mad at those who don't share is unpleasant. He would really like to know the scope of change with this ordinance.

Mr. Watt said that we have to decide the question of hardship, and the question of which zoning districts that this is allowed in, and the number of lots allowed to be on that shared access, and how far does the fire hydrant have to go - there are other ways you can limit or expand where these will be allowed.

Ms. Mead said policy issues are hardship, zoning, density, whether if all uses would be allowed or only residential and accessory. There is an impact on child care homes, there is a discussion about exempting the currently existing private access. Mr. Steedle said that another issue is average daily trips (ADT) and what is a reasonable amount of traffic.

Mr. Jones said he read this as four lots with residential uses, with an ADT of 70. When the zoning was increased to up to D-18, that can affect ADT. I thought this change was proposed for North Douglas, rather than developed land on Glacier Highway. He thought it would be important to compare the first version of the ordinance that went to the PC to the final version before the Assembly now.

Mr. Kiehl said the question of who pays for the eventual upgrade and how in the future - he asked the difference between privately maintained access to privately shared access. Ms. Mead asked Mr. Palmer to draw the options outlined in code on the white board. He asked what happens when people try to tack on future developments off of private shared access roads. Ms. Mead discussed a vested rights provision.

Ms. Gladziszewski asked what is the benefit of the private shared access. Mr. Steedle said that narrowing the standard may make the difference to develop or not develop the property. Ms. Gladziszewski asked if CBJ could create a different size standard for a public right of way. Mr. Steedle said that the width of a right of way could be reduced for public right of ways and it can be left up to the judgement of the Director of Public Works, determined by the characteristics of the property.

The Assembly and Staff discussed the variations in the drawings provided by Mr. Palmer.

Mr. Watt said that by not making it a hardship and expanding the zoning districts, we may incentivize lower density development in the short run - there are dynamics that are tough to

foresee. The PC only has one tool to increase housing and that is the code. They have heard from the public and Assembly discussions that housing is a community goal. They have been told to take the "brake" off development, and it is the Assembly's decision whether or not to put the brake back on and how hard. Land development is difficult and in context, we have several hard issues and we need to choose when and how to make progress. This is the PC's best attempt with the one tool it has.

Mr. Steedle said that the PC is very supportive of the Housing Action Plan, and they had discussion about the zoning and this is something that they believe will aid in the development of the community.

Ms. Gladziszewski said all the consequences of this ordinance have not been figured out - and there are many scenarios and it is hard to understand what we are doing. She would like more than two drawings to show potential developments. Mayor Koelsch had a point about the scope. What is currently happening with the privately maintained access roads we have now, to give us an idea of the possible problems we might face.

Mr. Watt said every neighborhood development has a story. We can try to quantify this but do not overestimate the validity of this. We always have neighborhood disputes, where we have ROW and where we have shared access. CBJ has tools to resolve ROW disputes over time where we are the underlying manager of the land. Where there is shared access - we tell them we have no role and we have to continually verify that and some disputes go on for years. We can try to give you information about land out there and pitfalls, but this could be applied to the entire borough.

Mayor Koelsch said we should be amending codes, giving money and land for incentive, but these are all hard. How can we get out of this with financial incentives. Mr. Watt said economics gets to the core of many of the issues and much of Juneau's roads, right of ways and utilities were built with public support. When the valley grew the road standard was gravel and ditches. There were sewer LID's (Local Improvement District) that were supported by CBJ. Later there were water extensions because wells did not produce good water. In the 90's there was a big LID to pave almost all of the valley as a pass through from DOT for dust mitigation. The valley was some of the easiest land to develop to the current standards we have today. We have continued to do sewer LIDs to spur development but have not seen much development result. Code issues are difficult but there are different ways to provide financial incentives to get the housing we are after - we could have grant programs to spur housing development. You can consider optioss in your CIP and it may be easier than changing the code. We have recent examples with accessory apartments. With the 1% sales tax, we have used it to do sewer lid's but there are other tools to develop housing. On Renninger St. we could have disposed of a large tract of land, but we took a risk to create lots - the "Pederson model." If we have properties that aren't developing because of costs, should we consider some kind of grant program?

Ms. White said that roads in Mendenhaven do not meet current CBJ standards, they don't have sidewalks, lighting and drainage. I don't see this ordinance as a cure, I see it as a tool in the toolbox. Ms. White said she could go through each MLS and determine how many potential units could be developed. She related the current housing issues. She had no problem getting the bugs out and getting this on the books to get more housing built.

Mr. Jones said he sees this ordinance to help with the infill. We did put in sewer and rezoned a lot of property because sewer was there. People objected to up-zoning because they don't want to develop their property to a higher standard. We won't get an immediate result from this because most of the current owners won't develop, but future owners might make use of this. Ms. White has a good point. If we don't put something in place it won't happen. This is infill, this is not major subdivisions. There are major changes that are needed, but he agreed with the principal to allow someone to do something with land that is not currently suitable. This is hardship based.

Ms. Mead asked if it would be helpful to see the prior version to the current version. Mr. Nankervis said yes. Mr. Steedle said that infill development is not in this ordinance, as Mr. Jones has stated, or a hardship.

Ms. Gladziszewski said the Assembly has not made the policy calls - we need to figure out if you are analyzing the allowance to everywhere or only a hardship situation. We need many more diagrams.

Mayor Koelsch asked when the issue would be back before the Assembly. Mr. Watt said that January was appropriate for a COW work session. He spoke about a joint meeting with the PC.

MOTION, by Kiehl to remove the ordinance from public hearing on Monday, November 28 Assembly's agenda and refer it to the Committee of the Whole in January. Hearing no objection it was so ordered.

E. Ordinance 2016-35 An Ordinance Authorizing the Manager to Convey Lot 3 of the Renninger Subdivision to the Juneau Housing Trust.

Ms. Mead explained the intended use of the property for development of "air condos" and the Assembly was interested to know if this would be allowed on that property, but the authorization to sell the property at below market value can go forward and they can choose to execute it and pursue various models of development.

Ms. Gladziszewski said she did not want to hold up the authorization to negotiate a sale at below market value.

Hearing no objection, the matter would appear on the November 28 Assembly meeting agenda as an ordinance for public hearing.

V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

None.

VI. ADJOURNMENT

There being no further business to come before the committee, the meeting adjourned at 9:05 p.m.

Submitted by Laurie Sica, Municipal Clerk