

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
October 23, 2018

I. ROLL CALL

Paul Voelckers, Vice 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 p.m.

Commissioners present: Paul Voelckers, Vice Chairman; Nathaniel Dye, Percy Frisby, Dan Hickok, Andrew Campbell, Carl Greene, (telephonically) Dan Miller

Commissioners absent: Ben Haight, Chairman; Michael LeVine

Staff present: Jill Maclean, CDD Director; Teri Camery, Senior Planner; Tim Felstead, Planner II; Allison Eddins, Planner II; Amy Liu, Planner I; Robert Palmer, Municipal Attorney

Assembly members: Loren Jones,
Wade Bryson, Assembly Liaison to the Planning Commission

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

III. APPROVAL OF MINUTES

- A. September 11, 2018 Draft Minutes – Regular Planning Commission Meeting
- B. September 25, 2018 Draft Minutes – Committee of the Whole Meeting
- C. September 25, 2018 Draft Minutes – Planning Commission Regular Meeting

Mr. Voelckers asked that the words “to proceed on a new Comprehensive Plan” be added to the September 11, 2018, Planning Commission minutes, line two, page 11 of 338; “They accepted the recommendation from the Planning Commission *to proceed with a new Comprehensive Plan*” ...

USE2018 0016: A Conditional Use Permit to allow a 32-unit residential condominium development
Applicant: The Jetty LLC
Location: 11798 Glacier Highway

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Conditional Use Permit. The permit would allow the development of a 32-unit condominium development in the General Commercial zoning district.

The approval is subject to the following conditions:

1. Prior to the issuance of a Building Permit, the applicant will provide a detailed landscape plan for the parking area.
2. Prior to a Certificate of Occupancy being issued for the building, the landscaping must be installed or bonded for.
3. Prior to the issuance of a Certificate of Occupancy, the parking spaces will need to be striped and properly signed.
4. Prior to issuing a Temporary Certificate of Occupancy for the first dwelling, a Homeowners Association Agreement shall be submitted for review and approval by Community Development Department. The HOA agreement shall specify how common facilities such as the parking area and pedestrian walkway and required landscaping and vegetation will be properly maintained.
5. Prior to the issuance of a Building Permit, the applicant shall submit a detailed drainage and snow storage plan.
6. Prior to the issuance of a Building Permit, the applicant shall submit a parking and site circulation plan that has been prepared by a licensed engineer or architect.

This lot is zoned General Commercial and it is located behind the old UAS Bookstore located off of Glacier Highway in Auke Bay, said Ms. Eddins. The condominiums will be built upon a raised foundation of 15-foot pilings and screened with lattice wood work, she said. Parking will be located below the dwellings, she said.

While the lot is fairly flat, the applicant will leave the steeper rear part of the lot undeveloped and will install a retaining wall, said Ms. Eddins.

The total height of the building is 45 feet, said Ms. Eddins. The maximum height in the General Commercial zoning district 55 feet, she said. According to Title 49, the height of the building is

the vertical distance above a referenced datum measured to the highest point of the coping of a flat roof, or to the deck of a mansard roof, or to the average height of a pitched roof, she explained.

An HOA agreement would make sure that vegetation is properly maintained and bonded, said Ms. Eddins. The parking, located under the dwellings, will have 49 spaces. The site will have an additional 15 uncovered parking spaces. Only 58 spaces are required, she said. There will be pedestrian access raised at least six inches above the parking area, and will be five feet wide. It will connect the condominiums to the old UAS bookstore, she said. She noted that other condominiums in the area such as Auke Bay Towers and Spaulding Beach condominiums are both four stories in height like the proposed project.

Staff has received two emails and a letter mentioning concerns about traffic impacts to the area and a negative impact that rental units may have on surrounding property values and views of neighboring properties, said Ms. Eddins. Each unit will generate about 5.86 average daily trips, she said. This is not a high enough number to generate a Traffic Impact Analysis, she said. The Department of Transportation also voiced no concerns about the traffic impact of the development, she said.

While there is some protection in the Auke Bay Area Plan to maintain the views of the bay from public property, there is no such provision for the protection of private property views, said Ms. Eddins.

Commission Comments and Questions

Mr. Miller said it has been his understanding and experience that the CBJ does not normally approve the Home Owners Association (HOA) document. He said this does look similar to what has come out of the Alternative Residential Subdivision (ARS) ordinance. He said he understands why CBJ would be involved in the ARS. He asked why that language was in this particular development condition.

Ms. Maclean said they had required it for a fairly recent development in town for a use permit.

Mr. Palmer said he thinks that Mr. Miller is correct in that state law generally regulates the formation and the operation of a condominium association. The CBJ also regulates condominiums, he said. Not because they are condominiums but because they are developments, he explained. The Commission may alter the Director's proposed permit conditions, said Mr. Palmer. This includes an owner's association, he said.

The CBJ has code authority to regulate common property, said Mr. Palmer. The fourth condition for this condominium development is a little unique in that the department is required to approve the entire agreement, he said. He said maybe the Commission would be more comfortable if the condition stated that the Community Development Department must review

the application to ensure that the common facility such as parking and pedestrian ways and landscaping and vegetation are properly maintained, said Mr. Palmer.

Mr. Campbell said he liked the suggestion of Mr. Palmer. He said he had also had questions about the approval portion of that condition. He said he thought in previous applications the word “review” was used and not “approve”.

Mr. Hickok said in all the meetings he has attended for the Auke Bay Area Plan that protection of the view shed was always mentioned. He asked if that is only applied to existing buildings and not to new developments.

Ms. Eddins said in the Auke Bay Area Plan that there is recognition that it is unique concerning views. The City should play an active role in protecting those views from public property, said Ms. Eddins. The plan does not specify protecting views from private property, she said. The Auke Bay Implementation Subcommittee had discussed the possibility of a developer being provided with a bonus if they worked to protect their neighbors’ views, she said. That has not been adopted, she added.

Mr. Hickok asked if there is a definition of a view shed for Auke Bay.

Ms. Eddins said there is not such a definition.

Mr. Dye asked where in the Auke Bay Area Plan public views are distinguished from private views.

Ms. Eddins said she would find that information for Mr. Dye.

Mr. Hickok asked if anyone knew the height of the adjacent AEL&P building.

Ms. Eddins said she did not know the height of that building.

Mr. Frisby asked how high the property was.

Ms. Eddins said the highest point of the property is approximately 92 feet. There is a 22-foot slope that spans 70 feet, she said. The applicants have decided to leave that portion of the property undeveloped, she said.

Applicant

Applicant Garrett Schoenberger told the Commission that their property is zoned General Commercial, that they are sticking to the height limits and the proposed uses that are cohesive with the Auke Bay Area Plan.

Commission Comments and Questions

Mr. Campbell said he is very supportive of both this condominium development and the condominium development behind it. He said he would like to try to find a solution in which both parties could feel good. He noted that the applicants have a 15-foot height in their parking structure which is very high. He said perhaps that they could lower the height of the parking structure thus lowering the total height of the project, to ease the concerns of the property owners behind them.

Mr. Schoenberger said they have worked through this with the engineer. The piles are driven into bedrock and under-podium parking allows residents covered parking, but elevates the common area amenity. He said they want the highest and best use for the site. He said skimping on the height of the parking garage does not suit the project.

Mr. Miller asked if they are confident they will actually be constructing their condominiums to 10 feet less than the maximum 55 feet allowed.

Mr. Simpson said the condominiums are 55 feet high.

Ms. Eddins said the developer calculates height differently, but Mr. Simpson is correct in that at the lowest grade on the site the building will be 55' above grade. However, the rear of lot at the highest elevation on the site the building will be 40' above grade, and according to the CBJ Land Use Code the height for the entire structure will be 45'.

Public Comment

Mr. Pat Kemp said he is one of the owners of the condominium project behind the proposed development. He said they were told that the Auke Bay Area Plan would deal with their concerns about height, so that they could view the top of the boat launch ramp at Statter Harbor from their development.

He said they had spoken with these developers about their project and were told that their building would not impact their view plane. In early October, the developer had put in a different plan and raised the building height. Mr. Kemp met with the CDD to express their concern about that.

They could come in level with the old Horton's Hardware store building height and save money, and with a sloped roof design along with reducing the height of the garage, it would minimize the project impact on the development behind, he said.

Mr. Campbell asked Mr. Kemp if they had told their buyers that they would have a view of the top of the boat ramp from their condominium.

Mr. Kemp said they did tell their buyers that they would have that view.

Mr. Schoenberger said they are reasonable people who bought a site zoned General Commercial. They paid above the asking price for the site knowing that it had a 55-foot height potential. He said he has empathy for the people behind them, and that they are willing to have discussions, but that they want to make the best use of their property.

Engineer for the project, Travis Arndt, said the fifteen-foot-high parking structure would actually just be providing a net height of ten feet. The beam height added to that comes to fifteen feet, said Mr. Arndt. If they dropped the elevation of their structure to the elevation of the old hardware store, then they would have to excavate further into the hill with the existing slope rise. If they then had to push the retaining wall back, it would have to be 15 feet high, he said. They have to place five feet of rock with the piles, said Mr. Arndt. Dropping down seven feet would affect the uphill side as well as a huge cost increase, he said. He said they moved as far forward with the development as they could, to have parking in the front and under the dwellings. They went with the gabled roof to save height, he said. A gabled roof has a three-foot rise and a sloped roof would be a six-foot rise.

Mr. Miller said the architectural drawings showed the front buildings have flat roofs. He said there could be some savings in elevation if the uppermost unit had a flat roof.

Mr. Arndt said that would be possible, but then they would have to change the roof covering, which would be much more expensive. He said very few people in town can install a membrane roof. A metal roof would probably triple the cost, he said.

Mr. Campbell asked for the elevation of the old hardware store.

Mr. Schoenberger said it is about 24.5 feet high.

Mr. Hickok asked if their development would be higher than the diesel fuel tank on the AELP lot, or if it would be lower than the fuel tank in elevation.

Mr. Schoenberger said he imagines their development would be at a higher elevation than the fuel tank.

Mr. Campbell asked if the applicant had plans on excavating the undeveloped portion of the rear of their property or it would remain undisturbed.

He was told they would excavate to where the retaining wall is going in, and that the rest of the property would remain undisturbed.

Mr. Campbell said it seemed like the applicant could use undisturbed land which would enable them to put in their pathway and lower the elevation a little bit.

Mr. Arndt said the geotechnical report was not positive in that regard, and that he did not think they would want to put it at a two to one slope.

Mr. Campbell asked how wide the pathway would be behind the building.

He was told it would be four to five feet wide.

The Mr. Schoenberger said they have put everything they have into this project. They have done a lot of public outreach and have settled on this design due to the feedback from potential buyers, and from the geotechnical report.

Ms. Eddins told the Commission the verbiage on protecting public view sheds is on page nine and page 63 of the Auke Bay Area Plan.

Mr. Campbell asked if the Commission has the ability to specify the maximum elevation of a lot.

Mr. Palmer said the Commission did have that discretion, but that it had to be tied in to the three primary criteria that it evaluates; will the development more probably than not:

- 🏠 Materially endanger public health or safety
- 🏠 Substantially decrease the value of or be out of harmony with property in the neighboring area
- 🏠 Not be in general conformity with the comprehensive plan, the thoroughfare plan, or other officially adopted plans

Mr. Miller asked if there are any bonus provisions in code that speak to heights, and view sheds, and density.

Ms. Maclean said there is a height bonus if the property is in the MU2 district. Typically, the bonus is for an increase, and the applicant is not looking for an increase, she said. There are no height bonuses in the General Commercial zoning district.

MOTION: *by Mr. Miller, to approve the Conditional Use Permit with the change in condition number 4 in the packet removing the word "approval" and inserting the words suggested by Mr. Palmer, with the advisory condition that would implore the applicant to work with the neighboring development to potentially put in a flat roof instead of a gable and to be willing to work with Mr. Kemp to lower the height as much as possible.*

Mr. Campbell said he feels they should split the difference. Mr. Palmer said the Commission has the ability to impose a height limitation if it is tied to a primary criterion, said Mr. Campbell, which in this case would be that the proposed height of the development would substantially

decrease the value of or be out of harmony with property in the neighboring area. He said the additional cost to the applicant would be to have to core out an additional three feet of material, and that the reduction in the pile length of three feet would help to offset that. There would be the negative impact of the applicant's development to the neighboring property because they had already told their customers that they would be able to view the top of the ramp at Statter Harbor, said Mr. Campbell. He suggested they limit the maximum height of the building to 113.5 feet above elevation 0' as a compromise, and that the compromise be a requirement and not a suggestion.

Mr. Dye said he is intrigued by Mr. Campbell's suggestion. Mr. Dye said he is not typically in favor of advisory conditions that are not enforceable. Mr. Dye said he is not in favor of that aspect of Mr. Miller's motion. He said he would like to hear from the other commissioners regarding their opinion of Mr. Campbell's possible amendment to the main motion by Mr. Miller.

Mr. Miller said the current height as drawn is considered a 45-foot-tall building. That is the height they are considering for a lot of property in the Auke Bay area. It is the legal height for Light Commercial zoned properties, and it is already lower than the maximum height by 10 feet, said Mr. Miller. He said in his opinion the applicant has already compromised by building ten feet under the allowable height for that zoning district.

Mr. Frisby said if they stick to this height recommendation, if it would be following the current direction the Auke Bay Steering Committee in terms of maximum heights for the area.

Ms. Eddins said the Auke Bay Steering Committee is currently discussing the idea of establishing a new zoning district with a maximum height of approximately 45 feet. There has also been discussion of a maximum height of 35 feet with bonus points edging the height up to 55 feet, said Ms. Eddins.

This proposal was evaluated to be in compliance with the adopted Auke Bay Area Plan, said Ms. Eddins. It is also in line with the current discussions regarding zoning district proposals, she said.

Mr. Miller said Mr. Campbell's suggestion of 113.5 feet in height above elevation 0 is 3.5 feet lower than the current design with a gabled roof. He said he thought that it should be fairly easy for the applicant to attain. Mr. Miller said he would accept the height suggested by Mr. Campbell as a friendly amendment to his motion. He said he is still in favor of his advisory condition.

Mr. Campbell said he foresaw a future in the Auke Bay area where the height of a future development may be limited due to harm experienced by neighboring properties.

Mr. Miller said the Auke Bay committee's direction of a height of 35 feet with very strong bonuses given for the lower height, and the upper limit of a height of 55 feet for properties that are not impinging upon the view shed.

Mr. Campbell asked if there was some bonus they could give to the applicant in exchange for the 3.5 feet height reduction for their development.

Ms. Eddins said that there is not such a bonus for this available at this time.

Mr. Campbell said he proposed the friendly amendment that they add condition number seven limiting the maximum elevation of the proposed structure to 113.5 feet.

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

Speaking in favor of the motion, Mr. Dye said that trying to maintain neighborhood harmony is not always a simple thing, especially considering the long Auke Bay process in terms of the neighborhood plan. He added that changes are afoot.

Mr. Greene said he was in favor of the motion.

MOTION: *by Mr. Miller, with a friendly amendment of Mr. Campbell, to approve USE2018 0016 with the change in condition number four in the packet removing the word "approval" and inserting the words suggested by Mr. Palmer (the Community Development Department must review the application to ensure that the common facilities such as parking and pedestrian ways and landscaping and vegetation are properly maintained), with the added condition that the applicant be implored to work with the neighboring development to potentially put in a flat roof instead of a gable and that the maximum height of the structure be 113.5 feet, and to be willing to work with Mr. Kemp to lower the height as much as possible.*

Roll Call Vote:

Yeas: Greene, Hickok, Miller, Campbell, Dye,

Nays: Frisby

The motion passes.

Mr. Miller stated that he lives in the area under consideration for item AME2018 0013, but that he feels that he can be impartial.

Neither the Commission nor the public voiced any objection to Mr. Miller remaining on the panel.

Mr. Campbell noted that referring to the table on page 215, that 10 out of 16 cases have similar uses for the zones. He said to him that is a pretty good argument that they are in substantial conformance.

Mr. Miller said that the comment of Mr. Dye is true. There could be 40 lots, each with a caretaker's unit. The Table of Permissible Uses also provides a good example, he said.

Mr. Hickok said he supports the rezone.

Mr. Greene said it made sense to him to rezone the property.

Roll Call Vote:

Yeas: Miller, Greene, Dye, Frisby, Campbell

Nays: Voelckers

The motion passes.

Mr. Campbell called for notice of reconsideration of item USE2018 0016.

This Conditional Use Permit case will come before the Commission at its next public meeting for a vote regarding whether or not to reconsider.

IX. BOARD OF ADJUSTMENT - None

X. OTHER BUSINESS - None

XI. STAFF REPORTS

A. Director's Report: FY 2020-2025 Capital Improvement Program

Mr. Felstead told the Commission that the Capital Improvement Program will be before the Commission at its next regular meeting on November 13, 2018, when the Director of Engineering and Public Works will be present to answer questions. The staff has also produced a summary of potential CIP projects in plans that have either been adopted into the land use code, or relate to past priority policies identified by the Planning Commission. These include the Housing Action Plan, the Climate Action Implementation Plan and the Renewable Energy Strategy, said Mr. Felstead.

Mr. Dye asked if there is a reason the CDD does not make its own recommendation for the CIP.

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
November 13, 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 7:01 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Dan Miller, Dan Hickok, Carl Greene

Commissioners absent: Andrew Campbell, Nathaniel Dye, Percy Frisby

Staff present: Jill Maclean, CDD Director; Teri Camery, Senior Planner; Allison Eddins, Planner II; Laurel Bruggeman, Planner I; Laura Boyce, Senior Planner

Assembly members: None

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

III. APPROVAL OF MINUTES - None

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

V. ITEMS FOR RECONSIDERATION

USE2018 0016: A Conditional Use Permit to allow a 32-unit residential condominium development

Applicant: The Jetty

Location: 11798 Glacier Highway

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Conditional Use Permit. The permit would allow the development of a 32 unit condominium development in the General Commercial zoning district.

The approval is subject to the following conditions:

1. Prior to the issuance of a Building Permit, the applicant will provide a detailed landscape plan for the parking area.
2. Prior to a Certificate of Occupancy being issued for the building, the landscaping must be installed or bonded for.
3. Prior to the issuance of a Certificate of Occupancy, the parking spaces will need to be striped and properly signed.
4. Prior to issuing a Temporary Certificate of Occupancy for the first dwelling, a Homeowners Association Agreement shall be submitted for review and approval by Community Development Department. The HOA agreement shall specify how common facilities such as the parking area and pedestrian walkway and required landscaping and vegetation will be properly maintained.
5. Prior to the issuance of a Building Permit, the applicant shall submit a detailed drainage and snow storage plan.
6. Prior to the issuance of a Building Permit, the applicant shall submit a parking and site circulation plan that has been prepared by a licensed engineer or architect.

MOTION: *By Mr. Miller to approve reconsideration of USE2018 0016, a Conditional Use Permit for The Jetty, and continue the discussion at the next meeting.*

Mr. Voelckers recused himself from this item.

After Mr. Miller motioned to approve the reconsideration, Mr. Haight stated that five votes would be needed to approve this motion.

Ms. Maclean stated that due to Mr. Haight and Mr. LeVine being absent from the previous meeting, they needed to make sure they were prepared to vote at this meeting.

Mr. LeVine and Mr. Haight stated they had reviewed the staff report and the minutes from the October 23, 2018 Planning Commission meeting and were prepared to participate in the vote.

The motion was addressing two separate determinations, so Mr. LeVine suggested that two separate votes be taken; one vote to reconsider the case and one vote to decide to continue the discussion at the following Regular Planning Commission meeting.

Mr. Miller stated he was okay with separating the motion into two votes.

Roll Call Vote:

Yeas: Miller, LeVine, Hickok, Haight, Greene

The first motion to bring the case up for reconsideration passed with no objection.

Mr. Miller motioned to continue the hearing at the next Planning Commission meeting.

Mr. LeVine spoke in support of this motion.

Mr. Haight made it clear that it will require six commissioners to open the case up for public testimony at the next Planning Commission meeting, if they decide to do that.

Roll Call Vote:

Yeas: LeVine, Miller, Hickok, Greene, Haight

The second motion to continue the hearing at the next meeting passed with no objection.

VI. CONSENT AGENDA

Mr. LeVine requested that the Archipelago related cases including CSP2018 0009, FZE2018 0001, USE2018 0015, and CSP2018 0010 be pulled from the Consent Agenda for review by the staff.

USE2018 0019: A Conditional Use Permit for Juneau Makerspace, a community workshop and meeting space
Applicant: Juneau Makerspace
Location: 3915 N. Douglas Highway

Staff Recommendation

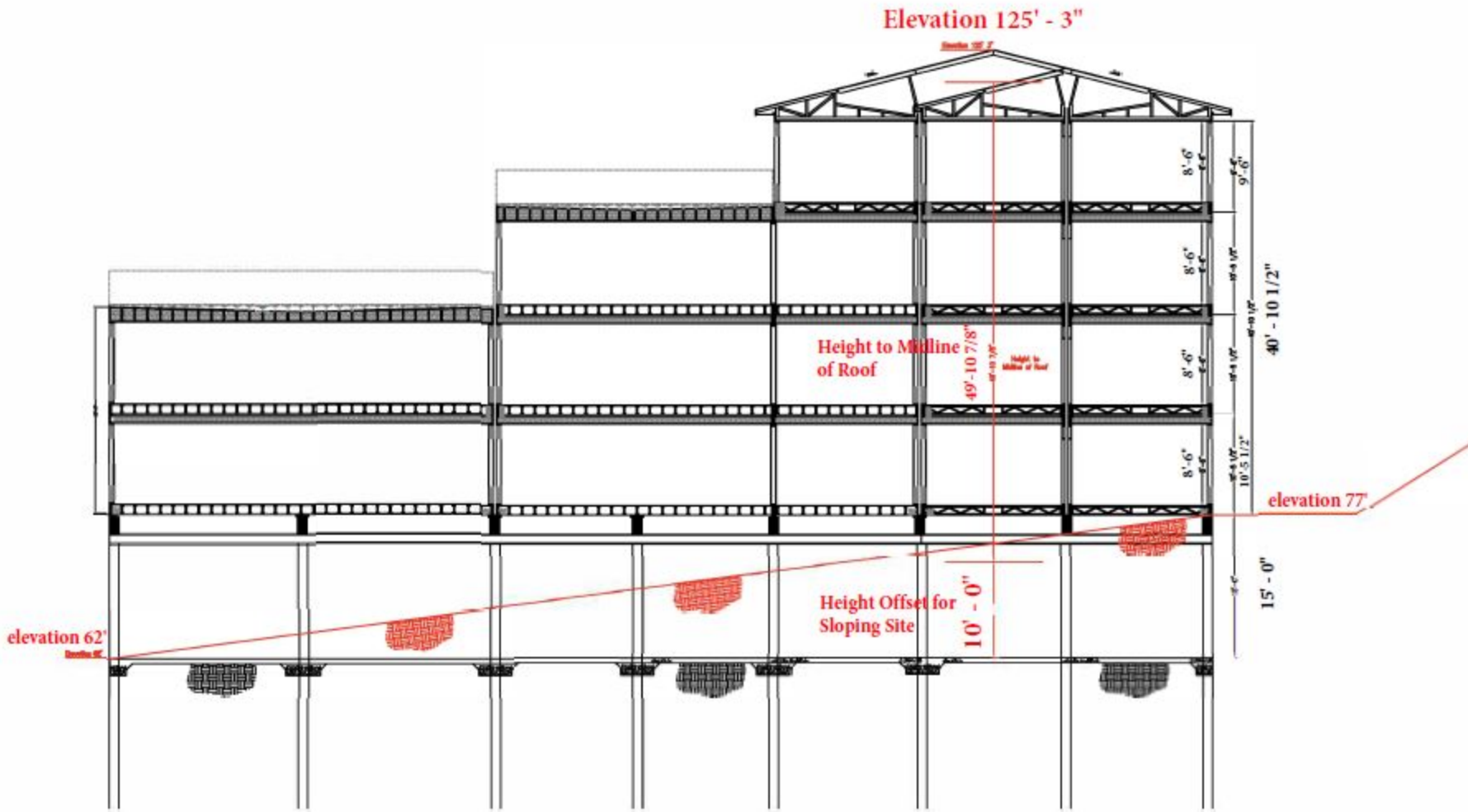
It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the operation of a shared community workshop and event space in a D18 zoning district.

The approval is subject to the following conditions:

1. The applicant must schedule a final inspection for the CBJ Grading and Drainage Permit within 10 business days of the date of approval for this Conditional Use Permit. Any required work must be completed before the permit can be closed out.
2. The applicant must schedule a final inspection for the three open Building Permits within 10 business days of the date of approval for this Conditional Use Permit. Any repairs or alterations required must be complete and the building must receive a Certificate of

EXHIBIT D

Neighboring Property View Elevation: 134' - 6"



LAW OFFICES OF
SIMPSON, TILLINGHAST, SORESENSEN & SHEEHAN, P.C.

ONE SEALASKA PLAZA, SUITE 300 • JUNEAU, ALASKA 99801

TELEPHONE: 907-586-1400

FAX: 907-586-3065

November 6, 2018

City and Borough of Juneau
Community Development Department
Planning Commission
Attn: Allison Eddins, Planner
155 S. Seward Street
Juneau, AK 99801



Re: Case No. USE2018 0016

Dear Ms. Eddins:

This firm represents The Jetty, LLC, the Applicant for a Conditional Use Permit to allow a 32-unit condominium development on a vacant lot in Auke Bay. The property is in the Auke Bay Center area as identified in the Auke Bay Area Plan (ABAP), and is zoned for General Commercial Use (GC).

In a memorandum dated October 12, 2018, the Community Development Department Director found that the Applicant complied with every requirement imposed by CBJ for issuance of a Conditional Use Permit for the project as proposed. Specifically, the staff report stated:

“It is recommended that the Planning Commission adopt the Director’s analysis and findings and **APPROVE** the requested Conditional Use Permit. The permit would allow the development of a 32-unit condominium development in the General Commercial zoning district.” [emphasis in original].

CBJ Code 49.15.330(e)(1), Review of Director’s Determinations, lists three considerations that the Commission shall review, and states that the Commission “shall adopt the Director’s determination . . . unless it finds, by a preponderance of the evidence, that the Director’s determination was in error, and states its reasoning for each finding with particularity.”

Apparently, the Commission adopted the Director’s determination, but at its October 23 meeting disregarded that determination and took into further consideration a complaint from a neighboring developer that the height of the proposed project, while well within the lawful height limits, would impair the view from the neighboring project. Based only on some rough drawings, the Commission, by motion, imposed a condition that the height of the Applicant’s development must be reduced by 3 ½ feet. This was evidently based on some rough drawings of potential sightlines from the neighboring property intended to preserve the view of a portion of the Auke Bay harbor area, approximately from the head of the boat launch ramp seaward.

This action apparently relied on CBJ Code section 49.15.330(f), Commission Determinations, which allows the Commission to deny or condition a permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the

Attachment E - Letter from Law Offices of Simpson, Tillinghas, Sorensen, & Sheenan

development will “more probably than not” . . . “2. Substantially decrease the value of or be out of harmony with property in the neighboring area;” (There are two other possible findings but neither could apply here).

The proposed development could not be deemed to be out of harmony with other property in the area, since it is consistent with the ABAP and similar to the development directly adjacent, which is the source of the complaint. The neighboring developer concedes, in a letter to the CDD, that the new development is subject to the 55-foot height limit; that it is well within that limit; and is generally a benefit to the neighborhood, but still asks for some relief. The Commission arbitrarily split the difference between the requested modification of 7 feet and gave the other developer half of what he asked for. This must have been based on subsection .330(f) 2., that The Jetty application would “Substantially decrease the value” of the neighboring area. There is no evidence of this assertion.

While an adjustment of 3 ½ feet seems minimal, it would require shifting the entire Jetty project, particularly a reconfiguration of the foundation, at considerable expense and loss of project value. If the impact on the two developments is compared, the 3 ½ foot difference to the uphill project could hardly be deemed “substantial,” which is the legal requirement; while the added cost and devaluation of the applicant project would be significantly greater—that is, more “substantial” than the hypothetical cost to the uphill property. Remember that the Director found no such impact, and the uphill property developer concedes that they were aware of the planned development of the adjacent parcel.

Based on an apparent misunderstanding of the height of The Jetty structure (excluding or including the roof peak), the Commission requested reconsideration at a future meeting. This is fortunate because it will allow the applicants to gather and present better and more complete information to the Commission. Among this information, the Applicant will show that it has already significantly mitigated the impact of its development to the adjacent property by shifting its location downhill and seaward of the point where it could be placed, thus establishing a significantly lower base elevation. If the project were moved uphill toward the common property line, the peak of the roof could lawfully be at elevation 137' 7 ½", more than 12 feet above the current planned elevation. Attached to this letter are two recent photographs taken from the adjacent property of the Auke Bay Station development. The first shows the current view, taken at eye level from the deck of the top floor of the existing structure; the second is the same view with the applicant's development drawn in outline, to show how the view would be affected. The major portion of the impacted view is the lot on which the Applicant intends to build; the roof of the existing structure (former UAS bookstore); and the harbor parking and launch ramp area. The view of Auke Bay itself, the water, and the outlying islands and mountains is barely impacted.

The developers wish to be good neighbors and have clearly demonstrated that by voluntarily limiting the height of their proposed structure. But they believe it is a two-way street and they are doing their part. Accordingly, the Applicant respectfully requests that, when this issue is set for reconsideration, the Commission should review and consider better documentary and graphic evidence to support the Director's findings and reverse the Commission's additional condition. This way, the CDD staff can defend its determination and the Commission's findings can be amended based on solid evidence of what impacts are substantial, how they affect the

CBJ Planning Commission
November 6, 2018
Page 3 of 3

respective developments, and whether any deviation from the Director's recommendation is merely arbitrary, or reaches the "more probable than not" threshold.

Sincerely,
SIMPSON, TILLINGHAST, SORENSEN & SHEEHAN



E. Budd Simpson

Enclosure: 2 Photos

Cc: Rorie Watt, CBJ Manager
Robert Palmer, CBJ Attorney
The Jetty, LLC



Attachment E - Letter from Law Offices of Simpson, Tillinghas, Sorensen, & Sheenan



Attachment E - Letter from Law Offices of Simpson, Tillinghas, Sorensen, & Sheenan



MEMORANDUM

To: Allison Eddins, Planner, CDD, City & Bureau of Juneau

From: Garrett Schoenberger and Paul Simpson, The Jetty LLC

Date: November 8, 2018

RE: Case Number USE2018 0016

Our partnership, The Jetty LLC, recently applied for a Conditional Use Permit for a proposed 32-unit condo development in the town center of Auke Bay. This case went before the Planning Commission on Tuesday, October 23, 2018. In this meeting, the commission made a motion to limit the height of our development based on a complaint from a neighboring property (Auke Bay Station). This complaint was founded on an assertion that the top of our building would block certain views of Statter Harbor. More specifically, a view of the boat launch. After reviewing all information, and consulting with several experts (architect, engineer, contractor, land use consultant, and attorney) it is our collective belief that:

1. The impact of our proposed development on Auke Bay Station is minor, and certainly not “substantial” (see exhibit A)
 - blocking the boat launch of Statter Harbor will have little to no impact as the neighboring project will still have coveted views of Auke Bay, surrounding islands, and the majestic Chilkat mountains

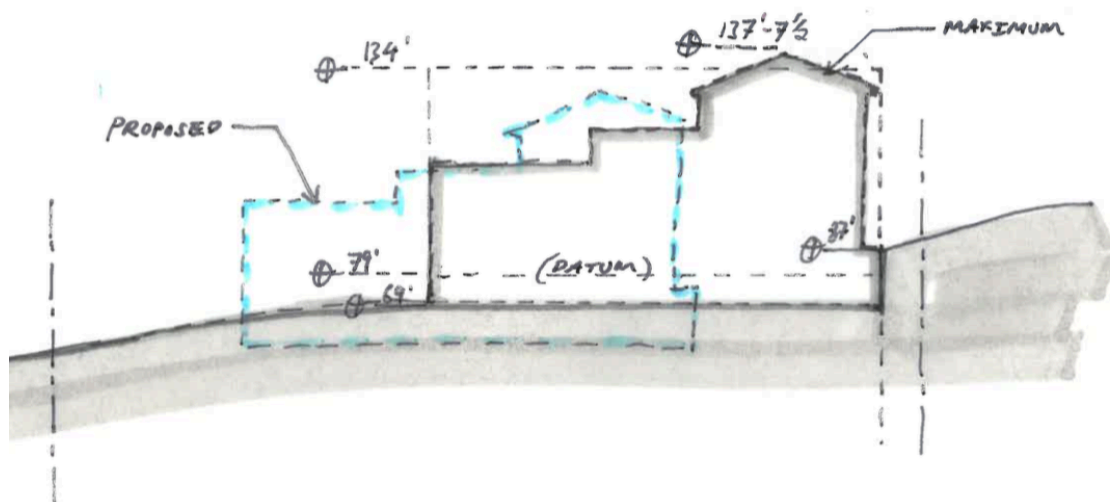
As outlined on Page 8 of CDD’s formal response (and recommended **APPROVAL** of our Conditional Use Permit): ***“The CBJ Assessor’s Office has stated that they do not foresee any negative impacts on surrounding property values from the development”***

2. The impact of any height restrictions to our proposed development would have substantial financial implications including but not limited to:

- additional excavation costs
- additional costs relating to retaining walls
- additional costs relating to flat membrane versus gable roof
- additional engineering, architectural, and labor costs
- loss of certain viewsheds for our entire first floor and common area

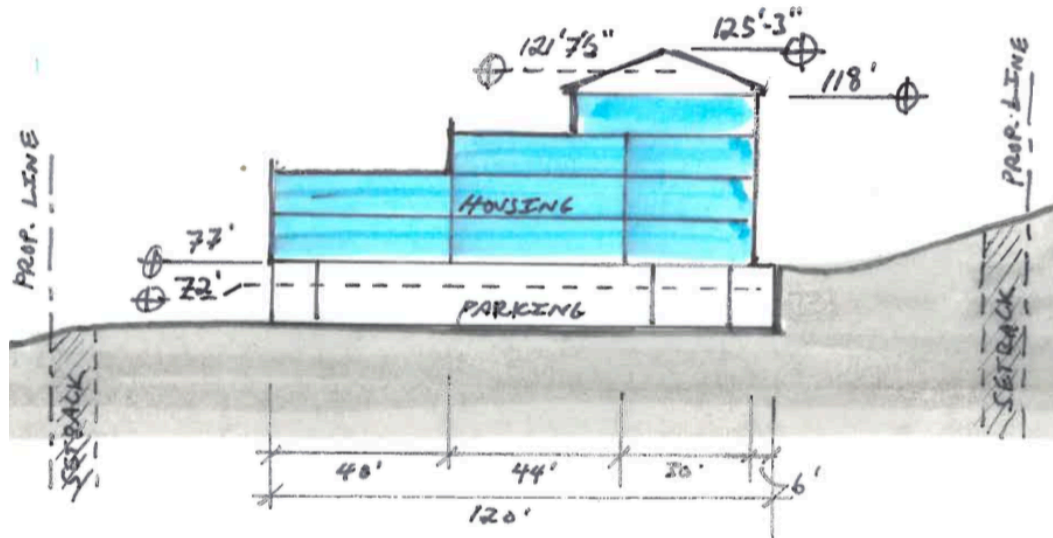
Allowable Height – per General Commercial (GC) zoning, the allowable height limit is 55'. The minimum setback in GC zoning is 10'. Our building could be developed further up the slope, with a peak elevation of 137' 7 1/2" (see Exhibit B below). Given the neighboring property's view line is 134.5', theoretically we could completely block their views. While the higher elevation would clearly benefit our views, at this time, we have decided NOT to build to our maximum height specifically due to the impacts it would have to our neighbor. This was a conscious decision made ahead of time.

EXHIBIT B.



Our proposed elevation of 125'3" (see Exhibit C below) is well below the potential 137' 7 1/2" we could legally build to and still gives Auke Bay Station the coveted views they desire.

EXHIBIT C.



For further clarification, please see Exhibit D, which outlines engineered drawings of all data points and calculations.

In light of this new documentation, we are asking that the Commission approve our Conditional Use Permit as submitted.

This project is thought out, well within its height and density requirements, and will add considerable value to the neighborhood.

Regards,

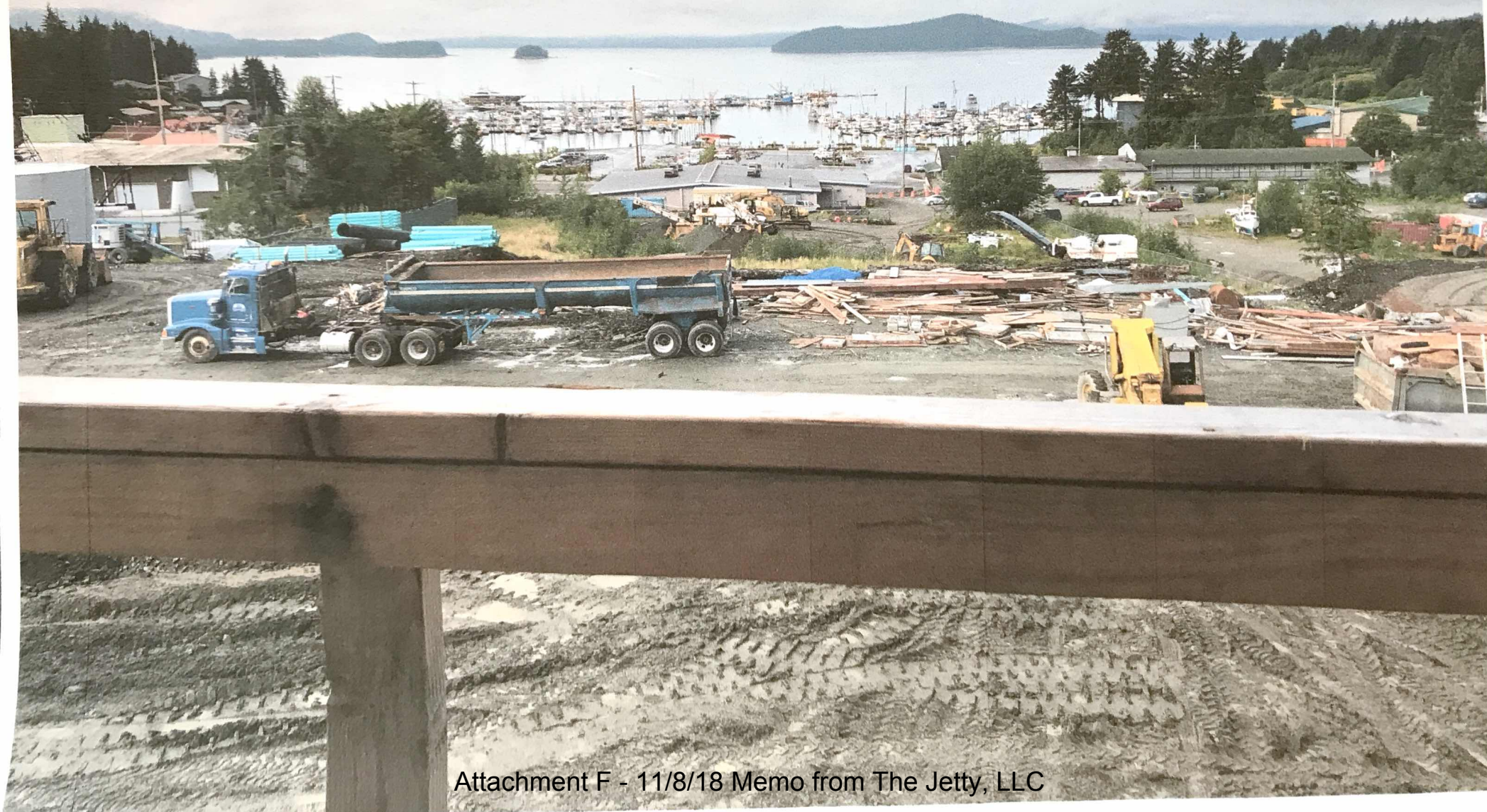
Garrett Schoenberger
602.790.6144
garrett@alaskalegacypartners.com

Paul Simpson
949.244.2924
paul@alaskalegacypartners.com

ALASKA LEGACY PARTNERS, LLC · 2780 FRITZ COVE ROAD · JUNEAU, AK 99801
INFO@ALASKALEGACYPARTNERS.COM

Current Views - Auke Bay Station

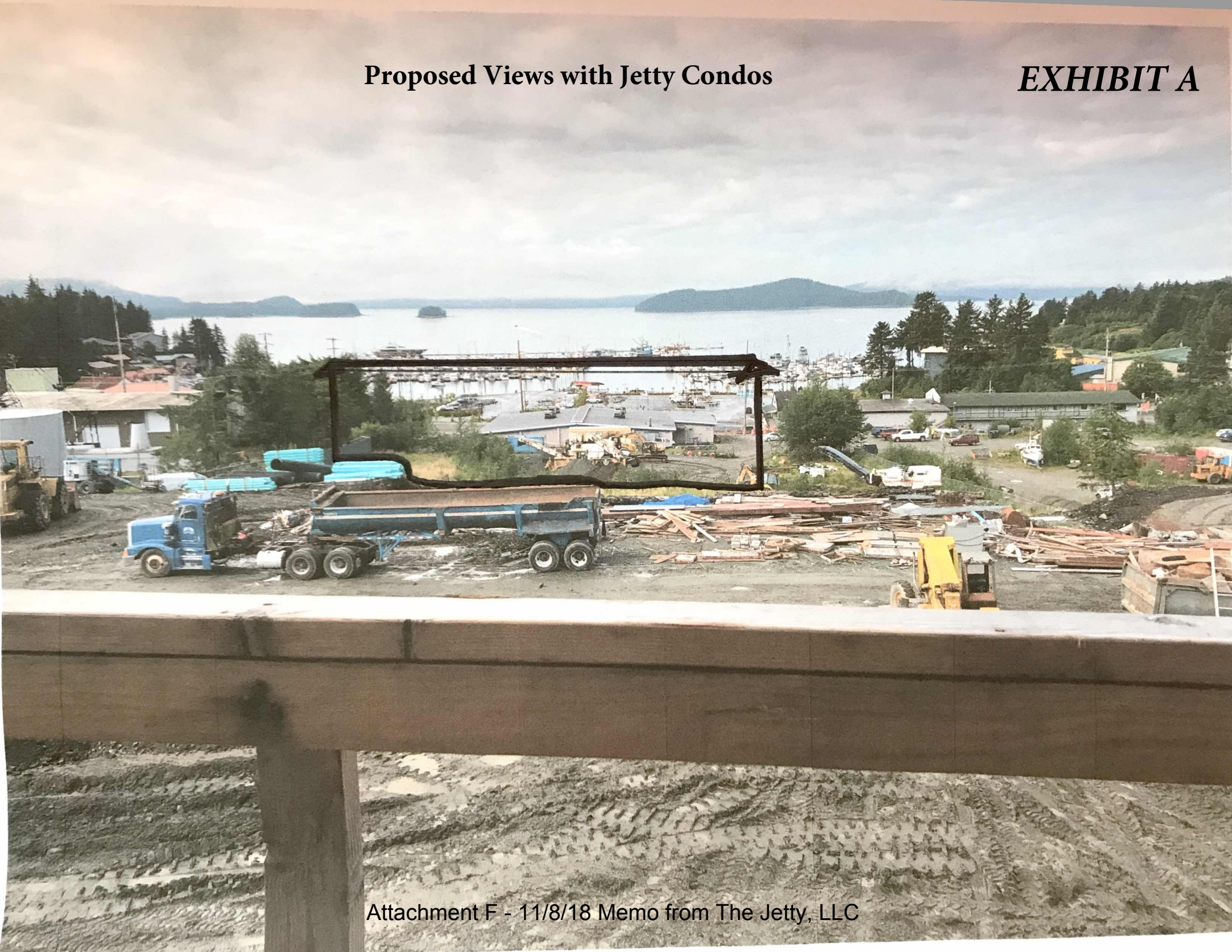
EXHIBIT A



Attachment F - 11/8/18 Memo from The Jetty, LLC

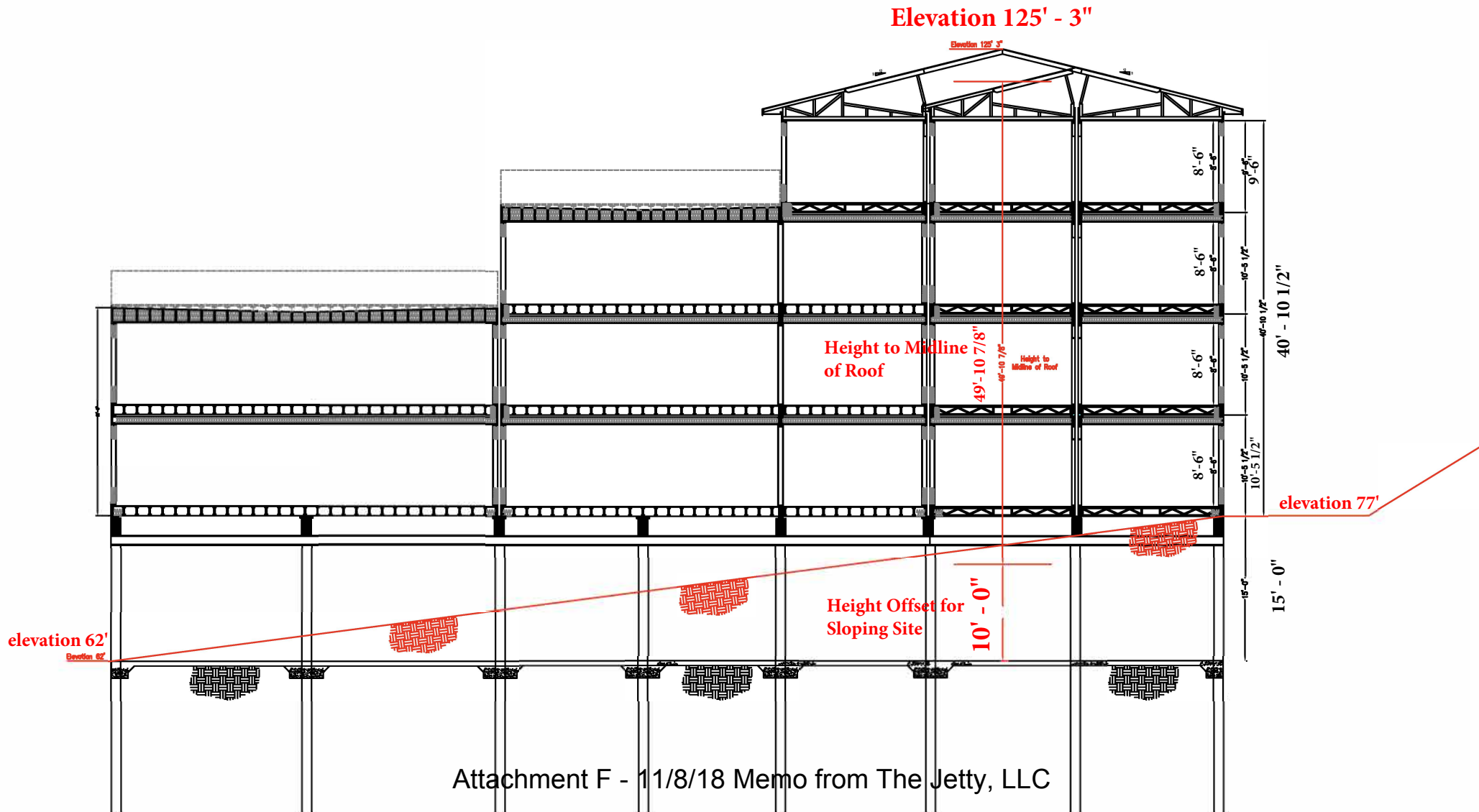
Proposed Views with Jetty Condos

EXHIBIT A



Peak Elevation:	125' - 3"
Gable Roof Height:	7' - 3"
Building Structure Height (less roof and pilings):	40' - 10 1/2"
Grade Level to First Floor Height:	15'
Elevation Datum:	72'
Building Height Per CBJ 49.25.420(b)(2):	49' - 10 7/8"

Neighboring Property View Elevation: 134' - 6"



From: Brad Ketcheson <lbketch@gmail.com>
Sent: Friday, November 2, 2018 11:17 AM
To: PC_Comments
Subject: USE2018 0016 The Jetty 32 Unit Condominium Development Building Height

Hello,

We have been out of town and just recently heard about the proposed development of the Jetty condominium units in Auke Bay.

We have an earnest money deposit on Auke Bay Station condominium #12 that sits due north of the proposed project. Prior to committing to the earnest money on the Auke Bay Station, we were concerned about any future development that may impact our view. Needless to say the view was one of the major selling points of the condominium. We were assured that future building height roof lines in front of Auke Bay Station would not block any view above the top of the new boat launch at Statter Harbor. The view was based on an average height person standing on the 3rd floor of an Auke Bay Station condominium.

We were dismayed to hear that the Jetty condominiums proposed plan would exceed this height restriction. We do not know the specifics of the communication that occurred between the developers of the Jetty, Auke Bay Station and the Planning Commission prior to the current proposed height of the Jetty roof line but it is clear it was not the original agreement.

We are asking the Planning Commission to accept the Jetty Condominium development only if the roof line height does not restrict the Auke Bay Station view above the launch ramp.

Thank you for your consideration.

Sincerely Brad and Louise Ketcheson.

From: Robert Pearson <trumphe@gmail.com>
Sent: Sunday, December 16, 2018 4:53 PM
To: PC_Comments
Subject: 11798 Glacier Hwy Condos - Jan. 8 Reconsideration

I am commenting on the reconsideration of the conditional use permit application for the proposed condominiums at 11798 Glacier Hwy.

I became interested in this project some months ago when the developers of the Jetty had an open house that included conceptual drawings and information on the project. I am interested in purchasing one of the units, depending of course on the final product. I read with some interest about the October hearing. It appears to me that the developers have followed the proper procedures to move forward with this project and have fulfilled the requirements to be issued this conditional use permit. I'm don't claim to know everything, but I don't see any legal basis for denying or modifying the terms and conditions for the permit based on any last minute points raised by other parties. There are always going to be some who don't particularly like any and all developments, but it's always been a basic principal that a project that meets the criteria of zoning and other regulations regarding height, appearance, density etc., is to be permitted.

I hope that same principle will be followed by the planning commission in this case as well.

Thank you for your consideration.

Robert Pearson
3500 Stream Ct., Juneau
907-209-1670

December 17, 2018

Laurie and Jerry Schoenberger
P.O. Box 211261
Auke Bay, Alaska 99821

To the Planning Commission:

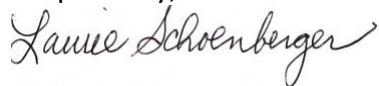
We received a postcard informing us that the Juneau Planning Commission was reconsidering an application for a Conditional Use Permit for construction of a 32-unit condominium complex located at 11798 Glacier Highway, Juneau, Alaska. We were invited to submit a written response, which follows:

The Jetty developers have embraced the Auke Bay development plan and have followed the procedure from preparing the parcel for the development through the following steps:

1. Early in 2018 they had the 1.5 acre tested for building suitability and came up with a feasible plan building on the parcel that is zoned for general commercial.
2. They brought sewer, water and power to the property in the summer of 2018.
3. Next, they applied to the Juneau Planning Department for a "Conditional Use Permit" to build the condominium development that is within the density and height requirements for that parcel.

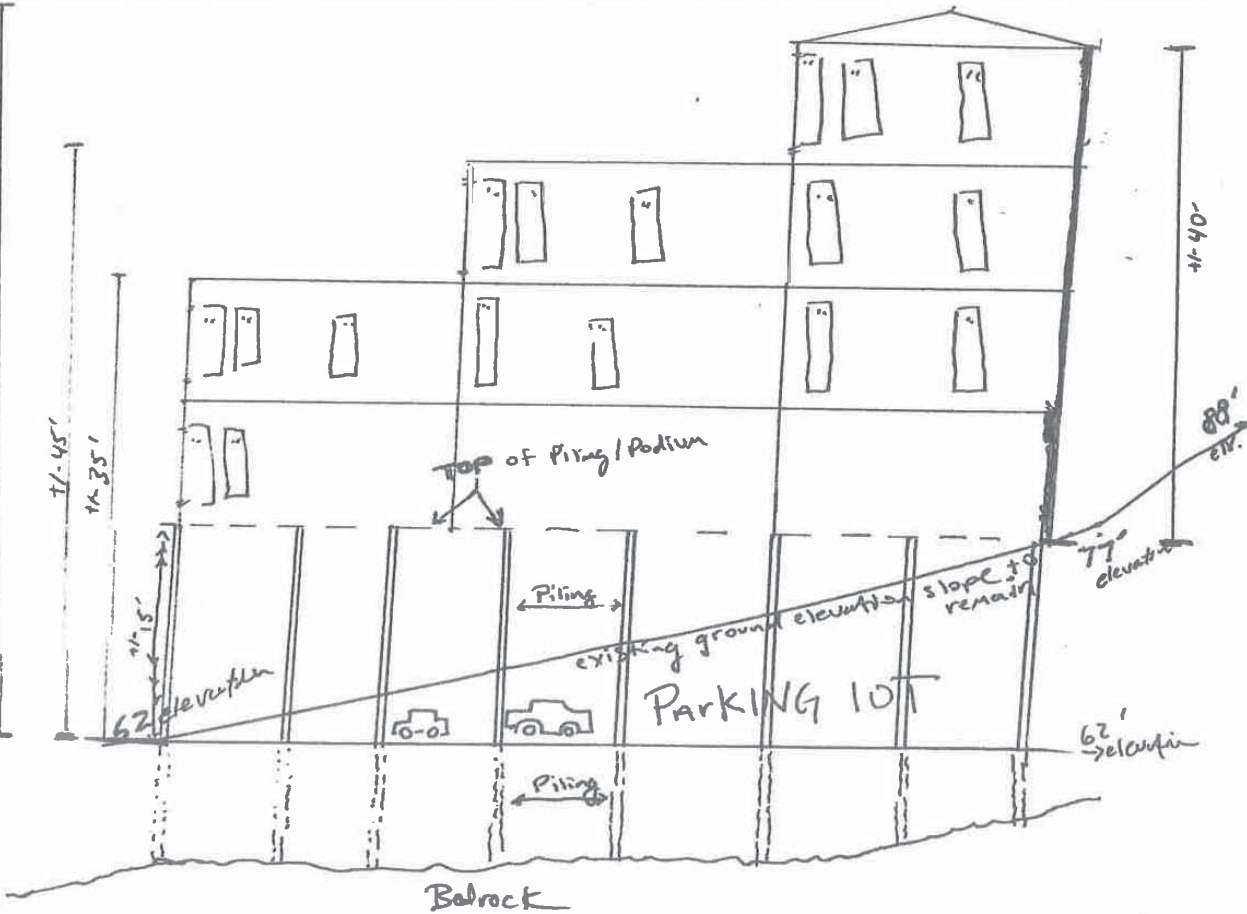
In our view they followed proper protocol and were open about their intentions with all stakeholders, including the builders of Auke Bay Station. Their plan for the new development is in-step with the vision for the Auke Bay community plan. We live at Cannery Cove and are excited to have a new condominium development that will enhance the area in which we live.

Respectfully,

A handwritten signature in cursive script that reads "Laurie Schoenberger".

Laurie Schoenberger and Jerry Schoenberger

Supplemental side view



EXISTING

PROPOSED

CATCH BASIN
MANHOLE
WATER LINE
SEWER LINE
STORM DRAIN LINE
ROOF DRAIN
WATER VALVE
PROPERTY LINE
CONTROL LINE

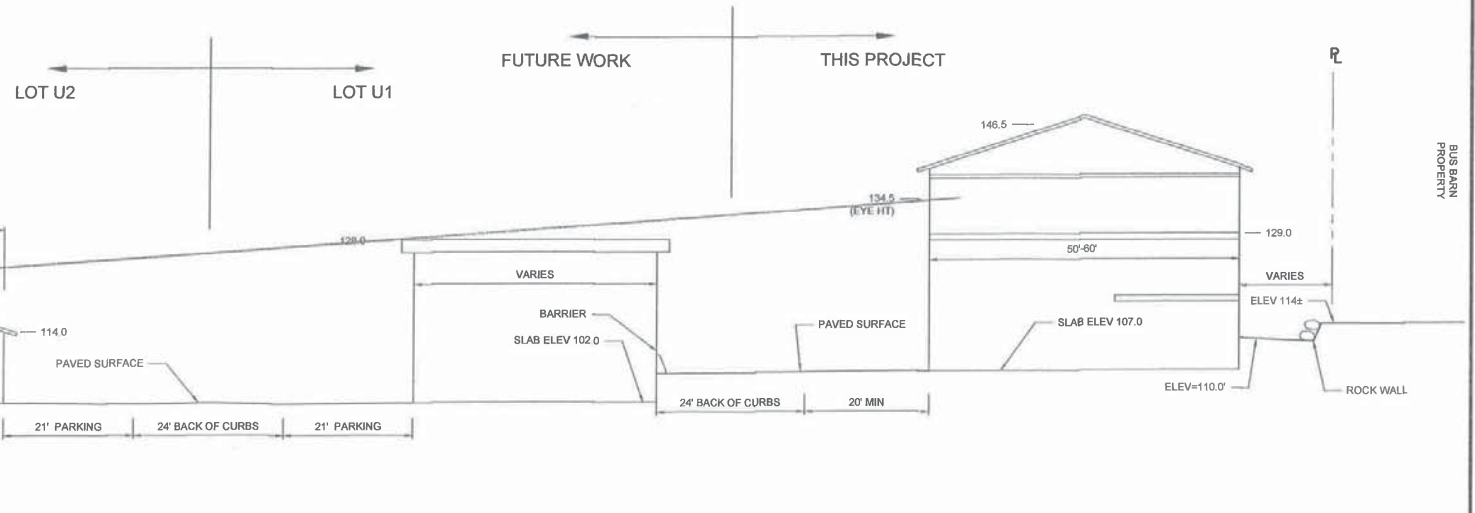
W
SS
SD
X

W
SS
SD
X

LEGEND

NOTES:

1. ALL WORK SHALL BE IN CONFORMANCE WITH THE CITY AND BOROUGH OF JUNEAU CIVIL ENGINEERING STANDARD SPECIFICATIONS AND SUBDIVISION IMPROVEMENTS.
2. THE FOLLOWING CITY AND BOROUGH ENGINEERING STANDARD DETAILS APPLY TO THIS PROJECT: 111B, 203, 205, 206A, 209, 213, 214, 215, 219, 304A, 304B, 306, 307, 311, 312, 403, 404, 406A, 414A, 414B, 419.



MASTER PLAN
FINISHED PROFILE
SECTION A-A
STA "N" 12+50±



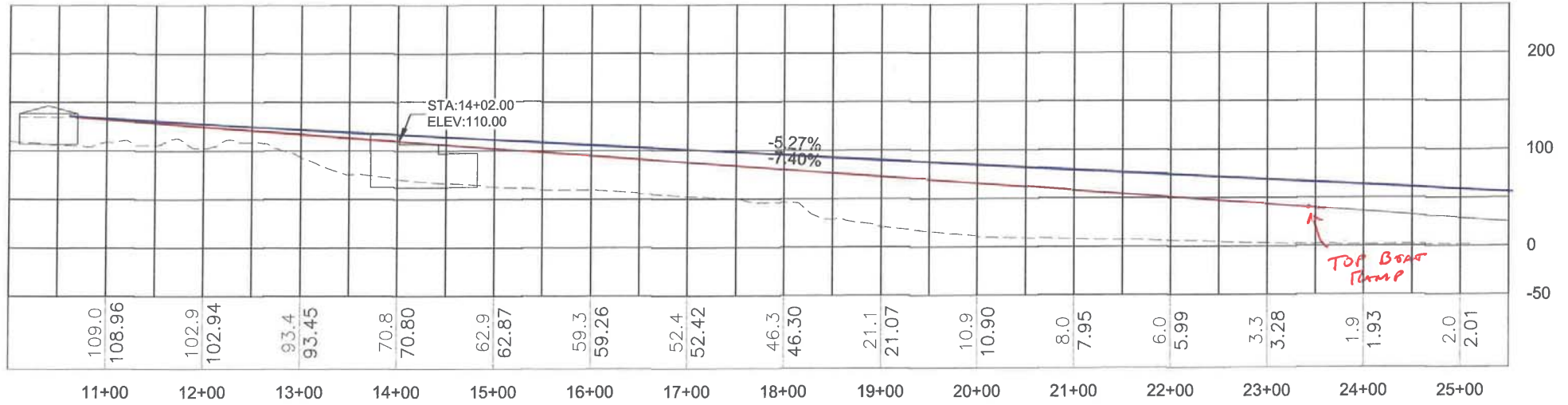
KEMP ENGINEERING, LLC
Drawn By: ABA CAD Services
1720 Glacier Avenue
Juneau, Alaska 99801
Ph: 907-586-3813, 907-723-4674

LOT U1, USS 2391
UTILITIES, GRADING & PAVING

LEGEND, NOTES
& SECTION A-A

SHEET NO.

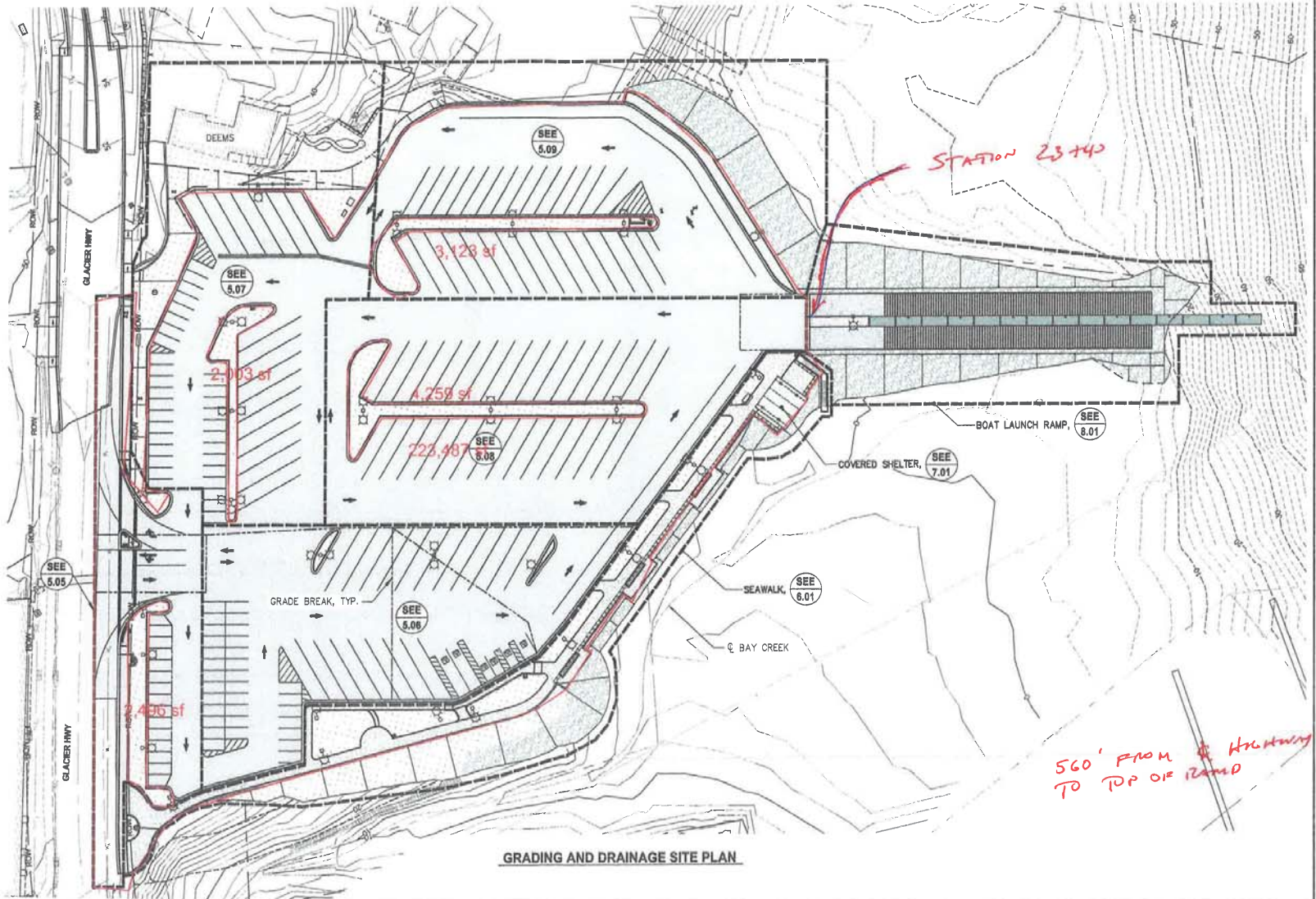
3 OF 11



BLUE LINE DENOTES VIEW WITH PROPOSED
BUILDING TOP ELEV = 117.0'

RED LINE DENOTES VIEW WITH PROPOSED
BUILDING TOP ELEV = 110.0'





560' FROM E. HWY
 TO TOP OF RAMP

- GENERAL CIVIL NOTES:**
- SEE CBJ STD. DETAILS FOR DETAILS NOT SHOWN.
 - EXISTING UTILITIES TO REMAIN UNO.
 - EXISTING UTILITIES SHOWN APPROX. CONTRACTOR SHALL OBTAIN LOCATES PRIOR TO WORK.
 - THE CONTRACTOR SHALL SUBMIT A TRAFFIC CONTROL PLAN TO DOT&PF ROW & OBTAIN APPROVAL PRIOR TO WORK.

DIAL BEFORE YOU DIG!
586-1333
 UNDERGROUND POWER, TELEPHONE, T.V.,
 COMMUNICATIONS, WATER AND WASTEWATER
 LINES ARE IN THE AREA. UTILITIES SHOWN HERE
 DO NOT SUBSTITUTE FOR FIELD LOCATES.

GRADING AND DRAINAGE SITE PLAN



REVISIONS				
REV.	DATE	DESCRIPTION	DWN.	CKD.

PND
ENGINEERS, INC.

0300 Glacier Highway, Ste. 100
 Juneau, Alaska 99801
 Phone: 907-586-2093
 Fax: 907-586-2099
 www.pndengineers.com

DESIGN: TCB CHECKED: CRS
 DRAWN: TCB APPROVED: CRS

SCALE: 1" = 40'
 0 40 80 FT

DATE: 8/29/14

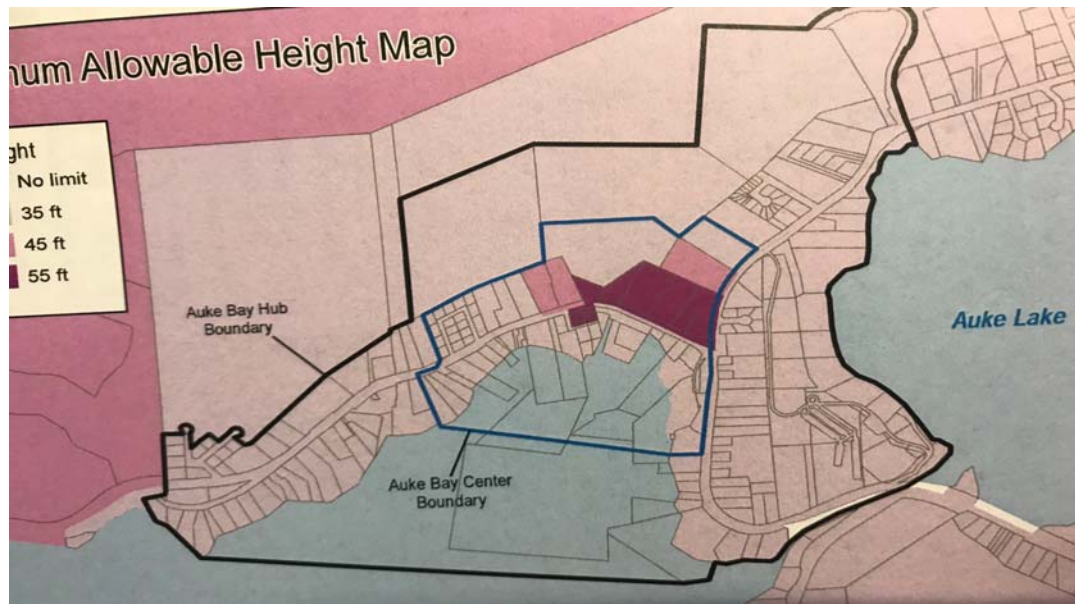
CITY & BOROUGH OF JUNEAU, ALASKA
STATTER HARBOR IMPROVEMENTS
 CONTRACT NO. DH14-014

SHEET TITLE:
**OVERALL GRADING AND DRAINAGE
 SITE PLAN**

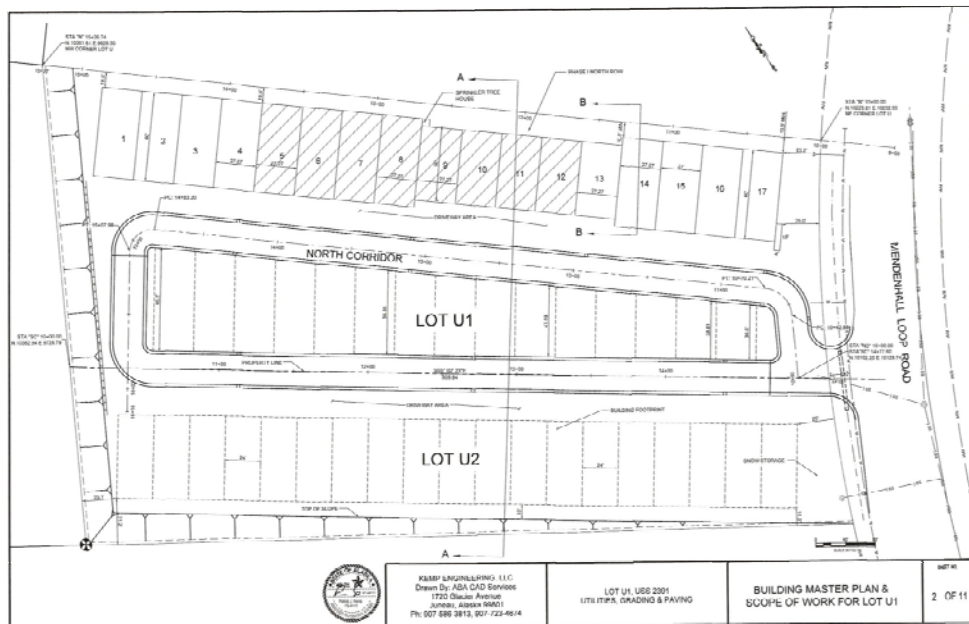
5.01
 SHEET
 40 OF 82

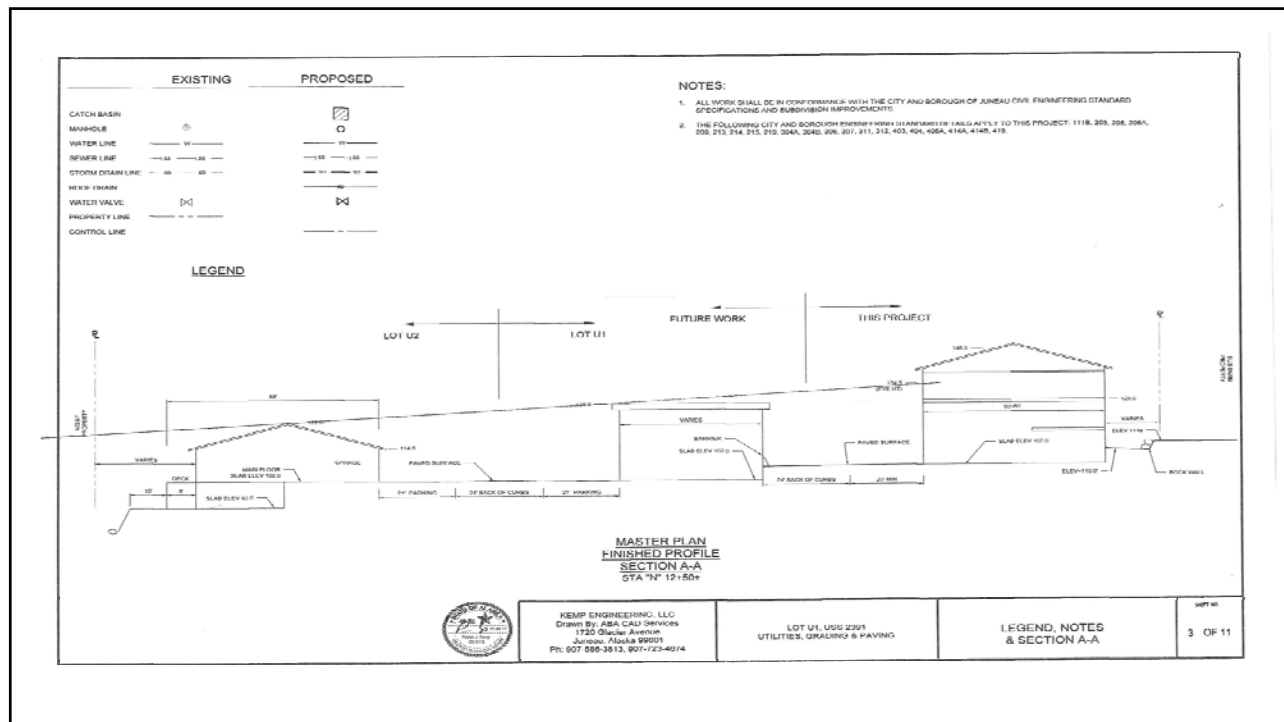
PROJECT NO.: 082015

Building height limitation map



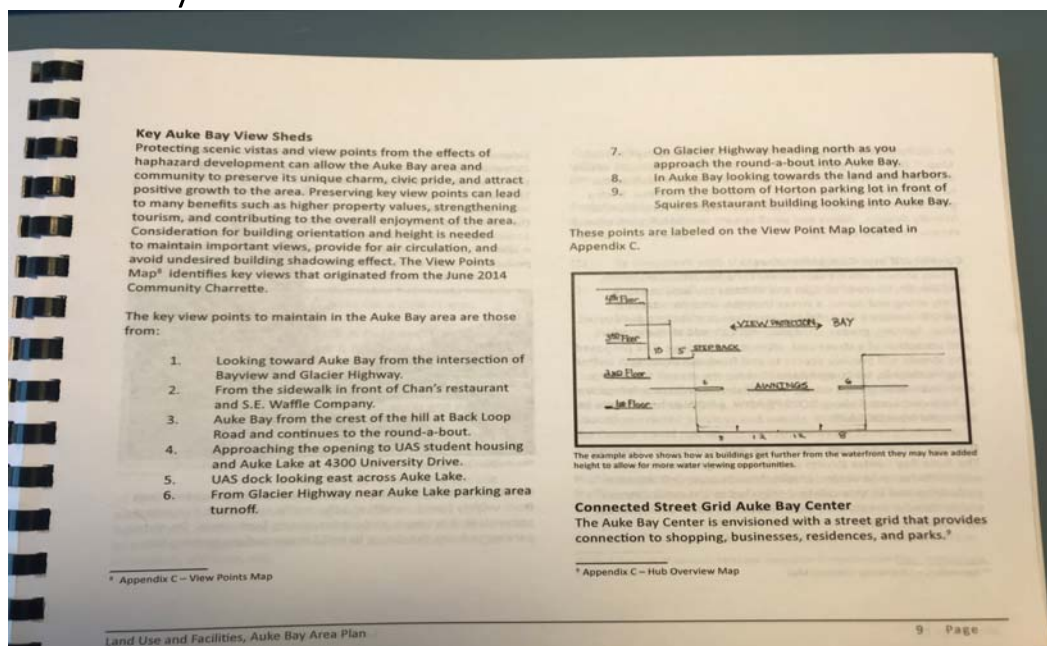
Auke Bay Station Layout







Auke Bay Plan view shed discussion



Policy 10.3 of 2013 Comprehensive Plan

October 12 staff report describing relevant comp plan verbiage:

- POLICY 10.3. TO FACILITATE RESIDENTIAL DEVELOPMENTS OF VARIOUS TYPES AND DENSITIES THAT ARE APPROPRIATELY LOCATED IN RELATION TO SITE CONDITIONS, SURROUNDING LAND USES, AND CAPACITY OF PUBLIC FACILITIES AND TRANSPORTATION SYSTEMS. (p.131)

Verbatim what 10.3 states:

- D. Compatibility of the various zoning districts and land use designations with the scale and massing of surrounding neighborhoods with regard to building height and orientation, but not necessarily with regard to similar density, as the CBJ seeks to make the most efficient use of residentially-buildable lands;

Policy 10.4, Implementing Action IA4 of 2013 Comprehensive Plan

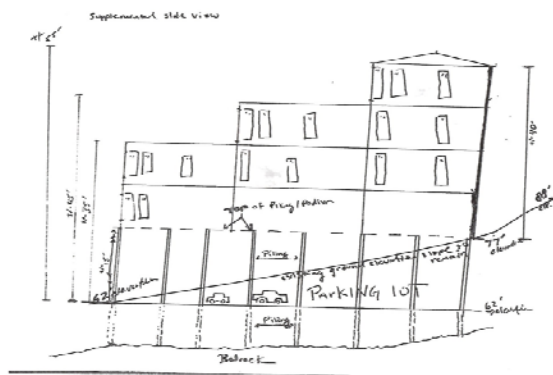
- Encourage mixed-use waterfront development that minimizes view obstruction of existing development and/or important viewsheds.

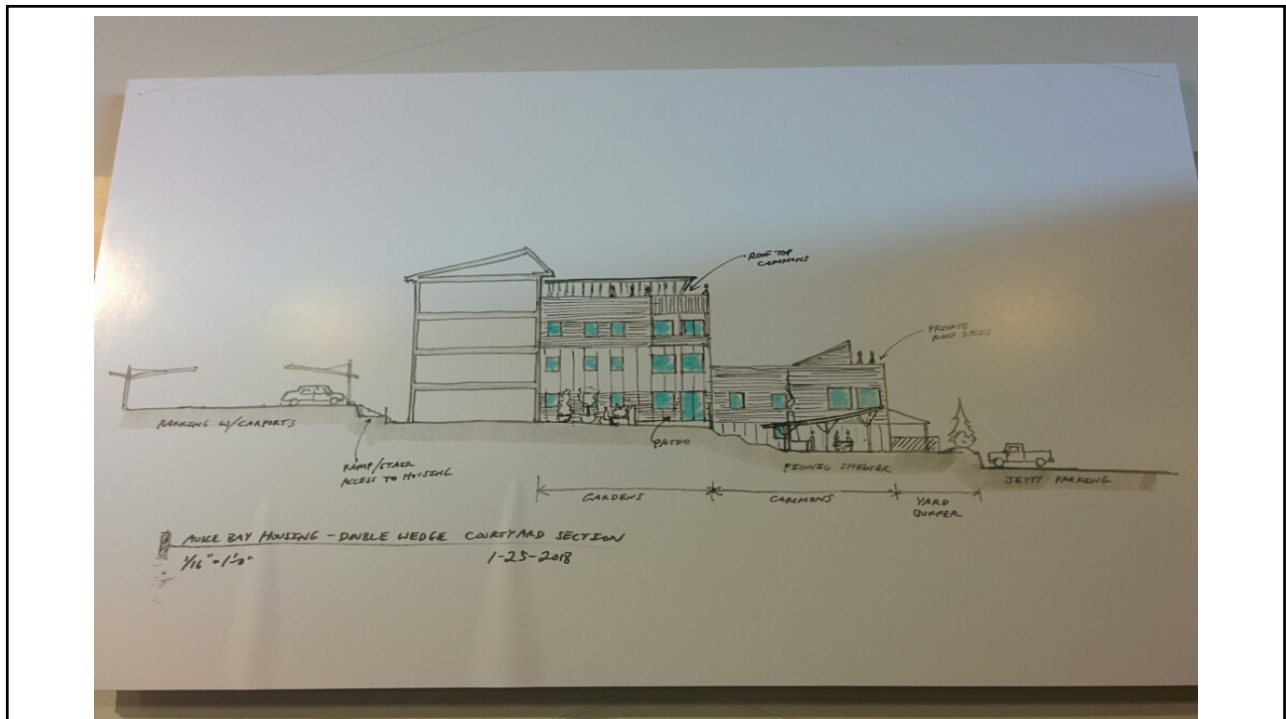
49.25.420 - Height of building.

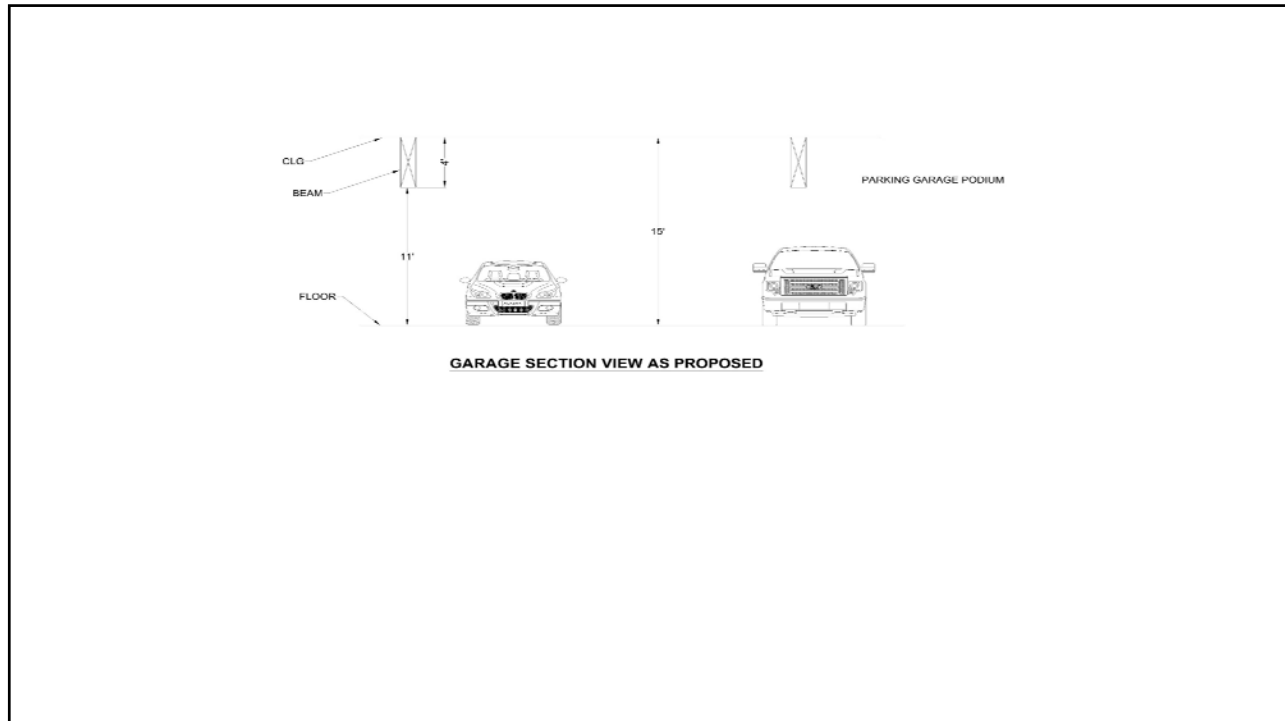
- Height calculations shall disregard any fill or construction which the director finds to have no significant purpose other than elevating the reference datum. In reaching such finding, the director shall consider only those architectural, structural, safety, aesthetic, access or other purposes claimed by the developer and supported by reasonable evidence.

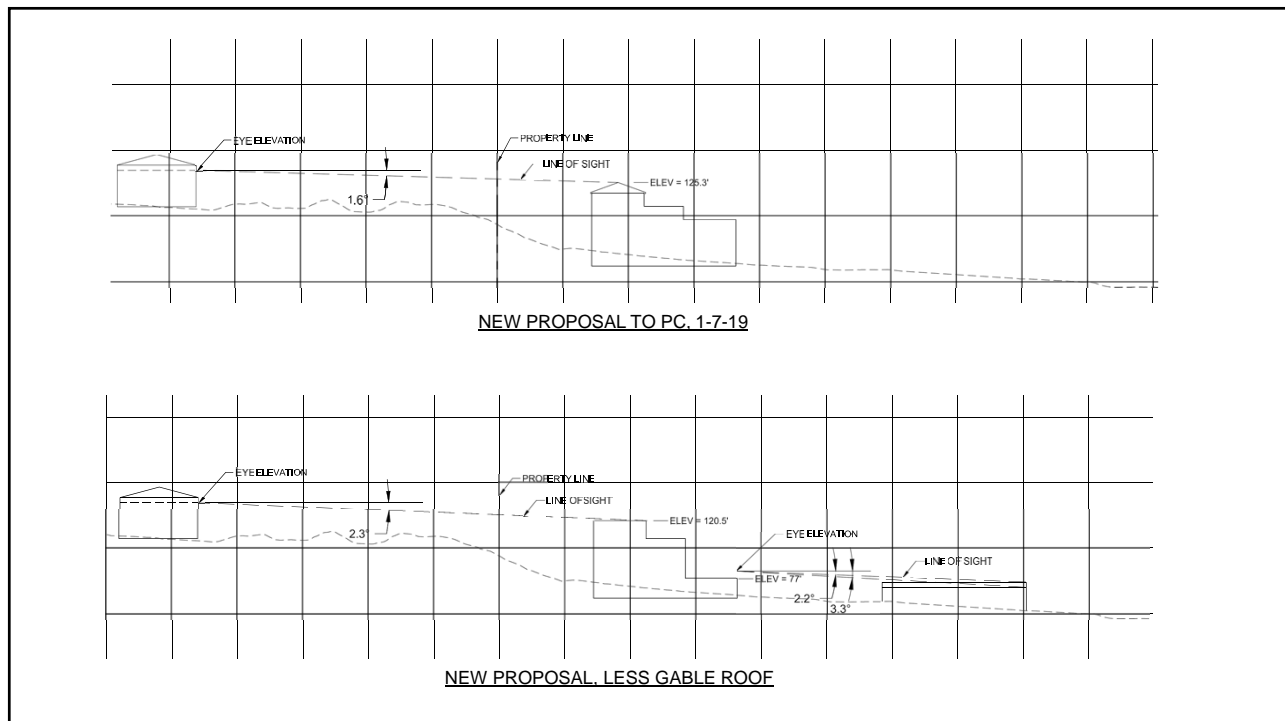
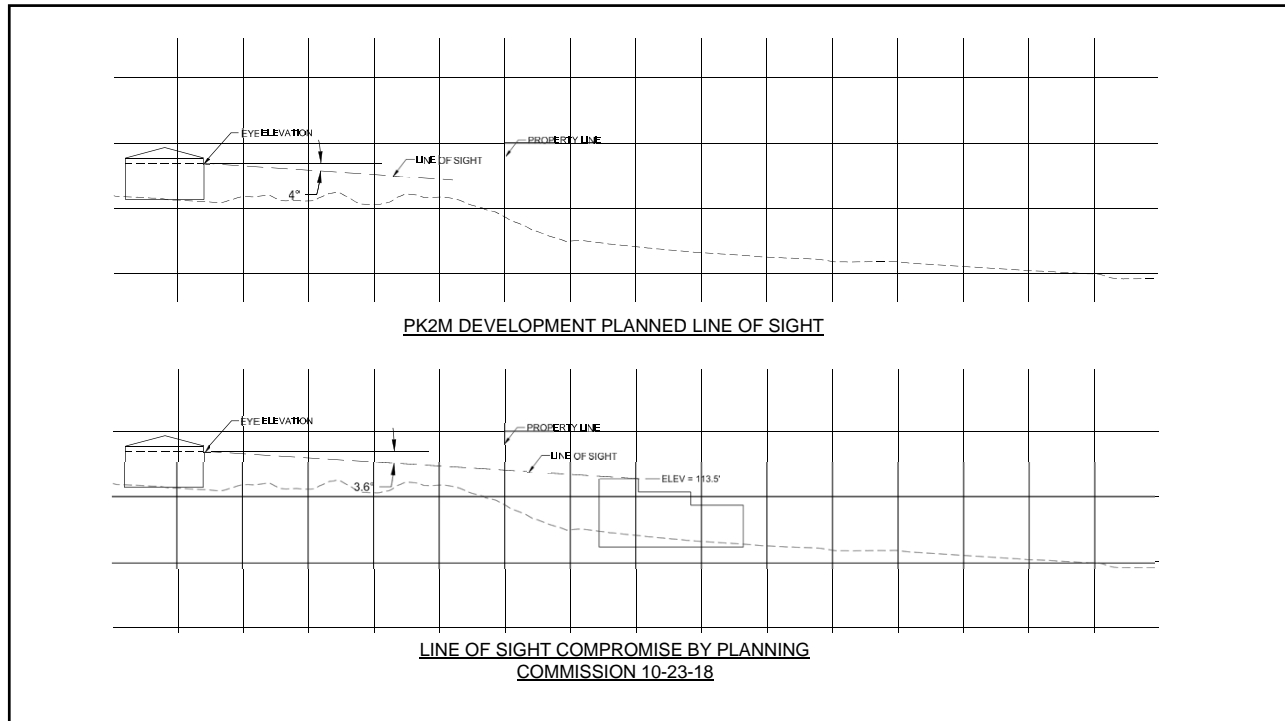
CBJ 49.15.330 (f), Conditional Use Permit

Commission Determinations, states that even if the Commission adopts the Director's determination, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the development will more probably than not: 1. Materially endanger the public health or safety; 2. **Substantially decrease the value of or be out of harmony with property in the neighboring area;** or, 3. **Not be in general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.**











October 12 staff report

- **5. Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?**
- **No.** Based on the above analysis, the use, with conditions, will maintain the values and will be in harmony with the neighboring area.
- **6. Will the proposed development be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?**
- **Yes.** Based on the above analysis, staff finds that the proposed condominium development is in general conformity with the CBJ Land Use Code, 2013 Comprehensive Plan and other relevant adopted plans referenced in this report.

Appraiser adjustment of sales for land value only

View Amenity: The value enhancement offered to a residential site for an unobstructed, protected view amenity

- Each of the comparables was inferior to the subject in view amenity and was adjusted upward 10%.

Auke Bay Station request for 1/8/2018 Planning Commission meeting

Require the height of any building constructed to have its greatest height below the 4.0 degree line of site the Auke Bay Station used for their development. PK2M will lose views from the south and middle row but this will protect the views of our north row building under construction. This can easily be accomplished by:

- The tallest roof could incorporate a flat design similar to the two roof lines below. This will lower the roof datum elevation 5' to elevation 120.5
- The height of the proposed parking garage can be reduced 6' and still meet IBC code requirements. This, with a flat roof will lower the roof datum elevation to 114.5.
- The ground floor level can be lowered 4.5' to elevation 57.5. This modification, a flat roof and a reduction in height to the parking garage will lower the roof datum below the 4.0 degree line of site.
- The specific outside gathering area could be constructed at a higher elevation without impacting other views.

Any combination of these four options could be used to lower the building and preserve the Auke Bay Station north row views.

It is clear the design of the building could be refined in a manner to protect Auke Bay Station views and comply with the Auke Bay Plan and 2013 Comprehensive plan while still meeting the scope and providing excellent views for the owners. The intent of the 2013 Comprehensive Plan, Auke Bay Plan, Title 49.15.330 (f) and Title 49.25.240 are to protect views currently enjoyed by others.