

Court's reasoning that zoning is meant to protect neighborhoods from deleterious uses. The Court found that the proper parties to challenge a zoning decision include (i) the neighbors directly affected by the use in their neighborhood and (ii) "others whose interests relate to the purpose of the zoning ordinance." Tall Timbers is organized to protect and preserve the neighborhood, and provide citizen participation on City decisions, so its interests relate to the purpose of the zoning ordinance-to preserve the neighborhood against deleterious uses. In this appeal it seeks to prevent the City from authorizing in the Tall Timbers neighborhood what Tall Timbers believes to be an unauthorized deleterious use contrary to the residential character of this D5 zone⁴. Since Tall Timbers falls within the zone of interest which zoning is meant to protect (prevention of deleterious uses), it has standing in this case to pursue this appeal.


Conclusion. The appeal must proceed with respect to the 28 individual appellants. Tall Timbers, as a neighborhood association registered with the City and Borough of Juneau, has standing to pursue its appeal because it is adverse to the Director, and is aggrieved because it seeks to protect the neighborhood from a deleterious use

⁴ "The D5 zone "is intended to accommodate primarily single-family and duplex residential development". Code 49.25.210(c).

DATED this June 24, 2014, at Juneau, Alaska.

GRUENING & SPITZFADEN, APC

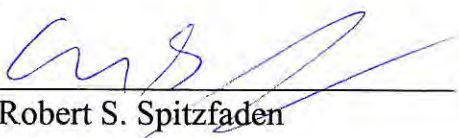
Attorneys for Tall Timbers Neighborhood Association,
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Hubert, Paula Hubert, Rosena Salazar, Rino Salazar,
Toi Gile, Becky Nelson, Noah Lager, Shelly Lager,
Teri Maxwell, Guy Holt, Sam Bertoni, David Marvel,
Lynn Marvel, Bill Thornton and Darlene F. Thornton


Robert S. Spitzfaden
AK Bar No. 7710171

CERTIFICATION

I HEREBY CERTIFY that on June 24, 2014, a copy of the foregoing of
the foregoing was emailed to:

Brenwynne Grigg, CDD Administrative Officer
Brenwynne_Grigg@ci.juneau.ak.us


Robert S. Spitzfaden

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Laurie Sica

From: Bob Spitzfaden <spitz@gci.net>
Sent: Wednesday, May 28, 2014 5:36 PM
To: Laurie Sica
Subject: Legislative History

Laurie

I spoke with Robert Palmer who tells me you are the person that can provide the legislative history for Code 49.20.110, enacted by the following: Serial No. 87-49, §2, 1987; Serial No. 92-10, § 3, 1992; Serial No. 95-35, §4, 1995; Serial No. 97-01, § 6, 1997.

The legislative history would include the Planning Commission and Assembly meeting minutes at which the ordinance was discussed, together with agendas of those meetings, staff memorandums regarding the ordinance, and any other documents bearing on the ordinance.

Robert S. Spitzfaden

EXHIBIT 2 PAGE 1 OF 1 PAGES

**Neighborhood Associations
Registered with the City Borough of Juneau**

Name of Association	Contact Person	Address	Phone Number	Fax Number	E-mail Address	Alternate Contact
Blueberry Hills Neighborhood Association	Paul Dick	2906 Blueberry Hills Rd., Juneau, AK 99801	586-3469		akpauldick@hotmail.com	
Douglas Indian Association	Linda Snow	811 W. 12th Street, Juneau, AK 99801	364-2916	364-2917	lsnow-dia@gci.net	Andrea Caudiente-Laiti: alaiti- dia@gci.net
Douglas Advisory Board	John Delgado	1300 1st St., Douglas, AK 99824	(h)364-3626, (w)796-3626	500-7326	urbaneskimo@hotmail.com	
Downtown Neighborhood Association	Emily Ferry	836 Calhoun Ave., Juneau, AK 99801	463-5145		emily.ferry@gmail.com	
Fritz Cove Neighborhood Association	Cody Salter	2770 Fritz Cove Rd., Juneau, AK 99801	(cell) 209-9240, (w) 789-3717		eric.salter3@acsalaska.net	
Indian Point Neighborhood Association	Jim Parr	P.O. Box 210567, Auke Bay 99821	321-2060		panhan7@ptialaska.net	
Lemon Creek Neighborhood Association	Daniel Collison	5980 Mountain Ave., Juneau, AK 99801				
Lena Extended Neighborhood Association	Kirk Miller	P.O. Box 210945, Auke Bay 99821	790-8557	790-8557	krjmillier@gci.net	
Mountainside Estates Neighborhood Association	Dale Staley	4481 Mountainside Dr., Juneau, AK 99801	(h)780-4658, (w)523-1588		Staleys@alaska.com	
North Douglas Neighborhood Association	Anne Fuller	7943 N. Douglas Highway, Juneau, AK 99801	(h)586-4422, (w)465-6558		fernleafq@yahoo.com	Ellen Furguson, 463-3532
North Tee Harbor Neighborhood Association	Gary Miller	20135 Cohen Drive, Juneau, AK 99801	789-3757		gmiller_juneauak@hotmail.com	
Norway Point Neighborhood Association	Russell Strandtmann	1401 Glacier Hwy., Juneau, AK 99801	586-4856		r_strandtmann@hotmail.com	
Riverwood Homeowners	Lorilyn Swanson	3101 Riverwood Dr., Juneau, AK 99801	789-7290, (w)586-5000		paulswan@gci.net	
Pt. Stephens Neighborhood Association	Russ Senkovich	18610 Trails End, Juneau, AK 99801	(h)789-0115, 723-1150		vich@gci.net	
Shelter Island Neighborhood Association	Karen & Rick Bierman	P.O. Box 211156, Auke Bay 99821			whaleseye@starband.net	
Sunny Point Neighborhood Association	Mary Lou King	1700 Branta Rd., Juneau, AK 99801	789-7540		kingfarm@ptialaska.net	
Tall Timbers Neighborhood Association	Guy Holt	8610 Gail Ave., Juneau, AK 99801	586-6844		guy@akbonfire.com	Dan Hubert, 8597 Marilyn Ave, 523-9719, danhubert@gmail.com
Telephone Hill Neighborhood Association	Maureen Connerton	214 Dixon St., Juneau, AK 99801			jbrown@alaska.net	
Thane Neighborhood Association	Larri Irene Spengler	4545 Thane Road, Juneau, AK 99801	586-9768	586-9768	lspengler@ak.net	
Tongass Park Neighborhood Association	Timothy R. Frowley	2335 Ka-See-An Drive, Juneau, AK 99801	209-4989, (h)790-2848, (w)465-4092		association@longasspark.org	Bill Jackson, 9096 Sheiye Way 99801, 789-5127, 209-9437, billja@gci.net
West Mendenhall Valley Neighborhood Association	Michelle Kaelke	9723 Trappers Lane, Juneau, AK 99801	789-5550		flyfish@ak.net	

EXHIBIT 3 PAGE 1 OF 5 PAGES
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**City & Borough of Juneau
NEIGHBORHOOD ASSOCIATION
REGISTRATION FORM**

JAN 23 2014



CITY & BOROUGH OF JUNEAU Office
★ ALASKA'S CAPITAL CITY

YOUR ASSOCIATION: Tell us about your organization, your neighborhood and attach a copy of any bylaws.

Name of Association: TALL TIMBERS NEIGHBORHOOD ASSOCIATION
Geographic Area of Concern: MARILYN AVE, GAIL AVE, MALISSA DR.
Estimated Population of Area: 85
Issues of Concern: TRAFFIC - LIGHTING - FUTURE DEVELOPMENT AND USAGE.

YOUR MEMBERSHIP: Please provide the names and addresses of your members. Attach extra pages as necessary.

PLEASE SEE ATTACHED

HOW WE CAN REACH YOU: Please list a primary and secondary contact person for your Neighborhood Association along with their contact information. This information is included in the Neighborhood Association Masterlist on the CBJ website so please indicate if you do not wish any of the below information posted online.

	<u>Primary Contact:</u>	<u>Alternate Contact:</u>
Mailing Addresses:	<u>GUY HOLT</u>	<u>DAN Hubert</u>
Contact Numbers (day, evening, cell, & fax):	<u>8610 GAIL AVENUE</u> <u>JUNEAU, AK 99801</u> <u>907-586-6844</u>	<u>8597 Marilyn Avenue</u> <u>JUNEAU, AK 99801</u> <u>907-523-9719</u>
Email addresses:	<u>guy@AKBONFIRE.COM</u>	<u>danhubert@gmail.com</u>

SPECIAL NOTES: Tell us anything else you would like us to know about your association.

Please keep membership records private.

* See Note on Back B.M. Form

In order to register your Neighborhood Association in accordance with CBJ Code 11.35, your completed registration form along with any attachments need to be submitted to the Clerk's Office at the following address:

OFFICE OF THE MUNICIPAL CLERK, 155 S. Seward St., Room 202
Phone: (907)586-5278 Fax: (907)586-4552 e-mail: City_Clerk@ci.juneau.ak.us

Agendas, Minutes, and Notices about Planning Commission, Assembly, and Assembly Standing Committee Meetings can be found on the City & Borough of Juneau website at www.juneau.org.

EXHIBIT 3 PAGE 2 OF 5 PAGES

S301

5/14/14 I call Guy Holt's phone # & c. she w/ his wife
who answered the phone & I explained to her
that the Note on the application "Please keep
membership records private" could not be
followed since the registration form & its
attachments are considered public documents
& would be provided to the public upon request.
Beth McEwen

EXHIBIT 3 PAGE 3 OF 5 PAGES

Bertoni, Sam

Home bmas@ptialaska.net
 Mobile 907-789-3786
 Home POB 32993
 Juneau, AK 99803
 Work 8614 Gail Avenue

Denton, Susie - Terry Kullander

Home denton.kullander@gmail.com
 Mobile 907-723-7522
 Home 907-789-1779
 Home 8618 Gail Avenue

Duran, Paul & Lolita

Home pauld2839@live.com
 Mobile 907-796-2839
 Home 3208 Malissa Drive

Fenumiai, Julie

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 Mobile 907-789-0436
 Home 8609 Marilyn Avenue

Hearn, Joe & Kim

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 Work joehearn56@yahoo.com
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 Mobile 907-229-7684
 Home 8595 Marilyn Avenue

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 Home 8597 Marilyn Avenue

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 Mobile 907-723-5203
 Home 3200 Malissa Drive

Judy, Will

Home will@alaskatechguys.com
 Mobile 907-723-9199
 Home 8609 Gail Avenue

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Lager, Noah & Shelly

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Mobile 907-209-0274

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Larson, Eddie & Samantha

Mobile 907-780-2206

Home 8613 Marilyn Avenue

Legg, Sammy

Home sammy_legg6@hotmail.com

Mobile 907-723-5293

Home 3200 Malissa Drive

Marvel, David & Lynn

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Home 8616 Gail Avenue

Nelson, Dan & Becky

Home akadventure@yahoo.com

Work beccahi@hotmail.com

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Reid, Scott

Home scottareid@live.com

Mobile 907-723-9993

Home 8619 Gail Avenue

Sullivan, Tom

Home thomascsullivan@hotmail.com

Mobile 907-957-0477

Home 3704 Malissa Drive

VanKirk, Brian & Michelle

Home 8707 Gail Avenue

Wilson, Debe & Ted

Home debewilson65@gmail.com

Mobile 907-321-5252

Home 8612 Marilyn Avenue

EXHIBIT 3 PAGE 5 OF 5 PAGES

Juneau Neighborhood Associations


City and Borough of Juneau | 155 S. Seward Street | Juneau, Alaska 99801

Juneau's Neighborhood Associations provide a direct and continuing means of citizen participation in local government decisions about neighborhoods through the use of neighborhood associations recognized as advisory to the municipal government. These associations are intended to improve the ability of local government to elicit opinions and recommendations, to assess the priorities of residents, property owners, and businesses and to formulate its basis for decisions regarding community development programs, and crime prevention programs, including neighborhood watch programs, and other issues.


The links below provide additional information such as: who to contact in your neighborhood if you would like to become involved in a registered neighborhood association, how to register a new neighborhood association, and what the CBJ Code says about neighborhood associations. Anyone wishing additional assistance should contact the **Municipal Clerk's Office** at **586-5278** or send an email to City_Clerk@ci.juneau.ak.us.

WHO: [Neighborhood Associations and Contacts List](#)

WHAT: [Neighborhood Association Ordinance](#)

Adobe Acrobat (PDF) file 

HOW: [Register Your Neighborhood Association](#)

Adobe Acrobat (PDF) file 

For general information on how to keep in touch with your local government, please [click here for the "Your Municipality" Brochure](#).

We encourage neighborhood association members and anyone from the public interested in items coming before the Assembly and the Assembly Standing Committees to sign up for one or more of the CBJ RSS Feeds. Additional information on the RSS Feeds can be found on the following web page: <http://www.juneau.org/about/rss.php>

 [Get FREE Adobe Acrobat Reader](#)

[Return to City Government and Services page](#)

Last updated 2014-05-14 bjm
www.juneau.org

webmaster@juneau.lib.ak.us

EXHIBIT 4 PAGE 1 OF 1 PAGES

BYLAWS

for

TALL TIMBERS NEIGHBORHOOD ASSOCIATION

ARTICLE 1 NAME

The name of this organization shall be the Tall Timbers Neighborhood Association, hereinafter "Association".

ARTICLE 2 MEMBERSHIP BOUNDARIES AND SCOPE

The Association is primarily concerned with issues that affect the Juneau, Alaska neighborhood including but not limited to properties along Marilyn Ave, Gail Ave, and Malissa Dr. ("the neighborhood").

ARTICLE 3 DEFINITION

The Association is a non-profit, voluntary, self-governing association composed of residents, property owners, business owners, and representatives from non-profit associations and other entities physically located within the Association's membership boundaries. The Association is not a branch or layer of government. The Association is not a regulatory or legislative body. Upon motion of its membership, it may file Articles of Incorporation as a State of Alaska Domestic Nonprofit Corporation.

ARTICLE 4 MEMBERSHIP

- A. Any person 18 years or age or older who is a homeowner, tenant, resident, property owner, business owner, or a designated representative of a corporation or non-profit association physically located within the membership boundary described in Article 2 is to be treated as and may act as a member, whether or not that person has attended a meeting or paid dues.

- B. Annual dues may be set by the members at an annual meeting; payment is optional, and is not a prerequisite for membership.
- C. A mailing list of members will be maintained by the secretary and an e-mail list of members e-mail addresses will be maintained by the President and at least one other Board member. The mailing lists will remain confidential and will not be distributed to any individual or entity for any purpose.

ARTICLE 5 PURPOSE

The Association is primarily concerned with issues affecting the neighborhood including but not limited to preserving harmony of the neighborhood, protecting public health and safety, and preserving property values. The purpose of the Association is to provide a direct and continuing means of citizen participation in the neighborhood. The Association exists to afford citizens an opportunity for maximum involvement and self-determination.

This Association is intended to give:

- A. Local people a method by which they can work together for expression and discussion of their opinions, needs, and desires in a manner that will have an impact on their neighborhood's development and services;
- B. Governmental agencies a method for receiving opinions, needs, desires and recommendations of the neighborhood; and
- C. Local governing bodies such as the Juneau Assembly and Planning Commission an improved basis for decision making and assignment of priorities for all programs affecting the neighborhood.

ARTICLE 6 FUNCTION

The Association has a policy and practice of open participatory membership.

ARTICLE 7 MEMBERSHIP MEETINGS

- A. Membership meetings shall be held as needed.

- B. Notices shall be sent, distributed, posted, or otherwise conveyed by email, social media, telephone, or such other means as is reasonable.
- C. Meetings shall be run in a manner intended to increase the public expression and discussion of opinions held by Association members.
- D. Meetings shall be conducted as informally as the number of participants will allow.

ARTICLE 8 MEMBERSHIP VOTING

- A. Each member of the Association shall have only one vote.
- B. If a vote is taken during a membership meeting, each member must be present at the time of the vote in order to cast a vote. There will be no proxy voting.
- C. A member who is absent may send personal correspondence to the Association detailing his or her position on the question to be voted on which shall be read to the Association prior to the vote.

ARTICLE 9 BOARD

Section 1: Board

The Board of the Association shall be the President and Treasurer. They two shall be elected at an annual member meeting.

A. The President shall:

1. Be the principal presiding officer and shall in general supervise the affairs of the Association and shall also ensure that these bylaws are followed and enforced;
2. Establish meeting agenda; and
3. Ensure the proper distribution of meeting notices and agendas.
4. Accept service of process.

B. The Treasurer shall:

1. Have charge and custody of and be responsible for all funds of the Association;
2. Make disbursements as necessary upon authorization by the membership or Board; and
3. Report at each annual membership meeting all receipts and expenditures since the preceding annual meeting, including a statement of the current balance of funds.

C. Removals, resignations, and vacancies can be filled temporarily by appointment by vote of the remaining Board members until an election is held by the voting membership at the next annual membership meeting.

Section 5: Board Meetings

A. The Board shall meet as needed.

B. All Board meetings will be open to the membership. Notice of a Board meeting will be sent, posted, distributed, posted, or otherwise conveyed to the membership as far in advance as feasible.

ARTICLE 11 COMMITTEES

Committees are optional, and may be established by a vote of the membership or by the Board or President at any time for whatever purpose deemed necessary. The nature and duties of the committees shall be determined by the President.

ARTICLE 12 FINANCES

A. The Association may receive voluntary contributions from each member as needed to meet the costs of its operation.

B. The Treasurer and the President shall have the authority to expend money. The Treasurer on his or her own, or, if the Treasurer is unavailable, the President on his or her own, may make such expenditures.

ARTICLE 13 AMENDMENTS

These bylaws may be altered, amended or repealed by a vote of the members present at a membership meeting.

ARTICLE 14 DISSOLUTION

The Association may be dissolved by a vote of the members present at a membership meeting.

ARTICLE 15 FORMATION OF A STATE OF ALASKA DOMESTIC NONPROFIT CORPORATION

Upon a majority vote of the members present at a membership meeting, the Association may elect to become a nonprofit corporation. In this event, the incumbent officers of the Association also serve as directors of the corporation. These bylaws shall serve as the bylaws of the corporation. The name and address of the initial registered agent and office shall be that of the incumbent President and the names and addresses of the incorporators are the incumbent officers.

Adopted hereby on 13 June 2014



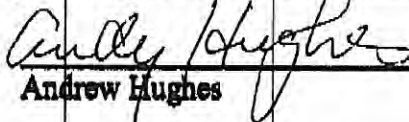
Dan Hubert
Treasurer

**Appeal 2014 0004 of:
CDD Directors Decision in
BLD20130767**

1. I reside at 3200 Malissa Drive, Juneau, AK 99801
2. I have resided at that address for almost 40 years.
3. My house was one of the earliest in the Tall Timbers neighborhood.
4. In the early years of the neighborhood, the neighbors organized the Tall Timbers Neighborhood Association.
5. The Association was organized to (i) identify neighborhood concerns and interests, and (ii) so the neighbors would get to know each other so the neighborhood would be safer and more peaceful since the residents would know each other.
6. The Association worked to secure additional street lights, which lead to streets lights being installed along Tongass Boulevard.
7. The Association met regularly and had progressive dinners and block parties.

8. In later years, with neighborhood turnover, the Association's activities waned, until the present Haven House issue arose.

DATED this 23 day of June, 2014, at Juneau, Alaska.


Andrew Hughes

CERTIFICATION

I HEREBY CERTIFY that on June 24, 2014, a copy of the foregoing of the foregoing was emailed to:

Brenwynne Grigg, CDD Administrative Officer
Brenwynne_Grigg@ci.juneau.ak.us


Robert S. Spitzfaden

Before the Planning Commission of the City and Borough of Juneau

In re /
TALL TIMBERS NEIGHBORHOOD /
ASSOCIATION NOTICE OF APPEAL /
Re: CDD Directors Decision in /
BLD20130767 /
_____ /

**Response to Memorandum by Tall Timbers Neighborhood Association to
Appeal CDD's Director Decision of March 18, 2014**

CBJ Land Use Code provides in section CBJ 49.29.110(a) that an aggrieved person may appeal a decision of the Director of the Community Development Department (CDD) to the Planning Commission. Tall Timbers Neighborhood Association (Tall Timbers) wishes to appeal to the Planning Commission the Decision of the CDD Director dated March 18, 2014, attached as Exhibit 1. To resolve whether Tall Timbers may appeal that decision to the Planning Commission and what steps the Planning Commission should take to resolve the issues raised by CDD Director's Decision BLD20130767, the Planning Commission needs to decide three questions:

1. Whether an unincorporated association is a person within CBJ Land Use Code 49.29.110 and 49.80.120. CBJ Land Use Code 49.29.110(a) provides that an aggrieved "person" may appeal a decision of the CDD Director. CBJ Land Use Code 49.80.120 defines "person" as "an individual, partnership, firm, [or] company corporation." Tall Timbers Neighborhood Association is not an individual, partnership, firm or corporation. Is Tall Timbers Neighborhood Association a person within CBJ Land Use Code 49.29.110 and 49.80.120?

2. Whether Tall Timbers or any residents of Tall Timbers Subdivision are aggrieved by CDD's decision of March 18, 2014. CDD has not granted Haven House a permit to operate. On March 18, 2014, CDD rescinded a decision that Haven House was a halfway house and issued a new decision that CDD believes the Planning Commission, after a public process, may grant Haven House a permit. Can a person that opposes the granting of a permit be aggrieved when CBJ has not issued a permit?

3. Whether the Planning Commission should schedule a public hearing as soon as possible on Haven House's appeal and Haven House's application for a use not listed permit. In a public hearing on Haven House's appeal and on Haven House's application for a use not listed permit, Tall Timbers and any person opposed to this project can make every single argument they could make in an appeal of the CDD Director's Decision of March 18, 2014, and the Planning Commission could hear all the evidence and arguments on whether Haven House should receive a permit. Should the Planning Commission schedule such a consolidated public hearing?

Chronology

This is a chronology of the key events that are relevant for the Planning Commission to decide whether Tall Timbers may appeal the CDD Decision of March 18, 2014, and to schedule the next steps on Haven Haven's application for a permit to operate.

- 12-23-13 Haven House applies for an allowable use permit for a group home at 3202 Malissa Drive.
- 1-24-14 CDD denies Haven House a permit on the grounds that [1] Haven House's use is not a group home because the residents will not have a disability and [2] Haven House is a halfway house.
- 2-14-14 Haven House files a notice of appeal.
- 3-6-14 CDD asks Haven House for additional information.
- 3-10-14 Haven House provides additional information and files a legal brief that [1] Haven House's intended use is as a single family residence, as family is defined by CBJ 49.80.120; [2] in the alternative, Haven House's intended use is as a group home; [3] Haven House's use is not a halfway house as defined by CBJ 49.80.120.
- 3-18-14 CDD rescinds its decision of 1-24-14 and issues a new decision that [1] CBJ Title 49 regarding halfway houses is likely unenforceable because it is irrational and arbitrary; [2] CBJ Title 49 regarding group homes is likely unenforceable and denies Haven House's application for a group home permit; [3] Haven House is not a single family residence and denies Haven House's application to operate as a single family residence; [4] CDD believes that Haven House is a "use not listed and of the same general character" as listed uses in the D-5 district; CDD believes that Haven House's intended use is most similar to a boardinghouse/rooming house, a use that may occur only if the Planning Commission grants a conditional use permit; **CDD did not grant Haven House a permit to operate; CDD does not have authority to grant a permit under CBJ 49.20.320, the use not listed provision; only the Planning Commission may issue a permit under the "use not listed" ordinance.**
- 4-1-14 Tall Timbers files a notice of appeal on the grounds that [1] CBJ Title 49 regarding halfway houses and group homes is enforceable; [2] Haven House is a halfway house; [3] Haven House is not a boardinghouse/rooming house within CBJ Title 49; [4] Haven House is not a use not listed pursuant to CBJ 49.20.320.
- 4-4-14 Haven House files a notice of appeal of CDD's denial to Haven House of a permit to operate as a single family residence or as a group home.
- 5-2-14 Haven House applies for a permit as "a use not listed and of the same general character as listed uses" in the D-5 district.
- 5-13-14 At a meeting, the Planning Commission [1] accepts Haven House's appeal [Appeal 2014 -0004]; [2] directs briefing on whether Tall Timbers has the right to appeal the CDD decision of March 18, 2014,

- [3] designates Commissioner Nicole Grewe as Presiding Officer for both appeals.
- 5-28-14 Tall Timbers files a motion to intervene in Haven House's appeal; Andrew Hughes, owner of the lot adjacent to 3202 Malissa Drive, files a motion to intervene in Haven House's appeal and in Tall Timbers' appeal.
- 5-28-14 Commissioner Grewe holds a scheduling conference.
- 5-29-14 In Haven House's appeal, Commissioner Grewe issues an order staying proceedings in Haven House's appeal based on request of Haven House. In Tall Timbers' appeal, Commissioner Grewe issues an order scheduling legal briefs on whether Tall Timbers may appeal the CDD decision of March 18, 2014 and setting oral argument on this question before the Commission for July 22, 2014.
- 6-24-14 Tall Timbers files a memorandum; eighteen individuals who signed Tall Timber's Notice of Appeal dated 4-1-14 file a motion to intervene in Haven House's appeal.

Haven House notes that Tall Timbers asserts that the CDD Director rescinded the January 24, 2014 decision "apparently after private interaction with Haven House."¹

Haven House is not exactly sure what Tall Timbers is suggesting but Haven House invites the Commissioners to review the twenty-five page legal memorandum that Haven House submitted, and is part of the public record, which thoroughly lays out Haven House's argument as to why the January 24, 2014 decision was in error.²

At the informational meeting with residents of Tall Timbers that Haven House held on February 21, 2014, several residents made statements that suggested they had talked in detail with the CDD Director before he issued the January 24, 2014 decision that Haven House was a halfway house. Haven House has not pursued this with a records request and understands that CBJ staff have contact with members of the public as part of their job.

Ordinances Primarily Involved

The primary ordinances involved in deciding the issues in this memorandum are as follows:

CBJ 49.20.110(a) Review by the commission of a decision of the director [of the Community Development Department] may be requested by filing a notice of appeal stating with particularity the grounds therefore with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. **The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should**

¹ Tall Timbers Memorandum at 2.

² Haven House's Memorandum in Support of a Zoning Permit (March 10, 2014).

hear the appeal. The appeal shall be heard unless it presents only minor or routine issues, and it is clear from the notice of appeal and any evidence offered as consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion. [emphasis added]

CBJ 01.50.020(b) An appeal shall be filed only from a final agency decision. Decisions which are not appealable include, but are not limited to, decisions to recommend, advise or request an action, even if the recommendation, advice or request is procedurally required as a prerequisite to some other decision, which latter decision is dispositive of the matter. [emphasis added]

CBJ 49.20.320 Use not listed. After public notice and a hearing, the board [of adjustment] may permit in any district any use which is not specifically listed in the table of permissible uses but which is determined to be of the same general character as those which are listed as permitted in such district. Once such determination is made, the use will be deemed as listed in the table of permissible uses.

Argument

1. Tall Timbers Neighborhood Association may not appeal the CDD Director's Decision of March 18, 2014, because the Association is not a person as defined by CBJ Land Use Code.

To appeal a CDD decision, the appellant must be an "aggrieved person." Haven House examines whether Tall Timbers is "aggrieved" in the next section of this memorandum but Tall Timbers must also be a person. The CBJ Land Use Code has a definition section: CBJ 49.80.120. CBJ 49.80.120 states: "Person means an individual, partnership, firm, [or] company corporation."³ CBJ 49.80.120 states that the words used in CBJ Title 49 "shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning."⁴

Tall Timbers Neighborhood Association is an unincorporated association. Tall Timbers is clearly not an individual, a partnership, or a corporation, and is not a for profit corporation. It is also not a non-profit corporation. The bylaws of the association provide that its members may elect to become a non-profit corporation,⁵ but the association has not been formed as a non-profit corporation.

The context of CBJ 49.20.110 -- that an appeal of a CDD Director decision may only be brought by an "aggrieved person" -- does not suggest that "person" in that context should be defined differently from the definition of person in CBJ 49.80.120.

³ CBJ Land Use Code 49.80.120 (Definitions).

⁴ CBJ Land Use Code 49.80.120 (first sentence).

⁵ Article 15, TTNA Bylaws, Exhibit 5 to Tall Timbers Memorandum.

An unincorporated association does not have standing to bring a legal action in court to stop a project.⁶ The Alaska Supreme Court held that an entity called “Washington’s Army” that consisted of a group of individuals who opposed the construction of a facility in Seward did not have standing to bring suit to stop construction of the facility.⁷ The Court explained:

An entity must have corporate status or possess the right to sue in order to have standing. The ability to sue or be sued has traditionally centered on the ability of a party to be accountable for the process and results of legal proceedings. Washington’s Army, as an entity, lacks standing because it does not have a person or a legal entity that may be held responsible for the process and results of the legal proceeding and thus does not have the ability to sue or be sued.⁸

The same principle should apply when an unincorporated association wants to bring an administrative appeal to stop a project. In an administrative appeal, a party must also be held accountable. For example, the Assembly may allocate costs as a result of an appeal.⁹ How would the Assembly allocate costs against an unincorporated association? If the association did not pay the costs, how would the Assembly enforce the judgment against the association? Even though Haven House does not anticipate this appeal will result in an order allocating costs against any party, the provision allowing for allocation of costs suggests that an appellant must be an entity against whom an order for payment of costs could be entered.

Tall Timbers Neighborhood Association can become a non-profit corporation. It would then be a person within the meaning of CBJ 49.29.110 and could appeal as an association, as distinct from individuals who are members of the association. Five neighborhood associations in Juneau have formed as non-profit corporations.¹⁰

Tall Timbers cites Civil Rule 5(c)(6) for the proposition that an unincorporated association may be sued.¹¹ Haven House found Civil Rule 5(c), no Civil Rule (5)(c)(6). Civil Rule 5(c) simply addresses the service of “numerous defendants.” Haven House agrees that numerous persons may file an appeal in the same appeal and that numerous persons may sue or be sued in the same action. That is not relevant to whether an association may take action as a separate legal entity.

⁶ *Washington’s Army v. City of Seward*, 181 P. 3d 1102 (Alaska 2008).

⁷ *Id.*

⁸ 181 P. 3d at 1105 (footnotes omitted).

⁹ CBJ 01.50.150(a).

¹⁰ State of Alaska, Division of Corporations, Business and Professional Licensing, Corporations Database, <http://commerce.alaska.gov/CBP>. The Thane Neighborhood Association is the only neighborhood association that has actively maintained its nonprofit corporation status. The others were administratively dissolved as nonprofit corporations.

¹¹ Tall Timbers Memorandum at 6 note 2.

Tall Timbers notes that it is a neighborhood association that has formed and registered with CBJ under CBJ 11.35.020.¹² As an association, it may give input to the CBJ Assembly, the Planning Commission and CBJ staff on actions that the City may take. But the ordinance allowing for neighborhood associations specifically states it does not create any substantive or procedural rights:

11.35.060 NO RIGHT CREATED. Nothing contained in this chapter creates a substantive or procedural right in any person.

The right to appeal a CDD decision to the Planning Commission is certainly a procedural right. Therefore, the neighborhood association ordinance is not, and cannot be, the basis for asserting that Tall Timbers Neighborhood Association has the right to appeal a CDD decision to the Planning Commission.

Haven House urges that the Planning Commission combine Haven House's appeal with Haven House's application for a use not listed permit. As a neighborhood association, Tall Timbers can participate fully in those proceedings and raise all its objections to the proposed location of Haven House.

2. Tall Timbers Neighborhood Association is not an aggrieved person and does not have the right to appeal the CDD decision of March 18, 2014, because the Decision does not grant Haven House a permit.

CBJ 49.20.110(a) Review by the commission of a decision of the director [of the Community Development Department] may be requested by filing a notice of appeal stating with particularity the grounds therefor with the department within 20 days of the date of the decision appeals. The notice shall be considered by the commission at a regular scheduled meeting. **The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal.** The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion. [emphasis added]

Tall Timbers is not aggrieved by the CDD Decision of March 18, 2014, because the CDD Decision of March 18, 2014, did not grant Haven House a permit to operate. Haven House does not have a permit to operate. Tall Timbers does not want CBJ to issue Haven House a permit to operate. But no officer or agency of CBJ has issued Haven House a permit to operate.

¹² Tall Timbers Memorandum at 6.

Further, the first sentence of CBJ 49.20.110(a) provides for review by the commission of “a decision of the director.” The CDD Director made a decision that denied Haven House a permit as a single family residence and a group home. That is why Haven House clearly is aggrieved and can appeal. That is why the Planning Commission without a moment’s hesitation accepted for decision Haven House’s appeal.

But the CDD Director did not make any decision granting Haven House a permit in his March 18 decision. The CDD Director rescinded his prior decision that Haven House was a halfway house and therefore could not operate in the D-5 District. The CDD Director stated that he thought that Haven House could operate under a use not listed permit but this was only if the Planning Commission granted a permit after a public hearing.

Tall Timbers thus wishes to appeal the rescinding of a decision when that decision did not lead to the action that Tall Timbers opposes, namely the grant of a permit to Haven House. Tall Timbers wants to appeal a decision that the CDD Director entered in the middle of the administrative process. This violates CBJ 01.50.020(b), which provides:

An appeal shall be filed only from a final agency decision.

Decisions which are not appealable include, but are not limited to, decisions to recommend, advise or request an action, even if the recommendation, advice or request is procedurally required as a prerequisite to some other decision, which latter decision is dispositive of the matter. [emphasis added]

The rescinding of the CDD Director’s prior decision that Haven House was a halfway house was not “a final agency decision” by the CDD Director to grant Haven House a permit. Haven House is not certain whether this ordinance [CBJ 01.50.020(b)] directly governs the appeal of the CDD Director’s decision to the Planning Commission. But the ordinance states a generally valid principle that a person must get a final adverse decision from one level before appealing for a different result to the next level.

Tall Timbers states that the issue of whether Tall Timbers is aggrieved is moot since the Planning Commission allowed a member of Tall Timbers to speak at the meeting on May 13, 2014.¹³ That is a nonsensical reading of CBJ 49.20.110(a). The Planning Commission allows anyone to speak who wishes to speak on the subject at hand. The Planning Commission does not have CDD staff quiz a member of the public beforehand as to what they are going to say. Obviously, the requirement that a person be aggrieved is not a requirement as to who can testify but who can appeal.

Tall Timbers states that it is “adverse” to the CDD Director because it disagrees with the CDD Director’s action in his March 18, 2014, rescinding his prior January 24, 2014 decision. Tall Timbers agreed with the prior decision and still believes that Haven House is a halfway house and should be denied a permit on that basis. This logic does not support Tall Timbers right to appeal the CDD Director’s decision of March 18, 2014,

¹³ Tall Timbers Memorandum at 3.

for two reasons: adversity is not the standard for standing in zoning appeals and adversity does not eliminate the requirement for a final decision.

In zoning cases, adversity is not sufficient to confer standing. The Alaska Supreme Court in *Earth Movers of Fairbanks v. Fairbanks North Star Borough* clearly explained the concept of standing as it applies to zoning decisions:

In Alaska, “[t]he concept of standing has been interpreted broadly.” *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987). “The basic requirement for standing in Alaska is adversity.” *Id.* (citing *Moore v. State*, 553 P.2d 8, 24, n.25 (Alaska 1976)). Thus, we have held that “[s]tanding questions are limited to whether the litigant is a ‘proper party to request an adjudication of a particular issue.’” *Moore*, 553 P.2d at 24 n. 25 (quoting *Flast v. Cohen*, 392 U.S. 83, 100-01 (1968)). Both parties vigorously argue whether *Earth Movers* is a property party to challenge the Department’s decision.

General Alaska standing law is not applicable in this case. In the area of land use law, the legislature has chosen to limit standing by statute. Therefore, we must look to the applicable statutes and ordinance for guidance in determining whether *Earth Movers* has standing.¹⁴

Tall Timbers memorandum quotes the first paragraph but not the second.¹⁵ The Court explains in *Earth Movers* why standing in zoning cases is more restrictive than general standing principles:

In general, standing in zoning cases has been more restrictive than general standing principles, primarily in order to prevent excessive litigation and undue delay of final dispositions. 83 Am. Jur. 2d Zoning and Planning 1026 (1992)¹⁶

Tall Timbers must be aggrieved by the CDD Decision of March 18, 2014, not merely adverse to it. The fact that Haven House *might* receive a permit as a result of the CDD Decision of March 18, 2014, does not mean that Tall Timbers or any resident of Tall Timbers Subdivision is aggrieved by that decision. Tall Timbers and any neighbor will be aggrieved only if and when Haven House is issued a permit to operate.

Tall Timbers states that it has the right to file an appeal because the ordinance states, “The appeal shall be heard unless it presents only minor or routine issues.” It is undeniable that this situation presents extremely important issues. But if that were the only requirement to file an appeal, any person in Juneau could file an appeal: any taxpayer, any resident, even any non-resident who was interested in the issue. Even if the

¹⁴ 865 P.2d at 742-43 (emphasis added).

¹⁵ Tall Timbers Memorandum at 4.

¹⁶ 856 P.2d at 743 note 6.

decision involves important issues, the person who wants to appeal the decision must be aggrieved, or adversely affected, by the decision.¹⁷

Haven House may not get a permit to operate. Haven House hopes that is not the case and believes that will not be the case. But until Haven House receives a permit, it is not even clear what “the issues” exactly are. If the Planning Commission concludes Haven House is most similar to a single family residence, it will receive an allowable use permit. That would create different issues than if the Planning Commission concluded that Haven House was similar to a boardinghouse/rooming house and could operate under a conditional use permit.

Finally, Tall Timbers’ standard to appeal a CDD decision to the Planning Commission would allow any person to appeal any CDD Decision to the Planning Commission [1] midway through the development process [2] merely because they were “adverse” to it. If Tall Timbers or the neighbors have standing to appeal the CDD’s decision that the halfway house ordinance is unenforceable even though Haven House has not been granted a permit, any decision by CDD midway through a project is appealable by anyone who doesn’t like the decision.

If the CDD Director initially required an applicant to submit two engineering studies, and then concluded that one study was sufficient, a person who disagreed with the CDD Director’s decision could appeal the CDD Director’s decision to the Planning Commission. If CDD initially decided that a traffic study was necessary, and then decided that a traffic study was not necessary, any person who disagreed with the CDD decision could appeal the CDD’s decision to the Planning Commission. In the life of a project, especially a big one, CDD makes many decisions as the project goes along. If neighbors could appeal to the Planning Commission every decision that they did not like that CDD made during the application process, that standard would virtually give the neighbors the right to stop any complex, controversial project, or at the very least, delay it for a very long time.

3. The Planning Commission should expeditiously schedule and hold a public hearing on Haven House’s appeal and Haven House’s application for a use not listed permit.

Haven House filed an appeal of the parts of the CDD Decision of March 18, 2014, that denied Haven House a permit to operate as a single family resident and as a group home. Haven House claimed that it did fit within the existing Table of Permissible Uses for the D-5 district. Haven House, however, also pursued the alternative described in the CDD Decision and filed an application to receive a use not listed/similar use permit.

Haven House asks the Planning Commission to combine Haven House’s appeal with Haven House’s application for a use not listed permit. Haven House urges the Commission in the strongest possible terms to schedule a hearing on all matters relating

¹⁷ The Court in *Earth Movers* interpreted the term “aggrieved” in an appeal statute to mean the same as “adversely affected” in another appeal statute. 856 P.2d at 743 – 744.

to Haven House's application on August 26, 2014 or, if that is not feasible, September 9, 2014. Haven House bases this request on three reasons.

First, it is fair to Tall Timbers and any residents that oppose the project. At the hearing on the use not listed permit, all Timbers and any residents of the neighborhood can make every single argument they would make in an appeal of the CDD's decision of March 18, 2014: every single argument. Tall Timbers can argue that Haven House is a halfway house; that the halfway house ordinance is enforceable; that Haven House is most similar to a halfway house; that it is not a group home; that the group home ordinance is enforceable; that if the project is allowed, it should require a conditional use permit and have certain conditions.

Second, it is the most efficient use of public and private resources. It avoids two hearings on virtually the same issues. If the Planning Commission does not consolidate the two hearings, and rejects Tall Timbers' argument that Haven House is a halfway house, the Planning Commission would have to have another whole proceeding to decide whether Haven House should receive a permit under the use not listed provision in CBJ 49.20.320.

And how could Haven House, CDD, Tall Timbers and interested individuals argue whether Haven House is a halfway house without going into the same facts and evidence about whether it can operate as a single family residence, a group home, or a use similar to other listed uses? And why would the Commission want to have two hearings when it could hear all the issues in one hearing?

Third, a combined hearing scheduled as soon as possible avoids further intolerable delay. Haven House has been paying substantial rent on the residence since January 2014. This is a very significant expense for a small non-profit corporation such as Haven House. Haven House has staff that it does not want to lose.

It would be especially wrong to delay a decision on Haven House's application for a permit so that the Planning Commission could decide, as a lone issue, whether Haven House should be denied a permit because it is a halfway house. That would be especially wrong because CDD, the agency charged with implementing the Land Use Code, has concluded that the halfway house ordinance is unenforceable because it is arbitrary. The CDD Director, reluctantly I am sure, concluded:

I conclude Title 49 is likely unenforceable regarding Halfway Houses because of the following: (1) large halfway houses (10+ people) are allowed in residential zones but small Halfway Houses (less than 10) are not, and neither title 49 nor the legislative history provide justification for the distinction; (2) neither Title 49 nor the legislative history provide justification for the change in prohibiting small Halfway Houses in residential areas; (3) neither Title 49 nor the legislative history provide justification for distinguishing Halfway houses from other uses in which people are not serving a sentence; and (4) the Table of Permissive [sic]

uses lists Halfway houses in two different sections (1.450 and 7.400), table CBJ 49.25.30, which creates an arbitrary effect if CBJ 49.25.300(a)(3) is applied. [Decision of March 18, 2014]

The CDD Director does not use the word “unconstitutional” but the only reason the executive branch can find a law “unenforceable” is because it is so arbitrary or otherwise irrational that it would be unconstitutional to enforce it.¹⁸ Tall Timbers recognized that the CDD Decision meant that CDD found the halfway ordinance was likely unconstitutional.¹⁹

Most importantly, delay is harmful because Haven House wishes to provide a needed that is needed in Juneau: specialized housing for women coming out of prison. In support of its application for a use not listed permit, Haven House submitted careful documentation on the need for housing for formerly incarcerated. It is a nationwide problem, a statewide problem and a local problem. Haven House submitted forty-four exhibits in support of its application. These exhibits included detailed statements from many people in our community on the need for this type of housing: probation officers, counselors, persons who work in the recovery field, persons who work to improve housing for low-income people in our community, former offenders, some residents of the Tall Timbers Subdivision.

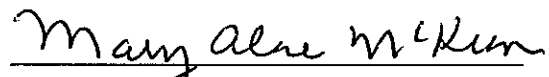
Haven House simply wants the Planning Commission to promptly review Haven House’s application and supporting material and determine if Haven House has met the requirements for a permit under the use not listed statute in CBJ 49.20.320.

CONCLUSION

The administrative appeal process of the City “shall be construed to secure the reasonable, speedy and inexpensive determination of every appeal.” CBJ 01.50.260.

To achieve that goal to the extent possible in this appeal, the Planning Commission should promptly schedule a public hearing on all issues related to Haven House’s applications to operate in Juneau – either as a use allowed in the current Table of Permissible Uses or a use not listed but similar to allowed uses under CBJ 49.20.320.

Dated: June 30, 2014


Mary Alice McKeen AK BAR # 8106035
Attorney for Haven House, Inc.

¹⁸ Haven House has not fully researched whether exhaustion of administrative remedies under an ordinance is required if the ordinance is unconstitutional. *Cf. Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982)(exhaustion of state remedies is not a prerequisite to bringing suit under 42 USC 1983).

¹⁹ Tall Timbers Memorandum at 3.

CERTIFICATION

I hereby certify that on June 30, 2014, a copy of the foregoing was emailed to Brenwynne Grigg, CDD Administrative Officer, Brenwynne_Grigg@ci.juneau.ak.us.



Mary Alice McKeen

Attorney for Haven House, Inc.

March 18, 2014

Pamela Finley, Attorney for
Haven House, Inc.
P.O. Box 22977
Juneau, AK 99802

RE: Haven House Transitional Housing located at 3202 Malissa Drive

Dear Ms. Finley:

Thank you for providing the requested additional information. That additional information allowed the Community Development Department ("CDD") to fully review the Haven House proposal and better understand how Haven House intends to operate at 3202 Malissa Drive. I have reached the following decision.

Upon reviewing the additional information provided by Haven House and upon legal guidance, I conclude the Title 49 provisions regarding Halfway Houses and Group Homes are likely unenforceable as applied to Haven House. Except the provisions specifically addressed below, Title 49 is presumed valid and enforceable.

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

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

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

Previously, I concluded that Haven House best fit the definition of a halfway house because the proposed use involved people, living together, who would be serving a sentence. However, based on the additional information, the reasoning provided above, and considering the proposed use does not now fit within one of the uses specifically listed in the Table of Permissive uses, I conclude the proposed use of

155 So. Seward Street, Juneau, Alaska 99801-1397

EXHIBIT 1, PAGE 1 of 1

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Haven House is a "use not listed." CBJ 49.20.320. In order to be considered for a "use not listed," Haven House will need to make an application to the CDD consistent with CBJ 49.20.320. This request would be evaluated by the Planning Commission sitting as the Board of Adjustment. This "use not listed" process requires public hearing and the associated public notice.

I conclude the proposed use of Haven House is currently boardinghouse and rooming house or is currently most similar to a boardinghouse and rooming house. CBJ 49.80.120 defines boardinghouse and rooming house as follows:

Boarding and rooming house mean a dwelling in which more than two bedrooms are used for commercial lodging provided by the owner or operator who lives on site. The term "boarding house and rooming house" includes houses offering bed and breakfast.

I conclude that Haven House is not a single family residence per CBJ 49.80.120 because the use is a boardinghouse and rooming house or is more characteristic of a boardinghouse and rooming house. I find the following factors distinguish Haven House from a single family residence: (1) a house manager lives onsite and provides services in exchange for rent; (2) two part-time co-directors live offsite and come onsite daily to provide services in the home; (3) all nine of the clients pay rent of \$550/month; (4) the clients will be recently released from prison and most will be on probation or parole; (5) most, if not all, of the clients will be under the supervision of probation or parole officers; and (6) despite allowing the clients to stay up to two years, Haven House may actually be a transient structure because there are no minimum stay requirements and clients will be evicted for violating the client agreement. At no point has CDD adversely distinguished Haven House based on the actual or potential likelihood of any of its clients having a disability or handicap as protected by 42 U.S.C. 3602 (Fair Housing Act) or by 42 U.S.C. 12101 (Americans with Disability Act).

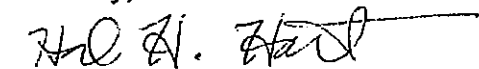
If the Board of Adjustment decides Haven House is similar to a boardinghouse and rooming house, an application for a conditional use permit can then be applied for and processed. The conditional use permit will be considered by the Planning Commission, after a public hearing. Alternatively, if the Board of Adjustment decides Haven House is more similar to a use that does not require a conditional use permit, then the underlying building permit application could be processed accordingly.

The CDD often hosts neighborhood meetings early in the conditional use permit process so that interested neighbors and other members of the public have an opportunity to learn about the project and the conditional use permit process. Both the "use not listed" and the conditional use decisions are appealable decisions.

The Director's Decision issued January 24, 2014, is rescinded. This Director's Decision is appealable pursuant to CBJ 49.20.110.

Please contact me at 586-0757 if you have any questions or would like to discuss this further.

Sincerely,



Hal Hart, AICP
Director

EXHIBIT 1, PAGE 2 of 2

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1 **BEFORE THE PLANNING COMMISSION OF THE CITY AND BOROUGH OF JUNEAU**

2
3 *In re*

4 TALL TIMBERS NEIGHBORHOOD
5 ASSOCIATION NOTICE OF APPEAL
6 Re: CDD Directors Decision in
7 BLD20130767

CDD Opposition Brief

8
9 **Tall Timbers Neighborhood Association Did Not and Does Not Have the Right to**
10 **Appeal the March 18, 2014, Director's Decision.**

11 Tall Timbers Neighborhood Association ("Tall Timbers") jumped the gun. Tall Timbers
12 jumped the gun by filing an appeal before Tall Timbers had the legal capacity to appeal. Tall
13 Timbers jumped the gun by filing an appeal before the use not listed hearing. Tall Timbers jumped
14 the gun by filing an appeal before the Board of Adjustments issued a final decision. Because Tall
15 Timbers jumped the gun, the Planning Commission ("Commission") should dismiss the Tall
16 Timber's appeal and conduct the use not listed hearing. The use not listed hearing resolves the need
17 for this appeal because it provides for a full public hearing where people for and against Haven
18 House can express their concerns without the restrictions imposed by law in an appeal. Ultimately,
19 Tall Timbers jumped the gun by filing a premature appeal.
20
21
22
23
24
25

CDD Opposition Brief

In Re Tall Timbers Neighborhood Association

Page 1 of 17

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I. FACTUAL SUMMARY

Haven House is a not for profit organization that wants to use an existing house on Malissa Drive in a D-5 zone for transitional housing for women coming out of prison.¹ Tall Timbers does not want Haven House to operate in Tall Timbers' subdivision.²

On December 23, 2013, Haven House applied for a change of use permit from a single family to a transitional group home. A permit was not issued, but the application was assigned the following number, BLD 2013-0767.

On January 24, 2014, the Director issued a decision ("Decision #1"). Decision #1 stated that in a D-5 zone, group homes are allowed outright but halfway houses are not generally permitted. Decision #1 concluded that "because operating a halfway house is not a permitted use in this zoning district; Haven House cannot operate as described in the business plan in this location."

On February 11, 2014, Haven House appealed Decision #1. It was assigned the following case number APL 2014-0001.

On March 10, 2014, Haven House presented supplemental information and legal argument to clarify and explain the proposed use.

On March 18, 2014, the Director issued a second decision ("Decision #2"). Decision #2 concluded, after receiving the supplemental information and upon legal guidance, the Title 49 provisions regarding halfway houses and group homes are likely unenforceable as applied to Haven House. The Director concluded the proposed use was not a single family residence. The Director also concluded that the proposed use is a "use not listed," and it is or is most similar to a

¹ Haven House Supplemental information to the building permit application (Dec. 23, 2013, and March 10, 2014).

² Tall Timbers Notice of Appeal (April 1, 2014).

1 boardinghouse and rooming house. A boardinghouse and rooming house is allowed in a D-5 zone
2 pursuant to a conditional use permit. The Director recommended that Haven House file
3 applications for a “use not listed” and conditional use permit.
4

5 On April 1, 2014, Tall Timbers filed an appeal of Decision #2. Tall Timbers requests the
6 Commission adopt Decision #1 and conclude Haven House cannot operate in the D-5 zone.

7 On April 4, 2014, Haven House withdrew its appeal of Decision #1 and filed an appeal of
8 Decision #2. Haven House requested the appeals be continued until after the use not
9 listed/conditional use permit hearing. Haven House also challenges whether Tall Timbers has a
10 right to appeal Decision #2. Implicitly, Haven House requests the Board of Adjustments find that
11 the proposed use is a listed use, namely a single family home or group home.
12

13 On April 19, 2014, Tall Timbers requested to be an Intervenor in the Haven House Appeal.

14 Staff and Haven House have had two pre-application conferences, April 1 and April 28,
15 regarding the submittals for the unlisted use and, if applicable, the conditional use permit. Haven
16 House requested the unlisted use hearing and the conditional use permit hearing occur at the same
17 time.
18

19 On May 2, 2014, Haven House filed a use not listed application.

20 On May 13, 2014, the appeals filed by Haven House and Tall Timbers were introduced at
21 the regular Commission meeting. Tall Timbers did not appear; only Mr. Dan Hubert appeared in
22 his personal capacity.³

23 On May 27, 2014, Community Development Department (“CDD”) staff conducted a
24 neighborhood meeting to describe the use not listed process.
25

³ E.g., May 13, 2014, Planning Commission minutes at 17 of 29.

1 On May 28, 2014, the Presiding Officer held a prehearing conference. The following day,
2 the Presiding Officer issued a stay for the Haven House appeal and requested briefing on whether
3 Tall Timbers has a right to appeal Decision #2.
4

5 Since May 28, 2014, Mr. Spitzfaden has filed a plethora of motions to intervene and entries
6 of appearance, even on the Haven House appeal, which was stayed.⁴

7 In summary, Decision #1 was rescinded and Haven House's first appeal was withdrawn.
8 Haven House's second appeal has been stayed. The Commission requested briefing whether Tall
9 Timbers has a right to appeal Decision #2.
10

11 II. DISCUSSION

12 This brief demonstrates the Commission should dismiss the Tall Timbers appeal and
13 proceed with the use not listed process.
14

15 A. Tall Timbers jumped the gun by filing an appeal before the Board of Adjustment 16 conducted the use not listed hearing and issued an appealable decision.

17 While not specifically requested by the Commission, the doctrine of finality implicates both
18 issues that the Commission requested briefing on. The doctrine of finality requires that a final
19 appealable decision is issued, which ensures adjudication of actual cases and controversies.⁵ The
20 doctrine of finality also helps frame the context to determine whether a sufficient adversity exists,
21

22 ⁴ Motion to Intervene on behalf of Andrew Hughes in the Haven House appeal (May 28, 2014);
23 Motion to Intervene on behalf of Andrew Hughes in the appeal filed by Tall Timbers (May 30, 2014);
24 Motion to Intervene on behalf of Tall Timbers in the Haven House appeal (May 28, 2014);
25 Entry of Appearance on behalf of eighteen people in the Haven House appeal (June 20, 2014); and
Entry of Appearance on behalf of eighteen people in the appeal filed by Tall Timbers (June 24, 2014).

⁵ CBJ 01.50.020(b) (imposing the doctrine of finality); CBJ 49.20.320 (describing that the Board of Adjustments makes the final decision on use not listed applications).

1 which is the predicate for determining standing. Here, Tall Timbers jumped the gun by appealing
2 an intermediary decision that is not ripe for review because Haven House cannot operate as
3 intended without a permit.

4
5 The Commission can dismiss Tall Timbers' appeal because the use not listed has not
6 occurred and because the Decision #2 is not a final decision. Unlike a permit denial or a permit
7 approval, Decision #2 is not a final decision subject to appeal by Tall Timbers because it is merely
8 the Director's recommendation that Haven House should submit an application for the use not
9 listed process. Because the Director concluded that the intended use of Haven House was a use not
10 listed, the Director did not have authority to make the final use not listed decision or issue a
11 permit.⁶ Further, the use not listed process provides the appropriate public forum for public
12 comment and provides a final appealable decision. If the Board of Adjustment, and the
13 Commission if the Board of Adjustment concludes the intended use is requires a conditional use
14 permit, authorizes Haven House to operate as intended, then aggrieved parties would be given the
15 opportunity to appeal that final decision.⁷ Moreover, the Board of Adjustment/Commission could
16 determine in the use not listed process that the intended use of the Malissa Drive property is not
17 allowed, which would defeat the need for Tall Timbers' appeal. Thus, Tall Timbers jumped the
18 gun by appealing a final decision can be issued.

19
20
21 In addition to Title 49, City and Borough of Juneau's ("CBJ") appellate procedures also
22 preclude Tall Timbers from filing an appeal because Decision #2 was not a final decision. In the

23
24 ⁶ CBJ 49.15.310(d)(1)(B) (stating that the Director cannot issue a permit beyond the Director's authority); CBJ
25 49.20.320 (stating that only the Board of Adjustments has authority to hear and decide use not listed applications);
Table of Permissive Uses CBJ 49.25.300 at 1.610 (describing that a rooming and boarding house is a conditional use
permit); CBJ 49.15.330 (describing that a conditional use permit can only be approved by the Commission).

⁷ Tall Timbers mischaracterizes the effect of the procedural history and purpose of this briefing. Tall Timbers
Opening Brief at 3 of 9. The issue is not mootness but ripeness and standing. By requiring briefing on whether Tall
Timbers has a right to appeal, the Commission has not waived ripeness and standing.

1 absence of contradictory authority, CBJ 01.50 describes appellate procedures.⁸ In particular, CBJ
2 01.50.020(b) precludes appeals of non-final decisions:

3 An appeal shall be filed only from a final agency decision. Decisions which
4 are not appealable include, but are not limited to, decisions to recommend,
5 advise or request an action, even if the recommendation, advice or request is
6 procedurally required as a prerequisite to some other decision, which latter
7 decision is dispositive of the matter.

8 Because only the Board of Adjustment has authority to make final decisions on use not listed
9 applications, Decision #2 is only a recommendation and statement of how the Director intends to
10 advocate at a use not listed hearing.

11 This is an unusual case because Tall Timbers filed an appeal before the Haven House had
12 its use not listed hearing and before the Board of Adjustment/Commission determines whether
13 Haven House is authorized to operate as intended. Therefore, Tall Timbers has jumped the gun,
14 and the Commission should dismiss this appeal and proceed with the use not listed hearing.

15 **B. Tall Timbers jumped the gun by filing an appeal before Tall Timbers legally existed**
16 **or could file an appeal.**

17 The Commission should also dismiss Tall Timber's appeal because Tall Timbers, as an
18 entity, could not and cannot file an appeal. Specifically, Tall Timbers did not have the legal
19 capacity to file this appeal. Additionally, Tall Timbers did not derive standing by registering as a
20 neighborhood association. Tall Timbers should not be rewarded by being allowed to proceed with
21 this appeal.

22 First, Tall Timbers cannot file an appeal because it does not have the legal capacity to file
23 an appeal. An association of people must have corporate status or possess the right to sue in order
24

25 _____
⁸ E.g., CBJ 49.20.120 states that CBJ 01.50 applies to appeals from the Commission except as provided in Title 49.

1 to have standing.⁹ In the leading Alaska Supreme Court decision, the Court considered whether an
2 “association of individuals who are residents of the City of Seward, and who oppose [a street
3 vacation]” had standing.¹⁰ The Court held the association, “Washington’s Army” did not have
4 standing because it was not a corporation or possessed the right to be sued:
5

6 An entity must have corporate status or possess the right to sue in order to
7 have standing. The ability to sue or be sued has traditionally centered on the
8 ability of a party to be accountable for the process and results of legal
9 proceedings. Washington’s Army, as an entity, lacks standing because it
10 does not have a person or a legal entity that may be held responsible for the
11 process and results of the legal proceeding and thus does not have the ability
12 to sue or be sued.

13 Here, Tall Timbers has not produced any evidence that it is a corporation.¹¹ Additionally,
14 Tall Timbers has not produced any evidence that it has the ability to sue or be sued, especially as of
15 the date the appeal was filed.¹²

16 Further, even if Tall Timbers perfects standing during the pendency of this appeal, the
17 Commission should still dismiss this appeal and proceed with the use not listed hearing because
18 Tall Timbers would not be prejudiced by participating in the use not listed process.¹³ Also, the

19 ⁹ *Washington’s Army v. City of Seward*, 181 P.3d 1102, 1105 (Alaska 2008). Interestingly, Tall Timbers neglected
20 to confront this case despite it being specifically cited to in the May 1, 2014, Staff Report.

21 ¹⁰ *Id.* at 1104.

22 ¹¹ The only evidence that indicates that Tall Timber might become a corporation is Article 15 of its bylaws, which
23 were adopted after it filed this appeal. Tall Timbers Opening Brief Ex. 5 page 5 of 5: “Upon a majority vote of the
24 members present at a membership meeting, the Association may elect to become a nonprofit corporation.” Tall
25 Timbers has not provided any evidence that it is actually recognized by the State as a corporation.

¹² Tall Timbers cites to Civil Rule 5(c)(6) for authority that an unincorporated association can be sued, Tall
Timbers Opening Brief at 6 of 9. Civil Rule 5(c)(6) does not exist. Additionally, Civil Rule 5(c) does not support Tall
Timber’s assertion. That rule provides a means for a court to simplify the service of pleadings when a large number of
defendants are involved. There is nothing to suggest that an unincorporated association can be sued or has the capacity
to sue.

¹³ Tall Timbers would not suffer a procedural due process harm because until the Haven House is authorized to
operate as intended, Tall Timbers—assuming *arguendo* that it has capacity and a personal interest—it cannot show any
deprivation of an interest or prejudice. *E.g., D.M. v. State of Alaska*, 995 P.2d 205, 212-14 (Alaska 2000) (describing
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Commission should dismiss the Tall Timbers appeal because Tall Timbers did not and has not provided evidence that it has the legal capacity to file an appeal. Thus, Tall Timbers jumped the gun by filing an appeal before it had standing, and the Commission should not reward Tall Timbers by hearing this appeal.

Second, Tall Timbers did not acquire standing by registering as a neighborhood association. Exactly a month after Haven House submitted its application for the change of use permit, Tall Timbers submitted a neighborhood association registration form.¹⁴ The purpose of neighborhood associations is for the CBJ to efficiently disseminate and received information, which facilitate citizen participation.¹⁵ However, despite Tall Timber's assertions, the submission of a neighborhood association registration does not create any rights for the association to file an appeal.¹⁶ CBJ 11.35 governs neighborhood associations and specifically states that no rights are created by registering,¹⁷ and registration does not grant any special rights to petition.¹⁸ Thus, Tall Timbers does not have standing as a result of registering as a neighborhood association.

that due process is not violated when a person is given the opportunity to be heard). The use not listed process provides Tall Timbers the opportunity to be heard.

¹⁴ When Tall Timbers submitted its neighborhood association registration form on January 23, 2014, it intentionally attempted to avoid the Alaska Public Records Act when it stated in the special notes section "Please keep membership records private." Tall Timber's Opening Brief, Ex. 3 at 2 of 5. As described by Deputy Clerk Beth McEwen on the following page, the registration form and the attachments are considered public documents and would be provided to the public upon request. *Id.*, Ex. 3 at 3 of 5.

¹⁵ CBJ 11.35.010.

¹⁶ "Tall Timbers is a proper party because it is the neighborhood association publicly registered with the City and Borough of Juneau..." Tall Timbers Opening Brief at 6 of 9.

¹⁷ CBJ 11.35.060 "**No rights created.** Nothing contained in this chapter creates a substantive or procedural right in any person. The failure of the City and Borough, any neighborhood association or any other person to give or receive notice or to invite or make comment under this chapter does not affect the validity of an action by a neighborhood association or the City and Borough."

¹⁸ CBJ 11.35.050 "**Right to petition.** Nothing in this chapter is intended to deny or limit the right of individuals or groups, whether or not a member of a neighborhood association, to petition the assembly or otherwise participate in City and Borough government through methods or procedures not involving a neighborhood association."

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In Re Tall Timbers Neighborhood Association

1 Therefore, because Tall Timbers does not have the capacity to file an appeal and does not
2 derive any standing by registering as a neighborhood association, the Commission can dismiss the
3 Tall Timbers' appeal. Tall Timbers jumped the gun by appealing before it had the capacity to file
4 an appeal.

5
6 **C. Tall Timbers jumped the gun by filing an appeal because Tall Timbers is not an
aggrieved person.**

7 By including the term "aggrieved person" in CBJ 49.20.110, canons of ordinance
8 construction require adjudicative bodies to give meaning to the term. *City & Borough of Juneau v.*
9 *Thibodeau*, 595 P.2d 626, 634 (Alaska 1979) (stating that "a court should not presume that a
10 legislative body has used superfluous words").
11

12 The CBJ, like the State, restricts standing in land use cases to an "aggrieved person." The
13 aggrieved person standing requirement is more restrictive than the traditional standing doctrine in
14 Alaska. The aggrieved party standing doctrine is designed to prevent undue delay of final
15 dispositions and to reduce litigation originating from land use decisions.¹⁹ Tall Timbers jumped the
16 gun because it, nor any property owners in the Tall Timber subdivision, could be an "aggrieved
17 person" right now. Haven House has not even had the public hearing to determine whether it is
18 allowed to operate as intended.
19

20 CBJ 49.20.110(a) restricts appeals from the Director to the Commission only from CDD or
21 an "aggrieved person."²⁰ The purpose of CBJ 49.20.110(a) is to describe the procedural
22 requirements of how to file an appeal of a land use decision and specifically states "The department
23

24
25 ¹⁹ *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 n. 6 (Alaska 1993).

²⁰ CBJ 49.80.120 defines a person at "Person means an individual, partnership, firm, company corporation." That definition does not provide that an unincorporated neighborhood association is a person. *E.g., Izaak Walton League of Am. v. Monroe Cnty.*, 448 So. 2d 1170, 1174 (Fla. Dist. Ct. App. 1984) (concluding that a representative association was not an aggrieved person and did not have standing to challenge a zoning decision).

1 and any aggrieved person, including the developer, may appear at that meeting and explain to the
2 commission why it should hear the appeal.” The term “aggrieved person” is not defined in Title 49.
3 However, the term has been used extensively since 1926 and is defined in Alaska land use law,
4 which restricts standing to a person personally aggrieved in a manner different than the community
5 as a whole.
6

7 The legislative history of CBJ 49.20.110 demonstrates that the Assembly, like the
8 Legislature, removed the more liberal taxpayer standing option in land use appeals.²¹ Taxpayer
9 standing is a doctrine that allows a member of the community, who has no particular personalized
10 injury, to appeal a governmental action.²² In contrast, aggrieved party standing requires a particular
11 personalized injury to appeal a governmental action.²³ CBJ, like the State, follows the majority
12 position that only aggrieved persons—not merely taxpayers—have standing to appeal a land use
13 decision.²⁴
14

15 CBJ 49.20.110(a) resulted from a massive re-write of the CBJ land use code, which limited
16 appeals to aggrieved persons. In 1987, the Assembly repealed and reenacted the CBJ land use code.
17

18 ²¹ Mr. Spitzfaden has made a number of public records act requests since May 28, 2014. The public records act,
19 AS 40.25.122, requires a party to litigation to comply with the administrative procedures to obtain records regarding
20 litigation. Mr. Spitzfaden may be required to invoke the jurisdiction of the Commission to issue a subpoena *duces*
21 *tecum*, if he or any of his clients attempt to obtain records subject to this or other litigation. CBJ 01.50.080(a).

22 ²² *E.g., Griswold v. City of Homer*, 252 P.3d 1020 (Alaska 2011) (describing that the Legislature eliminated
23 taxpayer standing in land use cases when it limited appeals to only aggrieved persons); *Hoblit v. Comm'r of Natural*
24 *Res.*, 678 P.2d 1337, 1341 (Alaska 1984) (describing that the plaintiff had “not demonstrated a sufficient ‘personal
25 stake’ in the outcome of this controversy to give him standing.”). Tall Timbers concedes that “there must be adversity
to have standing.” Tall Timbers Opening Brief at 4 of 9.

²³ *Griswold v. City of Homer*, 252 P.3d 1020 (Alaska 2011); some jurisdictions have concluded that people that
live five blocks away do not meet the aggrieved party standing requirement. *Crowder v. Zoning Bd. of Adjustment*, 406
So. 2d 917, 919 (Ala. Civ. App. 1981) *writ denied sub nom. Ex parte Crowder*, 406 So. 2d 919 (Ala. 1981).

²⁴ 4 Am. Law Zoning § 42:7 (5th ed.):

“It is well established that not every resident of the municipality is a person aggrieved by a decision of the board of
adjustment. It is not enough that a person be a property owner in the municipality, or, absent a specific statute, a
taxpayer with a general interest in efficient planning and zoning administration. To be a person aggrieved by
administrative conduct, it is necessary to have a more specific interest in the decision of which review is sought.”

²⁵ One of the changes resulted in who could file land use appeals. The pre-1987 version of Title 49, like the current version, appears to have followed the 1926 Model Standard State Zoning Enabling Act (“1926 Model Act”), except the current version of CBJ 49.20.110 eliminated the taxpayer standing option and restricted appeals to aggrieved persons.²⁶

The 1926 Model Act suggested that governments establish a board of adjustment to hear appeals from the planning department and established appeal procedures from the board of adjustment.²⁷ “Appeals to the board of adjustment may be taken by any **person aggrieved** or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer.”²⁸ The 1926 Model Act then provided

Any **person or persons**, jointly or severally, **aggrieved** by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality.²⁹

Although appeals from the board of adjustment includes the word “taxpayer,” jurisdictions—like Alaska—have concluded that appellate procedures without the term limit appeals only to aggrieved parties.³⁰ Regardless, 1926 Model Act provided (1) that a person had to be aggrieved to appeal a planning department decision and (2) that jurisdictions should provide for appeals from the board of adjustment.

²⁵ Ord. 89-49 § 2 Repeal and Reenacted CBJ Title 49.

²⁶ United States Department of Commerce, A Standard State Zoning Enabling Act (1926), available at <https://www.planning.org/growingsmart/enablingacts.htm>.

²⁷ 1926 Model Act at 10-11.

²⁸ *Id.* at 10.

²⁹ *Id.* at 11.

³⁰ 4 Am. Law Zoning § 42:7 (5th ed.); e.g., AS 29.40.050-060; *Griswold v. City of Homer*, 252 P.3d 1020 (Alaska 2011); *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 (Alaska 1993).

1 The CBJ, like the State, eliminated the taxpayer standing option and followed the two-step
2 appellate procedure for land use appeals. Prior to 1987, CBJ Title 49 used language similar to the
3 1926 Model Act for appeals. For example,

4
5 An appeal from an action, decision, ruling, judgment or order of the board of
6 adjustment may be taken by **any persons, jointly or severally aggrieved,**
7 **or any taxpayer or any officer, department, board or bureau** within the
city and borough to the city and borough assembly as provided by Charter
and ordinance.³¹

8 The same type of appeal language was sprinkled throughout Title 49, which was modeled after the
9 two-step process suggested in the 1926 Model Act.³² Importantly, when Title 49 was amended in
10 1987, the Assembly removed the term “taxpayer” and retained the term “aggrieved person” for
11 appeals of the Director.³³ Importantly, the changes in 1987 to Title 49 reflect the Assembly’s intent
12 to remove taxpayer standing and to limit land use appeals to aggrieved persons, which is what the
13 Legislature did two years earlier.³⁴

14
15 Despite the concept of standing being interpreted broadly in Alaska, the Legislature limited
16 standing in land use appeals only to aggrieved persons for non-home rule municipalities. “In
17 general, standing in zoning cases has been more restrictive than general standing principles,
18 primarily in order to prevent excessive litigation and undue delay of final dispositions.”³⁵ When the
19 Legislature enacted AS 29.40.050-060, it limited standing in land use appeals to aggrieved
20

21
22 ³¹ CBJ 49.25.806 (1974); Ord. No. 74-05 (creating the Board of Adjustment and providing for appeals of Board of
Adjustment decisions).

23 ³² Appeals from the Board of Adjustment were provided for “A municipal employee, a person aggrieved by the
24 decision of the board of adjustment or any taxpayer, may appeal a board of adjustment decision, including a variance
decision, to the assembly as provided in CBJ 01.50.” CBJ 49.26.100 (1981); Ord. No. 81.19 (providing for
comprehensive land use regulations regarding flood hazards).

25 ³³ CBJ 49.20.110 (appeals from the Director); CBJ 49.20.120 (appeals to the Assembly).

³⁴ The Legislature removed taxpayer standing when it enacted AS 29.40.050-060 in 1985. *Griswold v. City of
Homer*, 252 P.3d 1020, 1029 (Alaska 2011).

³⁵ *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 n. 6 (Alaska 1993).

1 persons.³⁶ The Alaska Supreme Court has even concluded that the aggrieved party phrase also
2 eliminates taxpayer-citizen standing in land use appeals.³⁷ For example, a business competitor
3 who's only alleged injury was potential increased business competition does not have standing to
4 challenge a land use determination.³⁸ Thus, to appeal a land use determination in Alaska, a person
5 must show a personalized legal interest, as distinguished from the general interest of the
6 community, that has been specifically and injuriously affected by the land use decision.

7
8 To allow a non-aggrieved person to appeal of a Director's decision would violate the
9 canons of ordinance construction and contradict the context of CBJ 49.20.110. CBJ 49.20.110(a)
10 clearly restricts standing in the initial appearance before the Commission to CDD and to any
11 "aggrieved person."³⁹ Because CBJ 49.20.110(a) specifically uses the term "aggrieved person,"
12 canons of ordinance construction require adjudicative bodies to give meaning to the term.⁴⁰ If only
13 an aggrieved person can initially appear to explain why an appeal should be heard, then only
14 aggrieved person can file an appeal to be given the opportunity to appear.⁴¹ The Alaska Supreme
15

16
17
18 ³⁶ Those statutes explicitly apply to non-home rule municipalities, AS 29.10.200, and provide guidance to home
19 rule municipalities. Although the extent of the aggrieved party requirement has not been extensively defined, some
20 courts have provided guidance. *Griswold*, at 1031-1032 (personalized damage to the use or enjoyment of a landowner's
21 property would give the landowner standing); *Earth Movers*, at 744 (stating that neighbors directly affected by the
22 change of use would likely have standing); *State v. Weidner*, 684 P.2d 103, 110 (Alaska 1984) ("Where the question
23 concerns subdivision planning approval or zoning change, various courts have held that property owners adjacent to
24 the land have the necessary interest required for standing."); *Crowder v. Zoning Bd. of Adjustment*, 406 So. 2d 917, 919
25 (Ala. Civ. App. 1981) *writ denied sub nom. Ex parte Crowder*, 406 So. 2d 919 (Ala. 1981) (concluding a person five
blocks away was not aggrieved by a land use decision).

26 ³⁷ *Griswold v. City of Homer*, 252 P.3d 1020, 1029 (Alaska 2011).

27 ³⁸ *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741 (Alaska 1993).

28 ³⁹ This is not a case about whether CDD can appear or appeal.

29 ⁴⁰ *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626, 634 (Alaska 1979) (stating that "a court should not
30 presume that a legislative body has used superfluous words").

31 ⁴¹ CBJ 49.20.110; e.g., *Chabau v. Dade Cnty.*, 385 So. 2d 129, 130 (Fla. Dist. Ct. App. 1980) (concluding that an
32 association of property owners lacked standing because it could not sue in state court then logically it could not appeal
33 an administrative zoning decision).

1 Court has concluded that in the context of when a party may appeal a land use decision, even the
2 phrase “adversely affected” as used in a land use ordinance means the same as the word
3 “aggrieved” used in AS 29.40.050-060.⁴² In CBJ 49.20.110(a), the term “aggrieved person” means
4 just that: only an aggrieved person can appeal a Director’s decision.⁴³
5

6 Here, Tall Timbers never appeared to explain why the Commission should hear this appeal.
7 Mr. Dan Hubert appeared in his personal capacity, but he explicitly stated that he was not
8 appearing on behalf of Tall Timbers. Tall Timbers has misstated the procedural history.⁴⁴ Thus,
9 because Tall Timbers never appeared, the aggrieved person requirement cannot have been waived
10 and is not moot.⁴⁵
11

12 More importantly, neither Tall Timbers nor its purported 28 individual members⁴⁶ can show
13 they are aggrieved persons. Haven House does not have a permit authorizing it to use the house on
14 Malissa Drive as intended. Further, Haven House has not even had the hearing in which the Board
15 of Adjustment/Commission would hear public concerns and conduct its detailed inquiry to whether
16 Haven Houses’ intended use is an unlisted use. Without a permit authorizing Haven House to
17

18 ⁴² *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 (Alaska 1993).

19 ⁴³ This is not the first time the aggrieved person standard has been used to explain who can appeal a land use
20 determination. *E.g.*, November 22, 2005, Lands Committee Agenda at 19 of 120 (pdf version) (“The applicant, or any
21 aggrieved person, may appeal the CBJ’s consistency determination to the CBJ Planning Commission or Assembly, in
22 accordance with the procedures established for the appeal of the underlying zoning permit or approval in CBJ Title
23 49.”); April 20, 1987, Assembly Minutes at 6 of 45 (pdf version)(stating that “Any aggrieved party has 20 days to
24 appeal [the issuance of a conditional use permit to the Assembly].”); August 18, 1976 Special Assembly Meeting at 2
25 and 10 of 10 (pdf version)(summarizing that an applicant challenged whether an appellant was an aggrieved party and
stating that the appeal was not granted).

⁴⁴ “Tall Timbers appeared and explained at the scheduled meeting of the Commission at which the two appeals
were being considered, why its appeal should be heard.” Tall Timbers Opening Brief at 2 of 9.

⁴⁵ “The Commission has already allowed Tall Timbers to appear and explain why the appeal should be heard, so
whether Tall Timbers is an aggrieved person is moot. Once the Commission, at its May 13 meeting, allowed Tall
Timbers to explain why the appeal should be heard, the issue before the Commission became whether the issues were
more than minor or routine.” Tall Timbers Opening Brief at 3 of 9.

⁴⁶ Tall Timbers Opening Brief at 8 of 9.

operate, especially even before the Board of Adjustment conducts the use not listed hearing, neither Tall Timbers nor its purported 28 members can be aggrieved.

D. Tall Timbers jumped the gun by filing an appeal when Decision #2 did not create sufficient adversity to even satisfy the more liberal taxpayer standing doctrine.

Even if the CBJ used the more liberal standing doctrine for land use appeals, Tall Timbers cannot satisfy that standard for the same reasons as stated above, namely: Tall Timbers cannot appeal unless the Board of Adjustment/Commission determines Haven House's intended use is a use not listed and then authorizes Haven House to operate as intended.

Under even the liberal standing rule, which is the taxpayer standing doctrine, a party only has standing when the person "has a sufficient personal stake in the outcome of the controversy to ensure the requisite adversity."⁴⁷ Here, the use not listed hearing has not occurred and Haven House is not authorized to operate as intended. There is no adversity until those two perquisites occur. Importantly, if the Board of Adjustment/Commission determines Haven House is not allowed to operate as intended, then Tall Timbers has not suffered any adversity to even satisfy the more lenient standing doctrine. Thus, Tall Timbers jumped the gun and this appeal should be dismissed.


Therefore, Tall Timbers has jumped the gun and needs to wait for the Board of Adjustment to conduct and render a decision from the use not listed hearing before Tall Timbers can claim it satisfies either the liberal or "aggrieved person" standing doctrines.

⁴⁷ *Hoblit v. Comm'r of Natural Res.*, 678 P.2d 1337, 1341 (Alaska 1984) (describing that the plaintiff had "not demonstrated a sufficient 'personal stake' in the outcome of this controversy to give him standing.").

III. CONCLUSION

Tall Timbers jumped the gun and the Commission should dismiss this appeal. The proper forum for adjudicating whether Haven House is a use not listed is the use not listed process as described by the Director in Decision #2. Because the Director does not have authority to make the final decision whether a use is listed or not, Tall Timbers cannot appeal Decision #2. Tall Timbers, or more appropriately the potentially aggrieved people to Haven House's intended use of Malissa Drive, can make all of the substantive arguments identified in its notice of appeal as to why Haven House is not an unlisted use at the use not listed hearing. Thus, neither Tall Timber nor the potentially aggrieved persons will be prejudiced by the Commission dismissing this appeal and proceeding with the use not listed hearing. Tall Timbers jumped the gun and this appeal should be dismissed.

Dated this 30 day of June, 2014.


Robert H. Palmer, III
ABA No.: 1405032

Certificate of Service

I hereby certify that on June 30th, 2014, a true and correct copy of the foregoing document was filed electronically via electronic mail to:

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Litigation and Civil Support Assistant

**BEFORE THE PLANNING COMMISSION OF
THE CITY AND BOROUGH OF JUNEAU**

In re,)
)
TALL TIMBERS NEIGHBORHOOD)
ASSOCIATION NOTICE OF APPEAL)
Re: CDD Directors Decision in)
BLD20130767)
_____)

**REPLY REGARDING TALL TIMBERS NEIGHBORHOOD
ASSOCIATION RIGHT TO APPEAL**

The Community Development Department (CDD) and Haven House oppositions to Tall Timbers Neighborhood Association's right to appeal fail for the following reasons.

1. **Finality is not at issue.** Whether the Director's March 18, 2014 decision is a final decision that may be appealed to the Planning Commission is not at issue. First, the Director determined in his March 18, 2014 decision (herein Decision) that the Decision was appealable: "The Director's Decision is appealable pursuant to CBJ 49.20.110". The CDD did not appeal the Director's determination that the decision was appealable so whether the Decision was appealable is not at issue here. Second, the Planning Commission and the Presiding Officer directed that the issues to be resolved before the Tall Timbers appeal could be accepted were whether Tall Timbers was aggrieved and had legal standing to file the appeal. Those issues do not involve whether the Director's Decision was final for purposes of appeal, hence they are not at issue. Third, Code

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Association Right To Appeal

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49.20.110 does not require finality. Instead, it states that “review by the commission of a decision of the director, may be requested by filing a notice of appeal . . .” Nothing in Code 49.20.110 states that a Decision by the Director must be final to be appealable, nor does it state that Code 01.50 (which requires finality for appeals to the Assembly) applies to appeals from the Director to the Planning Commission. Code 01.50.020 does not apply to appeals from the director to the Planning Commission because that Code 01.50.020 only applies to appeals to the Assembly or appeals which the Code, Charter or Assembly resolution provide Code 01.50 applies. Neither is the case in this appeal from the Director’s Decision to the Planning Commission. Fourth, even if Code 01.50.020 applied, it provides finality does not include recommendations, advise or requests for action. Here the Director reached final conclusions about Haven House use and permit request, hence his Decision was final. See Section 3 below.

2. Tall Timbers is an unincorporated association with the right to sue and be sued. As a long standing unincorporated association, Tall Timbers has the right to sue and be sued. Civil Rule 17(c). As a person defined by City Charter and Code, Tall Timbers may appeal the Director’s Decision. Charter section 15.14(i) (“person” extends and applies to associations); Code 01.15.010; AS 01.10.060(8). As a neighborhood association recognized by the City with the right to sue and be sued, it has the right to participate in this appeal.¹

¹ The purpose, in relevant part, of the neighborhood association ordinance is to provide a means of citizen participation in local government decisions. The functions of

3. **Tall Timbers is both aggrieved by and adverse to the Director's Decision.** As set out in Tall Timbers' opening memorandum, it has the right to appeal because it is a proper party to address the faults of a the Director's Decision. As set out in Tall Timber's opening Memorandum (pages 4-5), the Alaska Supreme Court required adversity for standing, meaning Tall Timbers should be a proper party to challenge the decision. Tall Timbers is a proper party as it is organized to make the neighborhood safer and address neighborhood concerns.

It is plain on the face of Code 49.20.110(a) that aggrieved person applies to determine who may appear before the Commission to assert that the appeal does not involve minor or routine issues and so must be heard, and that the Code section does not specify that only a person aggrieved may prosecute the appeal, once the appeal is accepted. There is no legislative history that contradicts the plain meaning of the ordinance. Tall Timbers appeared thru Mr. Hubert to specify its position. Mr. Hubert, a lawyer, specified he was not the legal representative of Tall Timbers, but that did not mean he was not presenting Tall Timber's views.²

neighborhood associations include to review and comments on actions which may significantly affect the neighborhood, and propose action upon issues affecting the livability of the neighborhood. Code Section 11.35.030(a) 3 and 7.

² Minutes of May 13, 2014 Planning Commission meeting page 17: "Dan Hubert said that he is a member of the Tall Timbers Neighborhood Association, but that he is not the legal representative. . . . He said that Tall Timbers disagrees with the staff recommendation that the parties submit briefings on their reasons for appeal."

CDD claims that adversity is not the standard for determining if Tall Timbers may appeal because AS 29.40.050 and AS 29.040.060, as interpreted by *Earth Movers v. North Star Borough*, 865 P.2d 74 (Ak 1993), and *Griswold v. City of Homer*, 252 P.2d 1020(Ak 2011), requires that Tall Timbers be an aggrieved person as defined in those cases; and CDD and Haven House claim Tall Timbers is not aggrieved. Because the legislature chose not to impose the requirements of AS 29.40.050 and AS 29.040.060 on home rule municipalities such as the City and Borough of Juneau, the City was free to and did create its own system of appeals unrestricted by said statutes³, so the City's appeal system and whether Tall Timbers may appeal are not defined by AS 29.40.050 and AS 29.040.060 as interpreted by *Earth Movers* and *Griswold*.⁴

³ For decisions of the Director, the Code creates three levels of appeal, from the Director to the Commission, from the Commission to the Assembly, and from the Assembly to the Superior Court. Only the appeal from the Director to the Commission indicates an aggrieved person may appear and explain why the Commission should hear the appeal. The appeal from the Commission to the Assembly is of right. Code 49.20.120. The appeal from the Assembly to the Superior Court "may be had by filing a notice of appeal in accordance with the applicable rules of court." Code 01.50.190. The Rules Of Appellate Procedure, Rules 204(b) and 601, addressing notices of appeal, do not limit appeals to a person aggrieved. Accordingly, the City has chosen to exercise the authority granted to it by the legislature when the legislature did not make home rule municipalities subject to AS 29.40.050 and .060. With that unrestricted authority, the City chose to create its own system of appeals independent from and unrestricted by AS 29.40.050 and AS 29.40.060. Nothing in the Code or its legislative history indicates that the Assembly in enacting its own system of appeals determined that an "aggrieved person", for purposes of appeals from the Director to the Commission, would be governed by the AS 29.40.050 and AS 29.40.060 and the Alaska Supreme Court's interpretation thereof.

⁴ *Earth Movers* and *Griswold* did not involve home rule municipalities, instead involving municipalities to which AS 29.40.050 and AS 29.40.060 applied.

The repealed section of Title 49 referenced by the CDD (Code 49.25.806) (specifying appeals be by aggrieved persons and tax payers) applied only to appeals from the board of adjustments to the Assembly. It did not apply to appeals from the Director to the Planning Commission. Because repealed AS 49.25.806 relates to a different matter (appeals from the Board of Adjustment to the Assembly), it has no bearing in determining whether Tall Timbers is aggrieved for purposes of appealing the Director's Decision. That repealed AS 49.25.806 specified that appeals to the Assembly may be taken by aggrieved persons, tax payers, etc. does not mean that appeals to the Planning Commission from the Director pursuant to present Code 49.20.110(a) may only be taken by persons aggrieved as defined in AS 29.40.050 and AS 29.40.060 and interpreted by *Griswold* and *Earth Movers*, nor does the repealed 49.25.806 mean appeals under present 49.20.110(a) cannot be taken by persons adverse to the Decision.

Simply because no permit has been issued or denied, does not mean that Tall Timbers is not aggrieved or this appeal is premature or that the Director's Decision is not final.⁵ Without the Director's Decision, Haven House was denied

⁵ Code 49.20.110(a) does not require that the Director's Decision be final to be appealable. Code 01.50.020 provides appeals to the Assembly must be final, but does not address appeals from the Director to the Commission. Further, even if Code 01.50.020 applied to impose finality, the Director's Decision is final because it does not recommend, advise or request an action, but instead finally resolves the various issues addressed in the Decision specifically that the Director's January Decision refusing a permit to Haven House is reversed, and specifying that given its proposed use, Haven House may proceed to secure a permit.

a permit for its proposed use. With the Director's Decision, it now can secure the permit. The Director's Decision made the following definitive determinations. First, Title 49 is unenforceable for Half Way Houses and Group Homes, so those provisions do not apply to Haven House. Second, the proposed use for Haven House is a "use not listed" as defined by CBJ 49.20.320 so to determine if Haven House's use is permitted in the D5 zone, it must apply to CDD pursuant to Code 49.20.320. Third, the Director concluded the Haven House proposed use was a boardinghouse and rooming house or is currently most similar to those uses. Fourth, the Director determined that Haven House's use is not a single family residence. Fifth, if Haven House's use is determined by the board of adjustments to be a use similar to boardinghouse and rooming house, it can apply for a conditional use permit, otherwise the underlying building permit will be processed accordingly, so apparently either way, Haven House gets a permit. The Director has interpreted the ordinance in a manner that directly contradicts his prior January, 2014 Decision. The effect of the Decision is to allow Haven House to proceed to secure a permit. Had the Director not reversed his January, 2014 Decision, this matter would be over and Haven House could not proceed to secure a permit. In effect, the Director has created a process by which haven House can get a permit, while the January Decision denied the permit outright. Without the Decision, Haven House would be unable to proceed with its use, thus protecting

the neighborhood from a deleterious use. The appeal here is not premature given the conclusions reached in the Decision.

Even if AS 29.40.050 and AS 29.40.060 and Griswold and Earth Movers applied, Tall Timbers is aggrieved because its purpose falls within the zone of interest that zoning is meant to protect, to preserve neighborhoods from deleterious uses. As Earth Movers recognized, not only neighbors, but “others” whose interests relate to the purpose of the zoning ordinance have standing. One of those “others” is a neighborhood association such as Tall Timbers seeking to protect and preserve the neighborhood from deleterious uses.

Given the situation created by the Decision, and Tall Timber’s and the individual appellants’ purpose to prevent a use deleterious to the neighborhood, Tall Timbers and its members are aggrieved persons and adverse to the decision of the Director.

4. Haven House and the CDD have caused the delay in resolving this situation. The Planning Commission and the Presiding Officer have already resolved the process to be used in this case. First, resolve the Tall Timber’s right to appeal, and only then address the merits of the Director’s Decision. The Presiding Officer has directed briefing only on whether Tall Timbers is an aggrieved person with a right to appeal. Hence Haven House’s briefing seeking to change the process to combine the use not listed process with this appeal is

immaterial because it does not address the issues that the Presiding Officer directed be addressed.

Haven House brought about its rent predicament itself by entering into the lease before it got the permit. It knew or should have known it needed a permit. Ignorance of the law is no excuse. The Commission has no duty to resolve a problem created by Haven House's own actions.

CDD and Haven House have brought about the very delay about which they complain. But for their challenge of Tall Timber's right to appeal, the merits of this appeal could have been well on the way to resolution.

Given the challenge to Tall Timber's appeal, the Commission must honor its own order and requirements of the City Code which provides for resolution of Tall Timber's right to appeal followed by appeals to the Assembly and Superior Court if there is dissatisfaction with the Commission's decision. Regardless of the resolution of the challenge to Tall Timber's right to appeal, the Commission has to resolve the merits of the individual appellants' appeal of the Director's Decision. Of course, that resolution may also be appealed to the Assembly and Superior Court.

Because resolution of the merits of the Director's Decision may well lead to the conclusion that Haven House has no right to have its use occur in the D5 zone, it is a waste of the time, money, resources and efforts of the Commission,

Assembly, Tall Timbers, and individual appellants to move forward with the use not listed or conditional use permit processes, until the Tall Timbers involvement is resolved as well as the merits of the appeal of the Director's Decision.

In any event, the dates suggested by Haven House for combined proceedings (August 26 or September 9) cannot be met because Tall Timber's counsel has a long standing commitment to be out of the office and country from August 25 to October 1.

If CDD and Haven House want to expedite matters, they can simply drop their objections to Tall Timber's right to appeal the Director's Decision, so that the merits may be addressed.

DATED this July 8, 2014, at Juneau, Alaska.

GRUENING & SPITZFADEN, APC

Attorneys for Tall Timbers Neighborhood Association,
Andy Hughes, Sammy Legg, Tom Sullivan, Dan
Hubert, Paula Hubert, Rosena Salazar, Rino Salazar,
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CERTIFICATION

I HEREBY CERTIFY that on July 8, 2014, a copy of the foregoing of the foregoing was emailed to:

Brenwynne Grigg, CDD Administrative Officer
Brenwynne_Grigg@ci.juneau.ak.us



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BEFORE THE PLANNING COMMISSION OF THE CITY AND BOROUGH OF JUNEAU

In re

TALL TIMBERS NEIGHBORHOOD
ASSOCIATION NOTICE OF APPEAL
Re: CDD Directors Decision in
BLD20130767

NOTICE OF DECISION

I. Introduction

Tall Timbers Neighborhood Association (TTNA) and 28 individuals¹ filed a Notice of Appeal, challenging a March 18, 2014 letter of decision (“Decision”) from the CDD Director to Haven House, Inc., concerning Haven House’s proposed transitional housing project for women coming out of prison. The CBJ Planning Commission (“PC”) considered the Notice of Appeal at its regular meeting May 13, 2014, and neither accepted nor rejected the appeal. Instead it ordered briefing on the preliminary issue of TTNA’s standing to appeal the subject Decision.

On July 22, 2014 the PC heard oral argument from TTNA, Haven House and the CDD, by and through their respective counsel on:

Whether the TTNA is an aggrieved person that may appeal the CDD Director’s March 18, 2014 Decision.

Whether TTNA has the legal standing to file the appeal.

II. Summary Statement of Decision

¹ TTNA and all 28 individuals are represented by the same attorney.
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Having considered the parties' extensive briefing and oral argument, the PC concludes that TTNA does not have the right to appeal the Director's Decision, because it is not an "aggrieved person" and cannot be an "aggrieved person," unless and until a permit is actually issued or use authorized that would allow the Haven House project to proceed with its intended use. Because the only "aggrieved person" at this juncture is Haven House, the TTNA legal status/standing issue is moot and not relevant to the immediate proceeding. The PC notes that TTNA adopted its bylaws *after* it filed its Notice of Appeal, thereby raising a question as to its legal entity status at the time of filing, however, the parties appeared to concede at the hearing that TTNA now exists as a legal entity.²

III. Procedural History and the Director's March 18, 2014 Decision

The merits of the underlying land use matters are not before the PC at this time, however, a procedural overview is included as helpful framework to this Notice of Decision. In December of 2013, Haven House applied for a change of use from a single family to a transitional group home for its residential property on Malissa Drive. In a January 24, 2014 letter, the Director responded that Haven House's project did not qualify as a "group home" and that it "best fit the definition of a halfway house," which is not allowed where the property is located.³ The letter did not indicate whether the Director's determination was appealable but invited questions or further discussion. Haven House filed a Notice of Appeal of the January 24 letter, and submitted additional information to the Director.⁴

² TTNA's legal existence does not mean that it represents a majority, or any particular percentage, of the Tall Timbers neighborhood residents.

³ See Regular PC Meeting Agenda for May 13, 2013, Staff Report for APL2014 0002 and APL2014 0004, Attachment 7.

⁴ *Id.* at Attachment 6.

The March 18, 2014 Director letter that is the subject of TTNA's Notice of Appeal begins by thanking Haven House for "providing requested additional information . . . [t]hat . . . allowed [CDD] . . . to better understand how Haven House intends to operate."⁵ The letter informs Haven House that based on legal guidance and the additional information received from Haven House, the Director has determined that the group home and halfway house provisions in CBJ Code are unenforceable against Haven House, and that its proposed use cannot be classified as either a halfway house or a group home. The Director then concludes the proposed use is a "use not listed," which will require an application and public hearing process as set out in CBJ 49.20.320.

In the March 18, 2014 letter, the Director concluded that the Haven House is not a single family residence and stated that the proposed use is or is most similar to a boarding house or rooming house. The letter indicates that "[t]he Director's Decision issued January 24, 2014, is rescinded . . . [and that the present decision] is appealable pursuant to CBJ 49.20.110.

Both Haven House and TTNA filed Notices of Appeal with respect to the Director's March 18, 2014 letter. Haven House also proceeded to apply for a permit as a use not listed under CBJ 49.20.320. The Haven House appeal was accepted by the PC, but subsequently stayed at the request of the Appellant. As indicated in the Introduction, no action was taken to accept or reject the TTNA appeal, pending this Notice of Decision.

IV. Pertinent CBJ Code Provisions

49.20.110 Appeals to the planning commission.

⁵ *Id.* at Attachment 2 and 3 (duplicate copies).
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(a) Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefor with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal. The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.
...

49.25.300 Determining uses.

(a) (1) Listed uses. There is adopted the table of permissible uses, table 49.25.300. The uses permitted in a zoning area shall be determined through the table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis . . .

(2) Unlisted uses. The allowability of a use not listed shall be determined pursuant to section 49.20.320

49.20.320 Use not listed.

After public notice and a hearing, the board may permit in any district any use which is not specifically listed in the table of permissible uses but which is determined to be of the same general character as those which are listed as permitted in such district. Once such determination is made, the use will be deemed as listed in the table of permissible uses.

V. Findings and Conclusions

CBJ 49.20.110 does not expressly state who can file an appeal of a director's decision, but it provides that "any *aggrieved person* may appear and explain to the commission why it should hear the appeal." CBJ 49.20.110(a) (emphasis added.) The PC Notice of Decision
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believes it would be illogical to interpret this ordinance as requiring the higher threshold of “aggrieved person” status to appear to tell the PC why it should accept an appeal, while setting a lower threshold of mere “adversity” to file and prosecute an appeal.

The PC therefore concludes that one must be an “aggrieved person” to appeal a decision of the CDD Director, under CBJ 49.20.110(a). We further find TTNA’s argument that suggests one could become “aggrieved” simply by such an initial appearance to testify before the PC, untenable. See TTNA Memorandum at p. 3.

Our reading of CBJ 49.20.110(a) gives meaning to the “aggrieved person” reference in the ordinance and is in keeping with general land use and zoning review practice.⁶ We do not believe it was the intent of the Assembly to extend an indiscriminate, blanket right of appeal to everyone who disagrees with a determination of the Director in a land use matter. The “aggrieved person” standard strikes a proper balance that protects property rights and interests and prevents excessive litigation and undue delay. It requires analysis of both the interests at stake and the finality of determinations being adjudicated.

That a particular decision or determination is “appealable” does not mean that it is appealable by anyone, without regard to the person or entity’s relation to or interest in the underlying determination, ie “aggrieved” status. For instance, when the Director, who has the jurisdictional authority to allow a requested use or issue a requested permit, denies the use or permit, the *applicant* is clearly an “aggrieved person.” The applicant has a direct stake and interest in obtaining the permit or the authorization of the use and the Director’s

⁶ See discussion in *Earth Movers of Fairbanks v Fairbanks North Star Borough*, 865 P.2d 741, 743-45 (Alaska 1993).

determination is final, unless timely appealed. However, we do not agree that the denial of a permit or proposed use creates appeal rights in third parties who have no legal right or interest in the permit or use application. With respect to such third parties (TTNA, as well as individuals), the permit or use denial merely continues the status quo. One cannot be “adversely affected” or “aggrieved” by the denial of something they never asked for in the first place.

We find that the Director’s determination that Haven House could not operate as a single family residence or group home were final determinations that only Haven House, as the aggrieved person, could appeal pursuant to CBJ 49.20.110. Unless and until Haven House receives authorization to proceed with a proposed use of its property, there can be no “aggrieved persons” other than Haven House, with respect to that proposed use.

This is in contrast to the Director’s determination that Haven House could *apply* for a permit through the use not listed process provided in CBJ 49.20.320. Because with respect to that determination, there is truly *no* aggrieved person unless and until that public hearing process is followed and a Board of Adjustment decision, if not a PC decision on a potential conditional use permit application, is reached. Unless and until a permit is issued or denied there is no actual case or controversy with respect to anyone.

TTNA has urged the PC to give the Tall Timbers residents and neighbors the opportunity to tell their side of the story, by accepting its appeal. Haven House joins in urging the Commission to hear all of the arguments for and against Haven House’s proposed use of its property--but doing so through the use not listed hearing process, under CBJ 49.20.320. Haven House argues that a piecemeal approach to the issues causes unnecessary

litigation and detrimental delay to Haven House that can be avoided and resolved through the use not listed process.

We agree that through the public hearing process, the PC sitting as the Board of Adjustment, can hear from all sides and can consider the constitutional challenges and competing arguments as to why or why not Haven House should be allowed to operate as a group home, a halfway house, a single family residence, or a boardinghouse or rooming house on the Malissa Drive property. In addition, the PC finds that the use not listed public hearing process provides the best opportunity and the proper forum for TTNA, Tall Timber residents and the public to be heard with respect to Haven House's proposed use of its property.

Moreover, no unfair prejudice will result from allowing Haven House to pursue the use not listed permit process since it will allow for a full public hearing on the proposed use and the issues raised in TTNA's appeal. Haven House will either obtain a permit or use authorization or it will not. Either way a final agency decision will be reached, which final decision in an actual case will be subject to challenge by any "aggrieved person."

The Notice of Appeal filed jointly by TTNA and its individual members, is hereby rejected and dismissed in its entirety. CDD is directed to complete the review and processing of Haven House's use not listed permit application as soon as possible, in order to schedule and hold the public hearing under CBJ 49.20.320, prior to August 25, 2014, if possible, as a courtesy to accommodate Mr. Spitzfaden's travel plans.

This Notice of Decision and the findings in it do not constitute a final agency decision in an actual case or controversy that is appealable under CBJ 49.20.120 and CBJ Notice of Decision
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01.50. However, this decision and its findings may be challenged in the context of a timely appeal of the final agency decision that will ultimately be issued, with respect to Haven House's proposed use of its Malissa Drive property.

Dated this 31 day of July, 2014.



Presiding Officer Nicole Grewe

**Commissioner Satre, dissenting in part and concurring in part, disagrees with the PC's finding and conclusion regarding TTNA's status as an "aggrieved person," but concurs with the PC's conclusion and order that Haven House's use/permit application be reviewed through the use not listed process set out in CBJ 49.20.320.

Certificate of Service

I hereby certify that on July 31, 2014, a true and correct copy of the foregoing document was served on the following via Electronic Mail as follows:

Attorney for Haven House:	Mary Alice McKeen	amckeena@gmail.com
Attorney for Tall Timbers:	Robert Spitzfaden	spitzr@gsi.net
Attorney for CDD:	Robert Palmer	Robert.Palmer@ci.juneau.ak.us
Attorney for Planning Commission:	Jane Sebens	Jane_Sebens@ci.juneau.ak.us

Courtesy Copy to CDD Personnel:

Holly Kveum Holly.Kveum@ci.juneau.ak.us
Brenwynne Jenkins Brenwynne.Jenkins@ci.juneau.ak.us

Litigation and Civil Support Assistant

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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.

IV. PLANNING COMMISSION LIAISON REPORT

Mr. Nankervis reported that the Assembly did not meet Monday night. It met last Wednesday as the Finance Committee and tentatively approved the budget for Fiscal Year (FY) 2015 and 2016. The Committee will go back and modify FY 2016 throughout the year, he said.

V. RECONSIDERATION OF THE FOLLOWING ITEMS – None

VI. CONSENT AGENDA

SMF2014 0001:	Final Plat Approval for a Major Subdivision creating 1 regular lot and 2 Bungalow lots on Garnet St. in the Northeast Mendenhall Valley.
Applicant:	Shawn Kantola
Location:	8287 Garnet Street

Staff Recommendation

Staff **RECOMMENDS** that the Planning Commission Adopt the Director's analysis and findings and **APPROVE** the requested Final Plat. Approval would allow the applicant to print their plat to Mylar and record their proposed plat.

VAR2014 0007	A Variance request to reduce the required street-side setback from 17' to 11' along Glacier Avenue in the Light Commercial zone to construct a 7,785 square foot, 2 story bank.
Applicant:	DOWL HKM
Location:	840 W Tenth Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **approve** the requested Variance, VAR20140007. The Variance permit would allow for a reduction of the required street-side setback from 17' to 11' along Glacier Avenue in the LC zone for construction of a 7,785 square foot, 2 story bank.

Staff recommends the following condition:

1. An As-Built Survey shall be submitted showing the building to be no closer than 11 feet to the Glacier Avenue property line prior to Certificate of Occupancy.

VAR2014 0008	A Variance request to reduce the required street-side setback from 17' to 11' along West 10th Street in the Light Commercial zone to construct a 7,785 square foot, 2 story bank.
Applicant:	DOWL HKM
Location:	840 W Tenth Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **approve** the requested Variance, VAR20140008. The Variance permit would allow for a reduction of the required street-side setback from 17' to 11' along West 10th Street in the LC zone for construction of a 7,785 square foot, 2 story bank.

Staff recommends the following condition:

1. An As-Built Survey shall be submitted showing the building to be no closer than 11 feet to the West 10th Street property line prior to Certificate of Occupancy.

VAR2014 0009	A Variance request to reduce the required side yard setback from 10' to 7' along the northeast property line in the Light Commercial zone to construct a 7,785 square foot, 2 story bank.
Applicant:	DOWL HKM
Location:	840 W Tenth Street

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **approve** the requested Variance, VAR20140009. The Variance permit would allow for a reduction of the required side yard setback from 10' to 7' along the northwest property line in the LC zone for construction of a 7,785 square foot, 2 story bank.

Staff recommends the following condition:

1. An As-Built Survey shall be submitted showing the building to be no closer than 11 feet to the Glacier Avenue property line prior to Certificate of Occupancy.

VAR2014 0010	Variance request to reduce rear setback from 20' to 19' to make energy efficiency improvements to existing residence.
Applicant:	Norman Landvik
Location:	8213 Poplar Avenue

Staff Recommendation

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and **APPROVE** the requested Variance, VAR2012 0010. The Variance permit would allow for the reduction in the rear yard setback from 20 feet to 19 feet to make energy efficiency improvements to an existing residence.

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

The motion was approved with no objections.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

AME2014 0004:	Amendment to remote subdivision area map to include Hidden Valley Tract B in the upper Lemon Creek Valley.
Applicant:	Jim Eliason & Zack Worrell
Location:	Upper Lemon Creek Valley

Staff Recommendation

Based upon the proposed project (identified as Attachments A, B, and C), and the findings and conclusions stated above, the Community Development Director **RECOMMENDS** the Planning Commission **RECOMMEND APPROVAL** to the Assembly for the map amendment proposal.

Mr. Lange told the Commission that this is a proposal for a map amendment to the Remote Subdivision Area Map for Hidden Valley Tract B, located in the Upper Lemon Creek Valley. The purpose of the Remote Subdivision Ordinance is to provide a waiver for design and

improvement requirements related to the requirements of a major subdivision such as access, and utilities such as water.

The applicant wants to qualify their parcel as Remote, with the possibility that they may request a subdivision in the future, said Mr. Lange. The Director may recommend an amendment to the Remote Subdivision Area Map if a parcel meets the following requirements, said Mr. Lange:

1. Parcel should not be near capital improvements
2. Parcel should not be in a new growth area
3. Parcel should not be connected to the road system and
4. Parcel should not be served by right-of-way, water system, fire protection or police protection, or maintained by an agency of government

While the area meets the criteria for a Remote subdivision, since it is not on a road system, there have been concerns expressed by CBJ staff because the applicant has been applying for road access easements, said Mr. Lange.

The parcel is outside of the police and fire protection area, said Mr. Lange. The department has received statements of concern about the proposal from Capital City Fire and Rescue and the Juneau Police Department about health and safety, if there was to be a subdivision. The applicant is proposing a recreational cabin subdivision, said Mr. Lange.

Mr. Watson asked where the location of the parcel was in relation to the high explosive storage area.

Mr. Lange showed Mr. Watson the relationship of the areas on the map.

Mr. Voelckers verified with Mr. Lange that his conclusion was still to recommend the project, and that there would not be road access.

Mr. Lange said as the parcel currently exists, it meets the criteria for a Remote subdivision. In the future, said Mr. Lange, if the applicant subdivides the parcel, they would need to show the parcel has no road access.

Ms. Lawfer asked if the parcel acquires a road, if it would still be qualified as "Remote".

Mr. Goddard said technically there is no road and will be no road to the site because it is Remote. If a road were to be proposed in the future, said Mr. Goddard, that is the time the Commission would review the application. When it reviewed the CSP, if the applicant acquires an easement from the CBJ, it would also be evaluated in the future when and if the applicant came forward with a subdivision request. Currently there is no road, said Mr. Goddard, and the applicant can only access the site by pedestrian access. This may endanger future applications

for the applicant, said Mr. Goddard, and this would have to be addressed by the applicant in the future.

Mr. Haight said there is an existing road and asked for its location in relationship to the property.

The applicant, Zack Worrell, showed on a map where the road was in relation to his property.

Mr. Goddard said the applicant has an access easement. The initial concern expressed by the CBJ engineering and lands departments was that the existing road has trucks loaded with rock traversing it, as well as the locations of the Secon Mining facility and explosive storage on that road. The road does not go all the way to the property, said Mr. Goddard.

Mr. Watson said when the company was before the Commission to obtain the permit for its explosive storage, that they were assured the facility was secure, and that the facility was also approved by the Juneau Police and Fire Departments.

Ms. Lawfer asked Mr. Worrell where he was requesting access to his property.

Mr. Worrell showed the proposed access on a map, which included a small easement from the City. There is also a separate access point with another small easement from the City, where they may request road access in the future.

Currently, said Mr. Worrell, they access the property on a path from the end of the existing road. They plan on building up to 20 cabins, providing a recreation area for people in town not requiring boat access, said Mr. Worrell. A Remote subdivision status would enable them to construct the cabins without having to install all of the requirements of a regular subdivision, such as roads and utilities, he explained, which are not appropriate for the area, he said.

Mr. Voelckers asked what the applicant's goal was regarding easements. He also asked how the homes would be constructed.

Mr. Worrell said they could park at the end of the road, and walk with materials on the trail to their cabin site. They could helicopter materials in as well, he said.

MOTION: *by Mr. Watson, that AME2014 0004 be approved, with staff's findings, analysis and recommendations, asking for unanimous consent.*

DISCUSSION

Mr. Voelckers spoke against the motion, saying it appeared the applicant was seeking a remote designation for a development at the edge of regular development. He said he did not see that the exemption applied in this case.

Mr. Watson said his understanding is that this is a remote area, and that it was no different than remote areas such as Shelter Island remote properties that meet the requirements. He said their questions should be limited to the application before them.

Chairman Satre said the Commission had approved an application for a land parcel in the past located on the back side of Douglas where there had been concerns about the road extending from the new growth area, but it was ultimately approved for subdivision as a Remote subdivision. If a road was connected to this property before it was subdivided, said Chairman Satre, then the subdivision would have to meet the roaded subdivision requirements.

Technically, the owners of the property cannot be called applicants, said Mr. Goddard, since applicants cannot apply for text amendments. The applicant is technically the CBJ, said Mr. Goddard. This is just a text amendment so the owners can proceed with their application, said Mr. Goddard. Mr. Goddard repeated if the owners try to install a road, then they will not qualify for the remote subdivision.

Ms. Grewe said as a Planning Commission member she is uncomfortable making a decision ignoring the context and the history of the request. She said, however, that she liked the idea of building cabins in a remote site.

Mr. Goddard repeated the explanation previously given for Ms. Grewe. He said the owner meets the four criteria in the code for the land as it stands now.

Mr. Miller said he has observed people on Colt Island and other locations using their four-wheelers. He asked what identified a road system from a trail where motorized vehicles were used.

Mr. Lange said in Title 49 road is defined as having vehicular access and a gutter on both sides.

The access to the parcel would be through Lemon Creek trail.

Mr. Goddard said the definition for a roadway includes vehicular traffic and it is the portion between the curbs.

Mr. Miller spoke in favor the motion, saying he felt it has a lot of merit, and that it has been pointed out by the staff and Mr. Watson that the parcel is not on the roaded system, and that when the Commission approved the Hilda Creek remote subdivision, there had been concern that someday there would be a road there, and yet currently there still is no road to that land.

Roll Call vote:

The motion passed by unanimous consent.

APL2014 0002: Planning Commission decision to hear or to not hear an appeal of the second Director's Decision regarding the operation of Haven House, a not for profit organization that wants to use an existing house in a D5 zone for transitional housing for women coming out of prison.

Applicant: Tall Timbers Neighborhood Association
Location: 3202 Malissa Drive

1. Whether Tall Timbers has a right to appeal Decision #2.

Staff Recommendation

Staff recommends that the Planning Commission request supplemental briefing from all “parties” (CDD, Haven House, and Tall Timbers) before making a determination whether Tall Timbers has a right to appeal Decision #2. The following is likely relevant to determine whether Tall Timbers has a right to appeal:

- A person must be an aggrieved person to appeal a decision of the Director.¹
- Only entities that have corporate status or possess the right to sue have standing.²

2. Whether the Planning Commission will hear either or both appeals. CBJ 49.20.110(a) and (b).

Staff Recommendation

- The Planning Commission hear the Haven House appeal.
- If the Planning Commission determines that Tall Timbers has a right to appeal Decision #2, then staff recommends that the Planning Commission hear that appeal.

3. Whether the Haven House and Tall Timbers appeals should be consolidated. See CBJ 1.50.030(e)(3).

Staff Recommendation

- That if Tall Timbers can appeal Decision #2, the two appeals should be consolidated because the legal issues are nearly identical, originated from the same decision, and consolidation would be more efficient.

¹ CBJ 49.20.110(a) (restricting standing in an appeal of a land use decision to an aggrieved person.); AS 29.40.050-060; *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 (Alaska 1993); *Griswold v. City of Homer*, 252 P.3d 1020, 1029 (Alaska 2011) (the Legislature “eliminated taxpayer-citizen standing in land use cases by enacting AS 29.40.050-.060.”)

² *Washington's Army v. City of Seward*, 181 P.3d 1102, 1104 n. 2 & 1105 (Alaska 2008).

4. **If the appeals are not consolidated or if Tall Timbers does not have a right to appeal, then whether Tall Timbers' request to intervene in APL2014-004 should be granted.**

Staff Recommendation

- The Planning Commission first determines whether Tall Timbers has a right to appeal Decision #2.
- If Tall Timbers can appeal Decision #2, then the two appeals should be consolidated.
- If the appeals are not consolidated and if Tall Timbers does not have a right to appeal, the Planning Commission should require briefing consistent with Civil Rule 24. Tall Timbers would be required to submit a motion describing why it believes intervenor status should be granted. The other parties would then have an opportunity to respond. See Appeal of AME2013-0015 (Bicknell Rezone) Order on Intervention (March 28, 2014) (requiring CR24 briefing to determine request for intervention).

5. **Whether the Planning Commission will hear the appeal(s) *de novo* or on the record.**

Staff Recommendation

- The Planning Commission hear the appeal(s) on the record because any appeal would focus on legal issues and additional evidence is not needed. An appeal of this type is a legal appeal and not a factual appeal.

The record in this case would include code provisions, history of relevant ordinances relied upon to make the Director's Decisions, materials supplied by Haven House (e.g., building permit application, supplemental information, etc.), and the Director's Decisions.

In an appeal on the record, Decision #2 shall be upheld if there is substantial evidence in support thereof and there was no policy error or abuse of discretion. Only argument may be heard because evidence outside the record is not admissible. In contrast, an appeal de novo the Planning Commission independently reviews Decision #2, which can allow for evidence from outside the record. CBJ 49.20.110(b).

In either type of appeal, the appellant (Haven House and/or Tall Timbers) has the burden of proof by a preponderance of the evidence. CBJ 49.20.110(b).

6. **Whether the Planning Commission will schedule and treat the use not listed hearing also as a conditional use permit hearing.**

Staff does not oppose combining the use not listed hearing with the conditional use permit hearing.

7. Whether the Planning Commission will hear the appeal(s) before, after, or at the same time as the use not listed/conditional use hearing on June 10, 2014.

Staff does not have a position or recommendation. However, if Tall Timbers cannot appeal Decision #2, then this issue is likely unripe because Haven House has stated it has no interest in pursuing its appeal prior to the use not listed/conditional use hearing. Instead, Haven House would start with the use not listed/conditional use hearing. If the Planning Commission denies their proposal, then Haven House would pursue their appeal. However, if the Planning Commission approved the Haven House proposal, for example as a boardinghouse and rooming house or as a new category, then Haven House would likely withdraw its appeal.

If the appeal occurs first, the Planning Commission could decide the foundational points on appeal before the public hearing, if necessary. However, the Planning Commission's schedule is tight, and it may not be able to hear and decide the appeal prior to June 10, 2014.

If the appeal occurs after June 10, 2014, the record and issues on appeal may be complicated by a decision based on the public hearing.

Alternatively, the Planning Commission could hear the appeal with the public hearing on June 10, 2014. While this approach simplifies the schedule, it may provide for a long and possibly complicated hearing.

APL2014 0004: Planning Commission decision to hear or to not hear an appeal of the second Director's Decision regarding the operation of Haven House, a not for profit organization that wants to use an existing house in a D5 zone for transitional housing for women coming out of prison.

Applicant: Haven House, Inc.
Location: 3202 Malissa Drive

1. Whether Tall Timbers has a right to appeal Decision #2.

Staff Recommendation

Staff recommends that the Planning Commission request supplemental briefing from all "parties" (CDD, Haven House, and Tall Timbers) before making a determination whether Tall Timbers has a right to appeal Decision #2. The following is likely relevant to determine whether Tall Timbers has a right to appeal:

- A person must be an aggrieved person to appeal a decision of the Director.³

³ CBJ 49.20.110(a) (restricting standing in an appeal of a land use decision to an aggrieved person.); AS 29.40.050-060; *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 (Alaska 1993); *Griswold v. City of Homer*, 252 P.3d 1020, 1029 (Alaska 2011) (the Legislature "eliminated taxpayer-citizen standing in land use cases by enacting AS 29.40.050-.060.")

- Only entities that have corporate status or possess the right to sue have standing.⁴

2. Whether the Planning Commission will hear either or both appeals. CBJ 49.20.110(a) and (b).

Staff Recommendation

- The Planning Commission hear the Haven House appeal.
- If the Planning Commission determines that Tall Timbers has a right to appeal Decision #2, then staff recommends that the Planning Commission hear that appeal.

3. Whether the Haven House and Tall Timbers appeals should be consolidated. See CBJ 1.50.030(e)(3).

Staff Recommendation

- That if Tall Timbers can appeal Decision #2, the two appeals should be consolidated because the legal issues are nearly identical, originated from the same decision, and consolidation would be more efficient.

4. If the appeals are not consolidated or if Tall Timbers does not have a right to appeal, then whether Tall Timbers' request to intervene in APL2014-004 should be granted.

Staff Recommendation

- The Planning Commission first determines whether Tall Timbers has a right to appeal Decision #2.
- If Tall Timbers can appeal Decision #2, then the two appeals should be consolidated.
- If the appeals are not consolidated and if Tall Timbers does not have a right to appeal, the Planning Commission should require briefing consistent with Civil Rule 24. Tall Timbers would be required to submit a motion describing why it believes intervenor status should be granted. The other parties would then have an opportunity to respond. See Appeal of AME2013-0015 (Bicknell Rezone) Order on Intervention (March 28, 2014) (requiring CR24 briefing to determine request for intervention).

5. Whether the Planning Commission will hear the appeal(s) *de novo* or on the record.

⁴ *Washington's Army v. City of Seward*, 181 P.3d 1102, 1104 n. 2 & 1105 (Alaska 2008).

Staff Recommendation

- The Planning Commission hear the appeal(s) on the record because any appeal would focus on legal issues and additional evidence is not needed. An appeal of this type is a legal appeal and not a factual appeal.

The record in this case would include code provisions, history of relevant ordinances relied upon to make the Director's Decisions, materials supplied by Haven House (e.g., building permit application, supplemental information, etc.), and the Director's Decisions.

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In either type of appeal, the appellant (Haven House and/or Tall Timbers) has the burden of proof by a preponderance of the evidence. CBJ 49.20.110(b).

6. Whether the Planning Commission will schedule and treat the use not listed hearing also as a conditional use permit hearing.

Staff does not oppose combining the use not listed hearing with the conditional use permit hearing.

7. Whether the Planning Commission will hear the appeal(s) before, after, or at the same time as the use not listed/conditional use hearing on June 10, 2014.

Staff does not have a position or recommendation. However, if Tall Timbers cannot appeal Decision #2, then this issue is likely unripe because Haven House has stated it has no interest in pursuing its appeal prior to the use not listed/conditional use hearing. Instead, Haven House would start with the use not listed/conditional use hearing. If the Planning Commission denies their proposal, then Haven House would pursue their appeal. However, if the Planning Commission approved the Haven House proposal, for example as a boardinghouse and rooming house or as a new category, then Haven House would likely withdraw its appeal.

If the appeal occurs first, the Planning Commission could decide the foundational points on appeal before the public hearing, if necessary. However, the Planning Commission's schedule is tight, and it may not be able to hear and decide the appeal prior to June 10, 2014.

If the appeal occurs after June 10, 2014, the record and issues on appeal may be complicated by a decision based on the public hearing.

Alternatively, the Planning Commission could hear the appeal with the public hearing on June 10, 2014. While this approach simplifies the schedule, it may provide for a long and possibly complicated hearing.

Chairman Satre said that items APL2014 0002 and APL2014 0004 would be combined initially, at least for the sake of discussion. He said separate action on the individual items may be required later.

Timeline	
Action	Date
Haven House applies for a change of use permit	December 23, 2013
Director decision; halfway house not a permitted use in this zoning district	January 24, 2014
Haven House appeals Director's decision (number 1)	February 11, 2014
Haven House presents supplementary information and legal argument	March 10, 2014
Director issues second decision; Title 49 provisions regarding halfway houses and group homes are likely unenforceable under Title 49 as applied to Haven House; the proposed use is a "use not listed", and is most similar to rooming house or boarding house; that these uses are allowed within D5 zoning with a conditional use permit, that Haven House file applications for a "use not listed" and a conditional use permit	March 18, 2014
Tall Timbers Neighborhood Association filed an appeal of Director's second decision requesting that the Planning Commission adopt Director decision number 1 and that Haven House not be permitted in the D5 zone	April 1, 2014
Haven House withdrew its appeal of Director decision number 1 and filed an appeal of Director decision number 2	April 4, 2014
Tall Timbers requests to be an Intervenor in the Haven House Appeal	April 19, 2014

Ms. McKibben said the lot in question is 9,000 square feet and located in the D5 zoning district. She said there is an existing single family home on the lot.

In December, said Ms. McKibben, Haven House applied for a change of use permit through the building permit process. A Director's decision was written, she explained, stating that this was a halfway house and that halfway houses were not allowed in a D5 zoning district.

Haven House submitted an appeal of that Director's decision. They supplied supplemental information requested by CDD in response to their appeal, said Ms. McKibben. Based upon that supplemental information, a second Director's decision was issued. It rescinded the first Director's decision. Haven House appealed the second Director's decision, said Ms. McKibben. Tall Timbers Neighborhood Association, which is composed of house holders in the area of the property in question, also appealed the second Director's decision, said Ms. McKibben.

The issue before the Planning Commission is whether or not it wants to hear these two appeals, said Ms. McKibben.

The Department has received an application for a "use not listed" designation and for a conditional use permit from Haven House, said Ms. McKibben. Those requests are scheduled to

be presented to the Commission on June 24, she said. There is also a neighborhood meeting to discuss these applications scheduled at Glacier Valley Elementary School for May 27 (2014), said Ms. McKibben.

Chairman Satre said that since the “use not listed” and conditional use permit were part of the Director’s second decision, which is up for appeal, why would they proceed with that application request if that decision is under appeal.

Ms. McKibben concurred with Chairman Satre’s analysis of the situation. She said she did want the Commission to have the date change from June 10, (2014) to June 24, (2014).

She said the Commission needs to decide:

1. Whether Tall Timbers has the right to appeal
2. Whether the Planning Commission will hear either or both appeals
3. Whether the Haven House and Tall Timbers appeals should be consolidated
4. If the appeals are not consolidated or if Tall Timbers does not have a right to appeal, then whether Tall Timber’s request to intervene in APL2014 0004 should be granted
5. Whether the Planning Commission will hear the appeals *de novo* or on the record
6. Whether the Planning Commission will schedule and treat the “use not listed” hearing also as a conditional use permit hearing
7. Whether the Planning Commission will hear the appeal(s) before, after, or at the same time as the “use not listed”/conditional use permit hearing currently scheduled for June 24, 2014

The staff recommends that first the Commission determine if Tall Timbers has the right to appeal, and if they do, that the two appeals be consolidated. If they are not consolidated, and Tall Timbers is found not to have the right to appeal, the Planning Commission would require a briefing that Tall Timbers would be required to submit a motion as to why it believes that Intervenor status should be granted. The other parties would likely have the opportunity to respond, said Ms. McKibben. The Commission would then need to decide whether or not to hear the appeal *de novo* or on the record. The staff recommends the Commission hear the appeal on the record, because any appeal would focus on legal issues, and additional evidence is not needed, said Ms. McKibben.

Combining the “use not listed” with the conditional use permit hearings would not be a problem, said Ms. McKibben. The staff does not have a position on whether or not the Commission should hear the appeals before, after, or at the same time as the “use not listed” application, she said. However, she said, there are potential outcomes that the Commission could discuss, as a result of pursuing the various alternatives, said Ms. McKibben.

If Tall Timbers cannot appeal the Director’s second decision, then it is unripe, because Haven House has stated that it has no interest in hearing its appeal prior to the results of its “use not listed” application, said Ms. McKibben. Their decision on whether to appeal would be based upon the outcome of the “use not listed” request, she said.

The Planning Commission could also hear the appeals at the June 24, (2014) meeting with the public hearing, said Ms. McKibben, but that would result most probably in a very lengthy and complicated meeting, she added.

Chairman Satre clarified that at this meeting the Commission was to decide whether or not to hear appeals.

Ms. McKibben read the relevant parts of 49.20.110 to the Commission regarding appeals.

Chairman Satre asked for clarification on the issue of standing for the Tall Timbers Neighborhood Association.

Mr. Palmer said that one of the issues raised by Haven House is whether Tall Timbers has a right to appeal. They recommend that the Commission hear a briefing from the parties before making this decision, said Mr. Palmer.

Chairman Satre clarified that the Commission would appoint a presiding officer this evening, who would accept briefs from both parties, which would result in a decision on standing of the Tall Timbers Neighborhood Association.

Mr. Watson said when the Planning Commission makes a decision on the Director's decision, that its decision on those appeals could be appealed to the Assembly.

Mr. Miller asked if a neighborhood association does not have the right to appeal, then would the members as individuals have the right to appeal.

Mr. Palmer said if Tall Timbers does not have standing to sue, then the individual members could not appeal because the time for appeal would have lapsed. However, if the individual members are aggrieved, they could petition through Intervenor status for intervention as individuals, said Mr. Palmer.

Ms. Lawfer, referring to the appeal filed by Timber House on April 1, asked if they could file for an appeal as individuals.

Mr. Palmer said they have signed as a group, so could not file for an appeal as individuals. If the Tall Timbers appeal is not heard because of standing issues, then the individuals who have signed the Tall Timbers appeal could petition to file as Intervenors, said Mr. Palmer, in the Haven House appeal.

Chairman Satre said the Commission should quickly appoint a presiding officer to take the briefings on whether or not Tall Timbers has standing. The same presiding officer would be used both for the briefing on standing and for the Haven House appeal, said Chairman Satre. Chairman Satre said they would open up the floor for testimony from representatives for each potential appellant, to state whether or not they felt the appeal(s) should move forward.

Ms. McKibben said that before it went too far into the process the Commission might want to think about the “use not listed” and the conditional use permit and how that relates to these appeals.

If that process were to move forward (“use not listed permit”), said Chairman Satre, then on the one hand it could help answer some questions raised in the appeal. On the other hand, he said, it is using the recommendation from the Director’s decision (number 2) which is under appeal. There may be merit in considering the appeals first, said Chairman Satre. Once that is accomplished, they can plan the path forward.

They will ask for briefings from the parties as to whether Tall Timbers has standing for an appeal, and most likely move forward with the Haven House appeal, said Chairman Satre. He said they are not taking testimony on the merits of the case, but just on whether or not the Commission should hear the respective appeals.

HAVEN HOUSE

Mary Alice McKeen, an attorney representing Haven House, said that Haven House clearly had the right to an appeal. She said it is an “aggrieved person” under any definition. She said there is not a question as to whether Haven House has the right to an appeal. She said that Haven House is willing to have its appeal held in abeyance, and have the Commission make the decision on the “use not listed” permit that Haven House is requesting. If they receive that permit, said Ms. McKeen, then they would not have the need to proceed with an appeal.

She said it was obvious that if the Tall Timbers appeal was approved, that they would want their appeal to move forward as well, and they would want the appeals consolidated. They would prefer going the permit route, because they want to open Haven House, they do not want to litigate Haven House.

Ms. McKeen pointed out that the most recent Director’s decision states that the existing ordinances on group homes and halfway houses are most likely unenforceable. The only reason an executive branch can say something like “likely unenforceable” is because it is unconstitutional, she said.

Ms. McKeen said she did not have an opinion on whether or not Tall Timbers Association has the right to appeal. She said she did understand that Tall Timbers is an unincorporated association. She said her understanding is that it is not a nonprofit corporation, and that was the issue regarding their standing to sue. She added they do not yet have the opinion on whether individual members had the standing to sue. But who would have the standing to sue, she said, neighbors that lived one block away from the proposed home, or five blocks away; can any person in the district join in the appeal, she said.

Mr. Watson asked about Ms. McKeen’s statement of neighbors and their standing to appeal.

Ms. McKeen said her statement referred to the necessity of a person needing to be “aggrieved” to appeal. The neighbors have no direct legal interest in the property, she said, so who would

have the right to appeal. If it is based on distance, she wanted to know the distance that a neighbor could live to the property and be considered “aggrieved”.

TALL TIMBERS

Dan Hubert said that he is a member of the Tall Timbers Neighborhood Association, but that he is not the legal representative. He said that he felt the “use not listed” proceeding should be put on hold pending the appeals because if the Tall Timbers appeal was successful, it would render the results of the “use not listed”/conditional use proceeding to be moot.

The Tall Timbers appeal, filed on April 1, (2014), seeks review of the decision by the Director on March 18, 2014. He said that Tall Timbers disagrees with the staff recommendation that the parties submit briefings on their reasons for appeal. He said they feel that the Planning Commission is equipped to deal with the Tall Timbers appeal request immediately. Supplemental briefing is unnecessary, as common sense dictates the Tall Timbers appeal being heard, said Mr. Hubert.

The Planning Commission should take up the Tall Timbers appeal for the following reasons, said Mr. Hubert:

1. CBJ code requires that the appeal be heard 49.20.110
2. Tall Timbers is an aggrieved person under 49.20.110(A)
3. There is no benefit for the City in denying the Tall Timbers appeal
4. It is important to properly hear this appeal now

Mr. Hubert said they also felt the appeal should be heard *de novo*. If the case were heard on the record, he said, certain evidence would be inadmissible, even though it could have important probative value in the proceedings. In such a big case for the City, there is no benefit at all in conducting the case on the record, he said. In the staff memo dated May 1, (2014), said Mr. Hubert, the Director said the appeal would include materials supplied by Haven House such as building permit applications and supplemental information. All of this is evidence, said Mr. Hubert.

The appeal must be *de novo* in order to give Tall Timbers the opportunity to raise issues as to the credibility of the materials provided by Haven House, said Mr. Hubert. Limiting the appeal to on the record would likely cause the Planning Commission to improperly rely on materials whose reliability may be questionable, said Mr. Hubert.

QUESTIONS

Mr. Peters asked Mr. Hubert what the structure of Tall Timbers consisted of and when it was founded.

Mr. Hubert said Tall Timbers is an unincorporated association, founded when they learned about the application of Haven House.

Mr. Peters asked if members of the association paid dues.

Mr. Hubert said they did not pay dues.

Ms. Lawfer asked if they had bylaws regarding who may speak on behalf of the association.

Mr. Hubert said there were no bylaws on who may speak on behalf of the association.

Mr. Jackson clarified that currently the only goal of the association was to stop Haven House.

Mr. Hubert said this is not correct. He said they exchange information about the safety of the neighborhood, about snow plowing, and about events going on for children in the neighborhood.

Ms. Grewe asked the staff if an entity had to be an incorporated nonprofit association to file an appeal.

This is a Director's decision on a building permit that is being appealed, said Ms. McKibben. They would definitely have the right to appeal if this was an appeal of a conditional use permit, said Ms. McKibben, since they would definitely be aggrieved parties in that case. But since this is a Director's decision it is not so clear whether they have the right to appeal or not.

Mr. Voelckers asked if Tall Timbers had established a geographic zone with all residents residing within that zone eligible to be members, or if it was self-selected.

Tall Timbers was a plat developed about forty years ago, said Mr. Hubert, and the group is comprised of residents living in an area roughly the size of that plat, who wanted to become a member.

Mr. Peters asked if there are any homes within that area who are not participating in the association.

Mr. Hubert said there were residents living in the area who were not participants in the Tall Timbers Association.

Chairman Satre said he would like clarification on the distinction on appealing a conditional use permit where people were noticed initially versus anyone in the community appealing what is essentially a building permit.

Mr. Palmer said since the second Director's decision has been made that the provisions regarding halfway houses and group homes are likely unenforceable under the Table of Permissible Uses; the potential aggrieved parties can be larger than just the entity applying for the building permit or the people living next door. The focus here is that the right to sue needs to be flushed out in a brief, said Mr. Palmer.

Could anybody be an Intervenor, asked Mr. Watson.

Mr. Palmer said not just anybody could be an Intervenor.

Mr. Watson asked Mr. Palmer to distinguish who could and who could not be an Intervenor.

There are three types of Intervenor, said Mr. Palmer:

1. Intervenor by right
2. Permissive Intervenor (some interest but not direct aggrieved parties)
3. Amicus Intervenor (Friend of the Commission – allowed to write a brief in support of their position)

Chairman Satre asked Mr. Palmer if the question of Intervenor status was historically decided by the presiding officer.

Mr. Palmer said that the decision is historically decided by the presiding officer.

Chairman Satre brought the first question before the Commission:

Whether Tall Timbers has a right to appeal Decision #2. (All questions to ultimately be addressed by the Commission are listed on page 14)

He asked which approach the Commission wanted to take on this question.

Mr. Peters said he liked option # 2, which is the staff recommendation to hear supplemental briefing from all parties before making a determination whether Tall Timbers has a right to appeal Decision #2.

Mr. Miller said he liked option #1. He said he felt that Mr. Hubert did a good job of presenting the reasoning for going with that option. He said if they would have been informed, they probably would have appealed individually, but he feels there are a number of signatures on that appeal, and that he feels it should be granted.

Mr. Voelckers said he would side with Mr. Peters in option #2. He said he felt they needed to be grounded in matters of law, and for that reason he felt the briefs would be beneficial.

Mr. Jackson said he felt they should take a briefing and get a number of different positions from both sides. This may also impact a number of decisions in the future affecting the Planning Commission, said Mr. Jackson.

MOTION: *by Mr. Peters, that the Commission accept the staff recommendation, and request supplemental briefing from all parties before making a determination whether Tall Timbers has a right to appeal Decision #2.*

The motion passed with no objection.

Chairman Satre said the same presiding officer would be used for both the above motion and the Haven House appeal.

MOTION: *by Mr. Watson, that the Commission hear the Haven House appeal 2014 0004.*

The motion passed with no objection.

The next question to be addressed by the Commission, said Chairman Satre, is:

Whether the Planning Commission will hear the appeal(s) de novo or on the record.

Mr. Voelckers asked for a distinction between the two approaches.

Ms. Sebens told the Commission that the basic difference between an appeal on the record and a *de novo* has to do with the taking of new evidence. Typically administrative appeals are on the record, said Ms. Sebens, and the appellant body defers to the lower body which has taken the evidence from the applications, the public comment, and analyzed it, and what comes before the Commission is minutes from meetings and their packet of information and they hear oral argument.

It is determined if the issues are mostly factual or legal disputes, said Ms. Sebens. Typically legal code interpretation types of appeals work very well with an on the record, because it is really questions of law, as opposed to questions of facts and evidence, she explained. Administrative types of appeals are almost always on the record, said Ms. Sebens. A *de novo* appeal can involve calling witnesses, she said, like a trial judge would, bringing in witnesses and new documents. These documents may or may not have been seen by the decision maker, she said. The Commission would pretty much be replacing the Director's judgment with its own judgment, she explained, by starting fresh and looking at everything as opposed to looking at just what the Director looked at, she said.

Chairman Satre verified that Tall Timbers would be able to refute documents in the record.

Ms. Sebens said there is also the provision of the administrative code to submit supplemental information that the presiding officer could decide on a motion whether or not certain pieces of evidence could be accepted. There is a certain amount of discretion, she said.

The whole point is that problems or gaps in the record be addressed, she said.

MOTION: *by Mr. Watson, that the Commission hear the appeal on the record.*

In support of his motion Mr. Watson said he feels it is extremely important that hearing the appeals on the record will serve the purposes of all sides.

Mr. Jackson said he is also in favor of hearing the appeal on the record.

Mr. Miller said he was presiding officer on a case which was heard *de novo*. He said in retrospect, he feels that case would have been better served if heard on the record. *De novo* allows new information into the argument, said Mr. Miller, and in this instance he said he thinks *de novo* may be the safer course.

Roll Call Vote:

Yeas: Voelckers, Jackson, Grewe, Haight, Lawfer, Peters, Watson, Satre

Nays: Miller

Motion Passes

Chairman Satre said he wanted the Commission to address item number 6:

Whether the Commission will hear the appeal(s) before, after, or at the same time as the use not listed/conditional use hearing currently scheduled for June 24, 2014.

Mr. Watson said it has been a long time since the Commission has addressed a use not listed permit request. He said he felt it may be wise to defer this until after the appeal.

Mr. Peters said he agreed with Mr. Watson.

MOTION: *by Mr. Watson, that the Commission defer the decision on the use not listed permit until after the Commission hears the appeals.*

The motion passed with no objection.

Chairman Satre said they will establish a briefing schedule for the presiding officer to establish whether or not Tall Timbers Neighborhood Association has the right to appeal the decision. He said the Commission has decided to hear the Haven House appeal on the record, and makes the recommendation that Tall Timbers look at Intervenor status as a possible way of involvement, because if Tall Timbers was granted the right to appeal, the effort would be made to consolidate that appeal with the appeal of Haven House, said Chairman Satre. The Commission has decided not to deal with the use not listed permit request until it has decided the issues on appeal, said Chairman Satre.

Mr. Watson asked if the public meetings would still be held.

Ms. McKibben said they have already scheduled the neighborhood meeting where the use not listed permit would be discussed. She said there is no reason to cancel the meeting. The cases would not brought to the Planning Commission until the decisions had been made on the appeal, she said. The Commission made no objection to this course of action.

Chairman Satre announced that Ms. Grewe would be the Presiding Officer both for the hearing on the standing of appeal for Tall Timbers as well as the Haven House appeal.

CSP2014 0006:	Review of Alaska DOT&PF project 68471, Glacier Highway reconstruction and pedestrian improvements from Fritz Cove Rd to Seaview Ave, for consistency with locally adopted plans and ordinances.
Applicant:	State of Alaska
Location:	Glacier Highway; Fritz Cove Road to Seaview Avenue

Staff Recommendation

Staff recommends that the Planning Commission adopts the Director's findings, and **approve** CSP2014 0006 as consistent with Title 49, under the following conditions:

Major Subdivision

- 1) Applicant must submit a major subdivision application to the Community Development Department for the re-alignment of right of way and re-subdivision of five or more

adjacent parcels. (Advisory)

Variance to Setbacks

- 2) Any lot line adjustments and right of way realignment that result in the creation of a non-conforming setback must have a Variance approved by the Board of Adjustment. (Advisory)

Variance to Eagle Nest Setbacks

- 3) A Variance approved by the Board of Adjustment is required prior to the commencement of any construction work within 330 feet of an active eagle nest on public land. (Advisory)

Striping and Signage

- 4) Shoulders shall be marked as bike lanes consistent with the Manual of Uniform Traffic Control Devices throughout the project area. The length of the project shall be signed with way finding signs where appropriate as part of the Cross Juneau Bikeway. The applicant must submit a signage and striping plan for review and approval by the Community Development Department for consistency with the Non-Motorized Transportation Plan. (Mandatory)

Future Speed Study

- 5) Applicant must conduct a new speed study once the roundabout is completed at the intersection of Glacier Highway and Mendenhall Loop Road, and re-measure the pace along Glacier Highway in the project area. If the median of the pace is lower than 30 mph in the business district, the DOT&PF shall re-evaluate the speed order accordingly. (Mandatory)

Traffic Calming Design

- 6) In compliance with Priority 61 of the Area Wide Transportation Plan, the applicant shall include traffic calming treatments throughout the corridor, including between Fritz Cove Road and Harbor Road. (Mandatory)

Ms. Bronstein told the Commission that in the past CSP state cases were recommendations by the Planning Commission to the Assembly, whereas a denial by the Commission was a final decision. Now, said Ms. Bronstein, after further review of Title 49, the staff has amended that position, and that there is no reference that either a positive or negative decision of the Commission be taken before the Assembly. Therefore, said Ms. Bronstein, either a decision to approve or deny a CSP state case by the Commission is a final decision.

Mr. Watson asked if the Law Department has read this interpretation as well.

The project runs from Seaview Avenue to the roundabout, which is not part of the project, said Ms. Bronstein. Then, it starts back up at Harbor Drive, and continues to Fritz Cove Road, said Ms. Bronstein. Most of the adjacent land to the south is Waterfront Commercial, said Ms. Bronstein, with land to the north in the UAS area zoned D5, General Commercial in downtown Auke Bay, and a small patch of Light Commercial and D10 zoning.

The speed limits are set at 35 miles per hour from Seaview through the roundabout, and 40 miles per hour past Fritz Cove, she said. The signage, at 35 miles per hour from Fritz Cove Road to the roundabout, was mistakenly signed in 2009, she said.

This project was begun by the Department of Transportation and Public Facilities (DOT&PF) in 2003 and 2004, said Ms. Bronstein, through the Auke Bay Corridor Reconnaissance (ABCOR) Study. The ultimate short term recommendations of the ABCOR Study were the construction of a roundabout at Glacier Highway and Back Loop Road, as well as a roundabout at Fritz Cove Road and Glacier Highway, with sidewalks along both sides and creation of a turning lane at the Anderson Building curve.

In 2011 CBJ submitted environmental scoping comments that included an overview of the requirements that are in the area-wide transportation plan for main street treatments for the Auke Bay area. There was now no roundabout proposed for the Fritz Cove Road and Glacier Highway intersection, said Ms. Bronstein.

A group was formed and did successfully petition DOT&PF to retain the DeHarts convenience store, said Ms. Bronstein, by moving the alignment of the proposed roundabout. Also in response to that petition, CBJ began the Auke Bay planning process and formed the Auke Bay Steering Committee, said Ms. Bronstein.

As a result of the reconstruction, said Ms. Bronstein, the cross section of the road will be widened into two twelve foot travel lanes with a twelve foot center turning lane, eight foot shoulders and two six foot sidewalks.

There will be no turning lane past the curve and going up to Harbor Drive, said Ms. Bronstein. There will be a turn lane through the business district and up to Seaview Avenue, she added. There will be bus pullouts provided just past Harbor Drive, said Ms. Bronstein. There is also a crosswalk provided with a raised center median located right in front of Auke Bay Elementary School, said Ms. Bronstein. It will connect to a future sea walk along the harbor, she said. There is also a center raised median provided in front of Bayview, said Ms. Bronstein.

At the Fritz Cove Road intersection, there will be an indirect left turn, said Ms. Bronstein, which will provide the option of a vehicle leaving Auke Lake Way, turning right, making a u-turn, and pulling into a provided pull out area before proceeding downtown.

The DOT&PF is also proposing to straighten the curve at the Anderson Building somewhat, said Ms. Bronstein.

Mr. Watson asked about a purported overpass that UAS had planned to construct from the main campus to the Anderson Building.

Ms. Bronstein said that UAS had planned to construct that overpass at one time but that the funds had subsequently been spent on other projects.

Mr. Watson said if they do not know it is off the table it should be considered still on the table.

Ms. Bronstein said the realignment of the curve and the addition of a turn lane would not make any provisions for pedestrian crossing at that location.

There is currently no exception in the code for agencies wishing to acquire property for rights of way, said Ms. Bronstein; those agencies are treated just like private landowners and so when a lot line on more than five lots is moved, that qualifies as a major subdivision. In this case the applicant is looking to acquire fee simple part or all of nine adjacent parcels which qualifies as a major subdivision under the current ordinance, said Ms. Bronstein. There are also two properties on which the project may be creating non-conforming front yard setbacks. The staff needs further documentation on this, said Ms. Bronstein. If there is an issue, that would be determined during the subdivision process, she added. There is also an eagle's nest which would require a variance or a take permit, said Ms. Bronstein.

Ms. Bronstein identified elements that the Comprehensive Plan required to be included in projects in Auke Bay. One of these elements, limiting left turns onto Glacier Highway through center medians, was not provided for in this project, she noted.

QUESTIONS

Mr. Watson said it appeared to him that putting medians in the highway would limit access to the commercial property. He asked why that would be a minus in the eyes of the planner.

The staff identified that there were no medians that were included in this project that would limit left turn access onto the highway, said Ms. Bronstein. She said there were two medians provided in this project, and neither of them limited a left turn movement.

Mr. Watson said he was still confused but that he would let it go.

Ms. Bronstein said if Mr. Watson's question was whether these would be good or bad things, that there is no value statement being placed on whether these are good or bad things. The plusses or minuses used in the power point slide were simply a statement on whether the staff felt they were provided in the project.

Mr. Watson said that helped clarify the answer to his question.

Mr. Miller asked if the CBJ would also have to go through the subdivision process just as an individual or the state.

Ms. Bronstein answered that they would.

There were three additional items required in the AreaWide Transportation Plan not provided in this project, said Ms. Bronstein:

1. Landscaping
2. Pedestrian level lighting
3. Curb extensions

Mr. Watson said he felt the landscaping was very adequately addressed by Docks and Harbors.

Mr. Voelckers asked what a curb extension was.

Ms. Bronstein said a curb extension is a sidewalk design intended to shorten crossing distances for pedestrians to allow for greater visibility around parked cars.

Marked bicycle lanes are not provided for in this project, said Ms. Bronstein, nor is there a vegetative buffer provided through high speed areas.

Ms. Lawfer said there is a sidewalk, a bike lane, and two lanes of traffic.

Ms. Bronstein said there are no painted bicycle lanes provided in the plans. She said they are simply shoulders that could be used by cyclists.

The Community Development Department had received three letters from residents of Fritz Cove Road expressing concern about making left turns off of Fritz Cove Road, said Ms. Bronstein. DOT&PF said with the guardrail pulled back with the creation of the sidewalk, that visibility will be improved, she said.

The Auke Bay Steering Committee finds the project largely consistent with area plans, said Ms. Bronstein. They did advocate for a 30 mile per hour design speed throughout the corridor, said Ms. Bronstein.

Mr. Peters asked if bus stops were just being moved, or added or subtracted in numbers.

They are being moved, said Ms. Bronstein, and improved with pullouts.

Mr. Peters asked if sidewalks would be incorporated with the roundabout and if crossings would be part of that area.

Ms. Bronstein said the answer was "yes" to both questions.

Mr. Voelckers asked if there was any possibility of a bypass road being a possibility in the future.

Mr. Hart said the Auke Bay Area Plan can preserve a right-of-way for the future.

Ms. Grewe said that the idea of speed for the area is not about current speed for the area but about trying to design the area for the future.

Ms. Bronstein said there is a paragraph in DOT&PF's policies that when a speed order is established, the local jurisdiction and public must be consulted.

Mr. Hart said there is also the CIP process, which can be explored through the planning process.

Mr. Voelckers said a more traffic calming, pedestrian friendly lighting system may have some merit.

That is exactly the type of item that could come up through a charrette process, said Mr. Hart.

DOT&PF

Duane Adams, representing DOT&PF and the project designer, said the project is a balancing act with a certain level of funds. The road is an arterial, and the intent of an arterial is to move traffic without backing people up, he said. There are a lot of ideal looking seafront villages that are absolutely choked by traffic, he said. He said overall a number of projects will be required to address the long range vision of the Comprehensive Plan. The turn lanes are specific to Fritz Cove and to the UAS lab, he explained.

Mr. Adams said he urged the Commission to look at the project as a step in the right direction of meeting the goals of the various plans including the Comprehensive Plan, while at the same time meeting the balancing act of bicycle, vehicular and pedestrian traffic.

He said he thought the traffic calming treatment was a very difficult item to address, and they requested that condition be removed.

Mr. Adams said they meet the requirements of the Comprehensive Plan, and they have made great strides in meeting the requirements of the Long Range Transportation Plan.

Mr. Voelckers asked about bicycle markings in the lanes.

Mr. Adams said signs in the right place make a lot of sense.

Mr. Voelckers said he felt it would be appropriate to make sure the eight foot lane was used only for bikes.

Mr. Voelckers asked if there was any intended pedestrian crossing between Fritz Cove Road and the roundabout.

Mr. Adams said there was not.

Mr. Watson asked if the design of the road by the roundabout would include any drainage for the road to alleviate the icing problem in the winter.

Mr. Adams said they are considering that problem, and that the curb and gutter system will also help with that problem.

Mr. Watson said he has a concern that the University not have additional access to the road.

Mr. Haight asked what the lighting plan was for the project.

Mr. Adams said the lighting calls for 40 foot fixtures of high pressure sodium lights.

Mr. Haight asked what intensity of light was being considered. He said it was a fairly densely populated area, where overflow lighting would not be welcome.

Steve Cary, a project consultant, said the lighting design is not that far along yet.

Mr. Haight asked if the intent is to illuminate to the level of Egan Drive, or is the intent comparable to what is normally seen for street lighting.

Mr. Cary said he did not think there was any intent to have any particular lighting relative to Egan Drive.

The road is not as broad as Egan and will not require as bright of lights with the hot spots that come with them, said Mr. Adams.

Mr. Voelckers said he did not think the high pressure sodium lights were very neighborly.

Dave Klein, a member of the Auke Bay Steering Committee, said he works for UAS, and that the cleared area between the new dormitory and the highway at UAS was just done for utilities, and not for any road aspirations. He said he thinks he sidewalks will help the crossings to the Anderson Building by UAS students. The roundabout was canceled at the UAS Glacier Highway entrance more because of a stream going under the road than because of traffic considerations, said Mr. Klein.

Pam Wells Peters said she just found out she lived next to a planned overpass.

She was informed by Ms. Bronstein that there was a median planned for the road, but no overpass.

Ms. Wells Peters asked how she would find out about any future development for her area.

She was informed by Chairman Satre that she would receive a notice if she lived within 500 feet of any proposed development.

Al Cough, Regional Director for Southeast Alaska, DOT&PF, said the project under review is attempting to accomplish a lot of things for a lot of people under a tight budget. They have to take into account trucks and boat trailers, said Mr. Clough. The subdivision review process is an incredibly cumbersome process, said Mr. Clough. He said he strongly encourages the Commission and the Assembly to come up with a more efficient system for these situations which are not traditional subdivisions.

Mr. Haight asked how long it would be before CBJ came in and installed new light fixtures in the area.

It would probably be false economy to install conduit for pedestrian level lighting now, said Mr. Clough, since there was not a specific design. He said they do have a completion date on the roundabout of July 15, (2014).

Mr. Miller asked Mr. Clough about condition number 6.

Mr. Clough said they feel they have complied with the spirit of the code.

Ms. Lawfer asked about a designated crosswalk to the Anderson Building.

Mr. Clough said when this project is complete there will be some level of pedestrian lighting through the corridor, with sidewalks. This is a continuous process, said Mr. Clough.

MOTION: *by Mr. Watson, to accept staff's findings and recommendations with two revisions; that number five be changed to an advisory leaving the wording as it is, and that we remove Item 6, as the applicant has significantly met the spirit of Priority 61 of the Area-wide Transportation Plan. Mr. Watson asked for unanimous consent on the motion.*

Chairman Satre said the applicant had said they did not have an issue with Item 5, but only with the timing; that it not be completed while the project was still ongoing.

Chairman Satre asked if Mr. Watson wanted to make it strictly advisory.

Mr. Watson said he wanted to make it advisory.

Chairman Satre clarified this was an advisory once the Seaview and the roundabout projects were complete.

Mr. Watson concurred.

Ms. Grewe said she objected to the motion. She said she felt that condition 5 should remain mandatory. She said that DOT&PF has stated it did not have a problem with performing a new speed study once the new project was complete, and that made a good compromise to address community concerns.

Mr. Miller said he would also like to see Number 5 remain mandatory.

Mr. Miller asked for a friendly amendment to the motion to leave number five as a requirement for when both projects are complete.

Mr. Watson accepted the friendly amendment.

Chairman Satre said he appreciated the cooperation of DOT&PF with the Department and with the Auke Bay Steering Committee.

The motion passed with unanimous approval.

X. **BOARD OF ADJUSTMENT** - None

XI. **OTHER BUSINESS** - None

XII. **DIRECTOR'S REPORT**

▪ **Next Wireless Communication Meeting**

There was a Wireless Communication Facility Meeting last Thursday, (May 8, 2014) said Mr. Goddard. They should have a revised Ordinance to the Commission by the end of this week, he said. That should enable the Commission to address the issue at its next regular meeting on May 27, (2014), said Mr. Goddard.

The Commission will meet at 5:00 on May 27, (2014) to hopefully approve the Wireless Communication Ordinance.

▪ **Subdivision Review Committee Meeting with Commission**

They would like to change the Subdivision Review Committee meeting scheduled for that date to an all-Commission meeting, said Mr. Goddard. That committee would continue to meet Thursdays, in June and July, for an August hearing for the full Planning Commission, said Mr. Goddard. The Law office is not comfortable with the current Subdivision ordinance so it will be broken down into three parts, said Mr. Goddard.

▪ **Auke Bay Steering Committee Charrette Process**

Mr. Hart said the Auke Bay Steering Committee has set up a Charrette process for June 14, (2014). There is a team of architects willing to help the Committee and the community identify missing elements and unify the plan.

XIII. **REPORT OF REGULAR AND SPECIAL COMMITTEES** - None

XIV. **PLANNING COMMISSION COMMENTS AND QUESTIONS** - None

XV. **ADJOURNMENT**

The meeting was adjourned at 10:46 p.m.

MINUTES

PLANNING COMMISSION City and Borough of Juneau

APPEAL HEARING

*Whether Tall Timbers Neighborhood Association has Standing to Appeal the
Planning Commission Director's March 18, 2014 Decision Concerning a Proposed
Transitional Housing Project for Women Newly Released from Prison*

July 22, 2014

HEARING OFFICER
Nicole Grewe

Attorney for Haven House:	Mary Alice McKeen
Attorney for Tall Timbers:	Robert Spitzfaden
Attorney for CDD:	Robert Palmer
Attorney for Planning Commission:	Jane Sebens

I. ROLL CALL

Mike Satre, Chairman, called the Special Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:04 pm.

Commissioners present: Mike Satre, Chairman; Dennis Watson, Vice Chairman; Karen Lawfer, Ben Haight, Nicole Grewe, Gordon Jackson, Dan Miller, Paul Voelckers

Commissioners absent: Bill Peters

Staff present: Hal Hart, Planning Director; Jane Sebens, Assistant Municipal Attorney; Robert Palmer, Assistant Municipal Attorney II; Travis Goddard, Planning Manager; Beth McKibben, Senior Planner; Rob Steedle, Deputy City Manager

II. REGULAR AGENDA

APL2014 0002: Planning Commission decision whether to hear or to not hear an appeal of the second Director's Decision regarding the operation of Haven House, a not for profit organization that wants to use an existing house in a D5 zone for transitional housing for women coming out of prison.

Applicant: Tall Timbers Neighborhood Association

Location: 3202 Malissa Drive

Planning Commission will hear oral argument on the briefing on the matters of:

- 1) Whether the Tall Timbers Neighborhood Association is an aggrieved person that may appeal the CDD Director's decision.
- 2) Whether the Tall Timbers Neighborhood Association has the legal standing to file the appeal.

Chairman Satre explained that Commissioner Grewe would be the presiding officer for this appeal. Each party was to have a half hour to present their brief to the Planning Commission, explained Chairman Satre. This time would include questions asked by the Commissioners. The parties could also reserve a portion of their time for rebuttal, said Chairman Satre.

Once the briefings have been completed, the Commission would adjourn to executive session, where they would deliberate on their decision, said Chairman Satre. Once the Commission makes a decision, it would be written up by the legal staff for the Commission.

Ms. Grewe explained that the Planning Commission has asked for a briefing on whether or not Tall Timbers Neighborhood Association has the right to appeal the Planning Commission Director's March 18, (2014) decision concerning Haven House's proposed transitional housing project for women coming out of prison.

TALL TIMBERS NEIGHBORHOOD ASSOCIATION

Mr. Spitzfaden said that Tall Timbers feels that it has the ability and the legal right to proceed with this appeal. He said the basic point of the brief is that the case law and the statutes relied upon in the brief by the Community Development Department (CDD) to argue that Tall Timbers does not have standing does not apply to the City and Borough of Juneau.

They are here this evening to ask for the opportunity to tell their side of the story, said Mr. Spitzfaden. He said that Haven House and the City staff have strenuously worked to prevent this opportunity. One reason Tall Timbers deserves to be heard is because the basic point of the legal issue is that most case law and statutes don't apply to the CBJ because it is a home rule municipality, said Mr. Spitzfaden. A fundamental question to be answered is; who is making the decisions here, the Director or the Commission? Is it up to the Commission to decide what use is authorized by the code, or is it up to the Director, said Mr. Spitzfaden. Mr. Spitzfaden said in his opinion the decision of the Commission this evening had two impacts: was Tall Timbers going to be given the opportunity to tell its side of the story, and was the Commission willing to cede authority in this matter to the Director.

According to Mr. Spitzfaden, the ordinance the Commission is -proceeding under dictates that if this is not a routine issue, then the Commission has to hear the appeal. The Commission should think seriously before denying his clients the opportunity to appeal this issue, said Mr. Spitzfaden.

It is also a matter of public policy that the public have input, said Mr. Spitzfaden; it should not just be up to an appointed director to decide a constitutional issue - whether one particular use is deleterious to a neighborhood or not.

Public policy dictates that the Commission and not the Director should make these kinds of decisions, said Mr. Spitzfaden.

Mr. Watson asked Mr. Spitzfaden to further define and clarify his definition of Tall Timbers and its relationship to the definition of adversity as defined in his brief on page 5.

Adversity is when there is an actual dispute, said Mr. Spitzfaden, and when there are two sides to the story. The view of Tall Timbers is that there is an actual dispute, in that the Director made one decision in January, and then made another decision in March. There are clearly debatable points here, said Mr. Spitzfaden, that a reasonable person can debate upon. Tall Timbers feels that the adversity lies in the March decision, said Mr. Spitzfaden. Tall Timbers seeks the opportunity to explain why it feels that decision is wrong, said Mr. Spitzfaden.

Ms. Lawfer asked how decisions were made by the Tall Timbers neighborhood Association.

Mr. Spitzfaden answered he believed they were decided by majority vote.

Mr. Voelckers stated that Mr. Spitzfaden had made reference to the fact that since Juneau was a home rule municipality that some of the laws and statutes were then invalidated. He asked if this was in reference to an aggrieved person status, and asked if Mr. Spitzfaden could elaborate on this.

Mr. Spitzfaden said he understood that it was the position of the City and Haven House that there was a statute passed by the State of Alaska which stipulated that if you were an aggrieved person that you have the right to bring before the appropriate body your position. Two cases were cited to support this position, said Mr. Spitzfaden. Those two cases define an aggrieved party as an entity who has a "dog in a fight" as explained by Mr. Spitzfaden. The neighbors in Tall Timbers have a "dog in the fight" because they either own or lease property surrounding the proposed Haven House project, said Mr. Spitzfaden. The purpose of Tall Timbers is to help protect and preserve and help the neighborhood, said Mr. Spitzfaden.

There is another statute passed by the legislature that applies across the board, said Mr. Spitzfaden, that says if you are a home rule municipality, the statute that says you are aggrieved does not apply. Juneau is free to set up whatever system it wants, said Mr. Spitzfaden. We have set up a system that states the Director makes the decision, and you can appeal to the Director, you can appeal to the Planning Commission, you can appeal to the Assembly and you can appeal to the Superior Court if you want to keep appealing, said Mr. Spitzfaden.

The Supreme Court has never ruled on Juneau ordinances said Mr. Spitzfaden. Therefore, the view of the Tall Timbers Association is that the adversity requirement is what is held to be the standard in Juneau, said Mr. Spitzfaden.

Ms. Grewe summarized the major points as presented by Mr. Spitzfaden on behalf of the Tall Timbers Neighborhood Association:

1. The adversity standard is met and there is a dispute with two sides
2. Tall Timbers is aggrieved because they are within the zone of interest or the impact area
3. Tall Timbers is indeed an entity because it is recognized by the CBJ; they have bylaws, they were organized to protect the neighborhood, there is a list of purposes for this entity

Ms. Grewe said she felt these were the three main points presented by Mr. Spitzfaden, and she asked if there were any major points that she had missed.

Mr. Spitzfaden responded that he felt those were the basic points covered.

Mr. Jackson said that he disagreed with the remarks Mr. Spitzfaden made about the Director's decision. He said if every single person came before the Commission and challenged the Director's decisions, the department would experience an administrative nightmare. It was not a common practice of the Planning Commission to cede its authority to the Director, said Mr. Jackson.

Mr. Spitzfaden said that he is not disputing the fact that the Director made the decision, he is disputing the fact that no one can appeal that decision.

Mr. Jackson said at the beginning of every single Planning Commission meeting the Chairman asks for public comment, so that opportunity is given to all members of the public.

Ms. Grewe reminded the group the purpose of the hearing which was whether Tall Timbers Neighborhood Association has the right to appeal the Director's March 18, 2014 decision concerning the Haven house proposed transitional housing project for women coming out of prison and whether Tall Timbers Neighborhood Association is an aggrieved person that may appeal the Director's decision, and whether Tall Timbers Neighborhood Association has legal standing to file that appeal.

COMMUNITY DEVELOPMENT DEPARTMENT (CDD)

Mr. Palmer, attorney for the Community Development Department, and Ms. McKeen, attorney for Haven House, said they would be splitting the half hour allotted to them. Despite the arguments which have been heard, said Mr. Palmer, there is really only one issue, and that is whether the arguments of Tall Timbers should be heard before the Commission or the Board of Adjustment.

CDD believes that the Commission should dismiss this appeal and proceed with the Use Not Listed hearing requested by Haven House, said Mr. Palmer. All the same arguments could be

made at that hearing, said Mr. Palmer, with all of the facts presented before the Commission at that hearing. At the Use Not Listed hearing, the parties could call witnesses and full participation of the public would be permitted, said Mr. Palmer.

The appeal requested by Tall Timbers is not yet ripe for review because the Commission has not yet made a decision, said Mr. Palmer. Right now Haven House cannot operate as intended, and could only operate if given a permit by the Commission as a Use Not Listed or a Conditional Use Permit, said Mr. Palmer. It is at that time when an aggrieved party or adversity standard could be applied, said Mr. Palmer.

When Tall Timbers filed its appeal on April 1, (2014), it did not have the capacity to appeal at that time, said Mr. Palmer. That capacity to appeal was not created until Tall Timbers filed its bylaws in June, said Mr. Palmer.

Mr. Voelckers asked if there are any precedents of a director's initial determination of an occupancy type leading to it an appealable action.

Mr. Palmer said it depends on what the use is. If the answer is something that is usually authorized by a building permit the answer is usually "no", said Mr. Palmer. A building permit would either be issued and there would be no appeal, or a building permit would not be issued, and it would go in front of the Commission. What makes this case complex, said Mr. Palmer, is that in the Director's determination in March he said that Haven House should apply for a Use Not Listed process. Because of that determination the Director has no authority to render a final decision, said Mr. Palmer. In that context Mr. Palmer said he knows of no other situation in a similar context in Juneau that has been appealed.

Chairman Satre said he struggles with the logic of why there is no appealable decision.

Mr. Palmer answered that with the Director's initial January decision the only aggrieved entity was Haven House, so therefore only Haven House had the right to file an appeal. With the Director's decision number two, said Mr. Palmer, the neighbors still are not in a position to appeal, because they are not yet aggrieved. They would or would not be aggrieved depending upon the outcome of the Use Not Listed decision, said Mr. Palmer.

Ms. Grewe asked what the criteria was for being a neighborhood association.

The creation of bylaws are necessary to register as a neighborhood association, said Mr. Palmer.

HAVEN HOUSE

Ms. McKeen stated that through the Use Not Listed process all concerned individuals including Tall Timbers Association could make all the arguments they wish to make concerning Haven House to the Commission. She said Haven House requests that the Planning Commission schedule a hearing in August, or as soon as possible on the application for the Use Not Listed permit.

Ms. McKeen stated the Commission needed to decide if an unincorporated neighborhood Association could file an appeal with the Planning Commission, and whether the Tall Timbers Neighborhood Association is aggrieved.

Tall Timbers could not be aggrieved because Haven House has not been granted a permit to operate, said Ms. McKeen. The standard is very simple, said Ms. McKeen. A final decision has to have been made to grant someone a permit, if you want to object to the granting of a permit.

Ms. McKeen urged the Commission to hold a hearing as soon as possible. She noted that the attorney for Haven House, Mr. Spitzfaden, is out of town August 25 through October 1. This puts an undue hardship on the Haven House project, said Ms. McKeen. This would put the project into a seven months waiting period. This is a small nonprofit corporation with a public spirited goal, said Ms. McKeen. And she noted that they are paying rent on this property, they have a grant which they cannot currently use, an application with the Mental Health Trust Fund which they cannot currently process and other items which cannot move forward because they do not have a permit. It may be that eventually CBJ will grant the project a permit and they may not be able to go forward because of the delay anyway, said Ms. McKeen.

TALL TIMBERS REBUTTAL

Mr. Spitzfaden said he hoped the Commission decided that it could go forward with their appeal. He said he did have travel plans, but that he could make an appearance before the Commission before he left on his trip if the Commission decided to hear the Use Not Listed Permit.

III. ADJOURNMENT

The special meeting convened into executive session at 6:06 p.m., from which it adjourned at approximately 7:15 p.m.

**OFFICE OF THE MUNICIPAL CLERK**

155 S. Seward St., Room 202

Phone: (907)586-5278 Fax: (907)586-5385

eMail: Laurie_Sica@ci.juneau.ak.us

RECEIVED

SEP 12 2014

PERMIT CENTER/CDD

Notice of Appeal

This appeal is governed by CBJ 01-50, the Municipal Appellate Code. This code establishes the standards and procedures for appeals. Anyone who files an appeal should be familiar with the appellate code. The clerk can give you a copy of the code.

Attach a copy of the decision being appealed. Do not attach any other documents, exhibits, or additional pages to this form, except for any pages needed to continue the answers to the requested information below. The clerk will accept this form only if the appropriate filing fee is attached. The fee to file an appeal to the assembly is \$250.00. To be timely, an appeal must be filed within 20 days of the date the decision being appealed is filed with the clerk.

Action Being Appealed

Board decisions are appealable: board recommendations and most staff decisions are not.

☐ Agency Appealed From:

Planning Commission sitting as Board of Adjustment

☐ Description and Date of Decision:

Determination that re-entry home is a use not listed in D-5 zone

Notice of Decision dated 8/27/14

Concerned Parties

Identify the people who have an interest in the action being appealed: yourself and others.

☐ Party Filing Appeal Mailing Address Telephone Fax Email

Tall Timbers Neighborhood Assoc., Inc. 217 2nd St Ste 204, Juneau, AK 99801 586-8110, 586-8059 spitz@gci.net

and Andrew Hughes, 3200 Malissa Dr, Juneau, AK 99801, 789-7470, andy.hughes@alaska.gov

☐ Parties Who Won the Decision Appealed Mailing Address Telephone Fax Email

Haven House, Inc., PO Box 22977, Juneau, AK 99802

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S397

Issues on Appeal¹

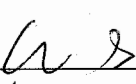

Concisely describe the errors in the decision appealed. Do not argue them: argument will be heard later.

See Attached

Relief Requested

What should the Assembly do with the action being appealed: send it back, modify it, or something else?

See Attached

 Signature	 Date
<i>If you are representing any group, or a person other than yourself, you must sign a notarized statement that you are authorized to represent them.</i>	

- 1 01.50.070 STANDARD OF REVIEW AND BURDEN OF PROOF. (a) The appeal agency may set aside the decision being appealed only if:
- (1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
 - (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency of the basis upon which the decision appealed from was made; or
 - (3) The agency failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.
- (b) The burden of proof is on the appellant. (Serial No. 92-36, 2 (part), 1992).1

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NOTICE OF APPEAL ATTACHMENT

Issues On Appeal

The proposed Haven House use of a re-entry home for persons coming out of prison is not a use not listed as it is not of the same general character as any permitted use in the D-5 zone, and hence the requirements of Code 49.20.320 have not been met. Any limitation of the use to women coming out of prison is a violation of equal protection and due process and statutory prohibitions on discrimination based on gender. Code 49.20.320 is an unconstitutional delegation of powers to the Board of Adjustment, and as such the ordinance is not enforceable.

The decision is a final decision capable of being appealed.

Relief Requested

The Assembly reverse the decision of the Board of Adjustment and determine the proposed Haven House use of a re-entry home for persons coming out of prison is not a use not listed as it is not of the same general character as any permitted use in the D-5 zone, and hence the requirements of Code 49-20.320 have not been met. The Assembly determine Code 49.20.320 is an unconstitutional delegation of powers to the Board of Adjustment, and as such the ordinance is not enforceable.

Representation Statement

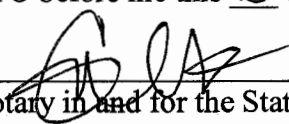
The undersigned is authorized to represent Tall Timbers Neighborhood Association and Andrew Hughes.^{INC.}

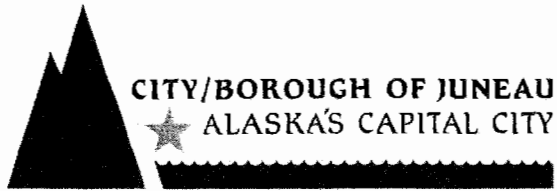
Cordially,


Robert S. Spitzfaden

SUBSCRIBED AND SWORN TO before me this 25 of August 2014, at Juneau, Alaska.




Notary in and for the State of Alaska
My Commission Expires: APR 26



**BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Date: August 26, 2014

File No.: UNL2014 0001

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

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

Legal Description: Tall Timbers 1 Block G Lot 3

Property Address: 3202 Malissa Drive

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

Hearing Date: August 21, 2014

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

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


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

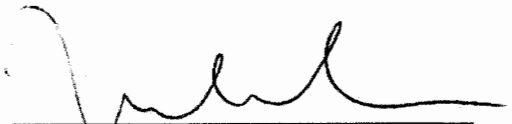
Attachments: August 13, 2014 memorandum from Beth McKibben Community Development, to the CBJ Planning Commission regarding UNL2014 0001.

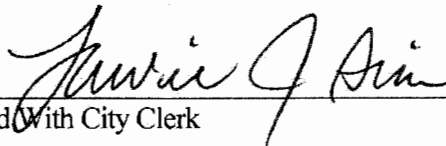
This Notice of Decision is not appealable until the Planning Commission makes a final decision on the Conditional Use permit requested for this transitional housing use. CBJ 01.50.020(b).

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

Project Planner:


Beth McKibben, Planner
Community Development Department


Michael Satre, Chair
Board of Adjustment


Filed With City Clerk

8/27/14
Date

cc: Plan Review

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

**ASSEMBLY AGENDA/MANAGER'S REPORT
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

September 29, 2014 7:00 PM

Assembly Chambers - Municipal Building
Regular Meeting No. 2014-25

Submitted by: _____
Kimberly A. Kiefer
City and Borough Manager

I. FLAG SALUTE

II. ROLL CALL

III. SPECIAL ORDER OF BUSINESS

IV. APPROVAL OF MINUTES

A. **September 8, 2014 Regular Assembly Meeting 2014-24 Minutes**

V. MANAGER'S REQUEST FOR AGENDA CHANGES

VI. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

VII. CONSENT AGENDA

A. Public Requests for Consent Agenda Changes, Other Than Ordinances for Introduction

B. Assembly Requests for Consent Agenda Changes

C. Assembly Action

1. Ordinances for Introduction

- a. **Ordinance 2014-45 An Ordinance Amending the Official Zoning Map of the City and Borough to Change the Zoning of 43 Parcels Along the North Douglas Highway, between mile 1.3 and 1.9, from RR(T)D3, RR(T)D15, and D1(T)D3 to D-3, D-5, and D-15.**

In December 2013, the Community Development Department initiated a rezone of 43 parcels along North Douglas Highway extending from mile 1.3 to 1.9. The parcels are currently identified as transition zones, RR(T)D-3, RR(T)D-15, and D-1(T)D-3.

On June 25, staff held an informational meeting to discuss the proposed rezoning with all property owners in the affected area. No one from the public participated in the meeting.

The Planning Commission heard the rezone proposal at its August 26, regular meeting. The Planning Commission recommended approving the rezone with modifications, up-zoning a portion of the lots currently zoned D-1(T)D-3 to D-5 and a portion of the lots zoned RR(T)D-3 to D-15. The Planning Commission

believed the modifications were, needed for consistency with the Land Use Maps of the Comprehensive Plan.

Ordinance 2014-45 reflects the Planning Commission's recommendations.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- b. **Ordinance 2014-46 An Ordinance Amending the Official Zoning Map of the City and Borough to Change the Zoning of Black Bear, Lot 3, Located at the South End of Silver Street in the Northwest Mendenhall Valley, from D-1 to D-3.**

In July 2014, the applicant applied to have Lot 3 of Black Bear Subdivision, located at the south end of Silver Street, rezoned from D-1 to D-3. On July 28, staff held an informational meeting to discuss the proposed rezoning with all property owners in the affected area.

The areas surrounding the lot at issue are either zoned D-1 or D-3. There are single-family developments in the D-3 neighborhood north of the proposed rezone, which would be consistent with the requested D-3 zoning for Lot 3.

The Planning Commission considered the rezone application at its August 26th, and September 9th meetings. The Planning Commission recommends that the Assembly approve the rezone of the subject parcel from D-1 to D-3.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- c. **Ordinance 2014-24(L) An Ordinance Transferring the Sum of \$650,000 of Budget Reserve Fund Balance from the Sales Tax Special Revenue Fund to the General Fund.**

This ordinance would transfer \$650,000 to the General Fund from the Sales Tax Fund in the FY15 Budget.

On June 30, 2014, the Assembly adopted Ordinance 2013-11(AT), effectively consolidating all budget reserve funds in the General Fund. The objective was to make it simple for the Assembly, public and bond rating agencies to determine the balance of the reserve.

When addressing the consolidation of the FY15 \$650,000 allocation, revenue from the 2012 voter-approved 1% sales tax to the budget reserve was not included. A supplemental appropriation is needed to address this. In the future, the sales tax allocation to the budget reserve will be included in the overall operating budget adopted by the Assembly.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- d. **Ordinance 2014-24(M) An Ordinance Appropriating to the Manager the sum of \$17,032 as Partial Funding for Research and Mapping of the Evergreen Cemetery for Historic Preservation Purposes, Grant Funding Provided by the State of Alaska, Department of Natural Resources.**

The Evergreen Cemetery Mapping project received funds from the Certified Local Government grant program administered by the Alaska Office of History and Archaeology to hire a consultant to locate and map graves in the Evergreen Cemetery, as well as design and create a pamphlet highlighting key people buried who have ties to Juneau's historic structures.

The work performed under this project will be a combined effort of a contracted mapping consultant, a contracted design professional, the Historic Resources Advisory Committee, Parks and Recreation Department, the City Museum, and the Project Manager. Total project costs are estimated to be \$28,386. In accordance with using Certified Local Government Funds the City is required to provide a 40% match, which will be fulfilled through staff wages from the varied CBJ departments' operating budget.

Total project costs include a 10% State administrative surcharge.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- e. **Ordinance 2014-24(N) An Ordinance Appropriating to the Manager the Sum of \$1,800,000 as Funding for Water Main Replacement - Egan Drive – 10th to Main, Loan Funding Provided by the State of Alaska Department of Environmental Conservation, Alaska Drinking Water Fund State Revolving Fund.**

This Ordinance would appropriate to the Manager \$1,800,000 of loan funds from the State of Alaska, Department of Environmental Conservation (ADEC), Alaska Drinking Water Fund (ADWF) State Revolving Fund.

The loan funds would be used to fund the construction phase of the Water Main Replacement – Egan Drive - 10th to Main Street Capital Improvement Project.

The terms of the low interest loan are 20 years at 1.5-percent per annum.

Assembly Resolution 2668, adopted on November 25, 2013, authorized the City Manager to enter into this loan agreement with ADEC.

The Public Works and Facilities Committee reviewed this action at its June 2, 2014 meeting and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- f. **Ordinance 2014-24(O) An Ordinance Appropriating to the Manager the Sum of \$2,000,000 as Funding for the Last Chance Basin Well Field Capacity Improvements Project, Loan Funding Provided by the State of Alaska Department of Environmental Conservation, Alaska Drinking Water Fund State Revolving Fund.**

This Ordinance would appropriate to the Manager \$2,000,000 of loan funds from the State of Alaska, Department of Environmental Conservation (ADEC), Alaska Drinking Water Fund (ADWF) State Revolving Fund.

The loan funds would be used to fund the Last Chance Basin Well Field Capacity Improvements Project.

The terms of the low interest loan are 20 years at 1.5-percent per annum.

Assembly Resolution 2679, adopted on February 24, 2014, authorized the City Manager to enter into this loan agreement with ADEC.

The Public Works and Facilities Committee reviewed this action at its June 2, 2014 meeting, and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- g. **Ordinance 2014-24(P) - An Ordinance Forfeiting a \$2,500 Performance Bond and Appropriating to the Manager the Sum of \$2,500 as Funding to Complete the Installation of Water Service on Lot 7A, Curry Subdivision according to Plat 95-3, Juneau, Recording District, First Judicial District, State of Alaska, Funding Provided by a Cash Bond.**

This Ordinance would appropriate to the Manager \$2,500 for the installation of water service for Lot 7A, Curry Subdivision. The funds are a cash bond that were posted to guarantee the installation of a water service. The original subdivider of the property posted the bond, but failed to install the required water service and is non-responsive. The new owner of the property has agreed to accept the funds and install the water service.

The Public Works and Facilities Committee heard this request at its September 22, 2014 regular meeting and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

2. Bid Award

- a. **B15-027 - Term Contract for Trucking Services**

The purpose of this bid is to establish a term contract for dump trucks with drivers, primarily for snow removal as well as other needs such as, debris hauling or material hauling. All services will be used on an as needed basis. The Streets Division of Public Works will be the primary user of this contract; however other departments may use the contract for trucking services as needed.

The resulting contract would be awarded based on a "per hour" payment schedule. \$109,000 was committed for this project, based on prior term contract pricing. Final actual costs would be dependent on the amount of snowfall and CBJ hauling needs.

The Manager recommends the award of Bid No. 15-027 to Alaska Juneau Construction, Inc., for \$131,668.75.

VIII. PUBLIC HEARING

A. Ordinance 2014-14(c) An Ordinance Amending the Land Use Code Relating to

Rezoning Procedures.

This ordinance was introduced on May 19, 2014, and referred to the Assembly Committee of the Whole on June 16th. At that meeting, the Assembly Committee of the Whole discussed the matter in a joint meeting with the Planning Commission, and forwarded the matter to the Assembly for public hearing on June 30, 2014. At the June 30th Assembly meeting, the Assembly referred the matter back to the Committee of the Whole. The Committee of the Whole considered the ordinance at its July 28th meeting and decided to continue its discussion to the September 22nd Committee of the Whole meeting.

The Committee of the Whole, at its September 22nd meeting, recommended forwarding the ordinance, with changes, to the full Assembly for approval. Version (c) reflects the changes, in bold font, recommended by the Committee of the Whole.

The Manager recommends this ordinance be adopted.

B. Ordinance 2014-32(e) An Ordinance Amending the Land Use Code of the City and Borough to Provide for the Regulation of Wireless Communication Facilities and Providing for a Penalty.

Ordinance 2014-32 was introduced on June 9, 2014, set for public hearing on June 30th, and discussed by the Committee of the Whole in a joint work session with the Planning Commission on June 16th. At the June 30th Assembly meeting, public testimony was heard and the Assembly referred the ordinance back to the Committee of the Whole. The Committee of the Whole considered the ordinance at its July 28th meeting, after which the Committee moved to continue its consideration of the ordinance to its September 22nd meeting.

At the September 22nd meeting, the Committee discussed a number of proposed amendments to the ordinance. At the close of the meeting, the Committee approved forwarding the ordinance to the Assembly along with its proposed amendments for public hearing on September 29th.

The motion to move the ordinance to the September 29th hearing, as well as a motion to propose amending Table 1 of the ordinance with respect to towers located in the Rural Reserve districts, was passed by the Committee after 9 p.m. At 9 p.m., the doors to City Hall were inadvertently locked without the Committee's knowledge.

Subsection (f) of the Open Meetings Act states that "Action taken contrary to [the Open Meetings Act] is voidable."

Subsection (g), however, reads: "Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity."

Since the Assembly was sitting as the Committee of the Whole, which is an advisory body to the Assembly (for example, the Committee cannot amend an ordinance, it can only recommend amendments to be adopted by the Assembly), the last two motions voted on at the Committee of the Whole meeting are not voidable under the Open Meetings Act. Additionally, since the motions to amend the ordinance were only recommendations to amend, the Assembly must, as per its usual practice, consider and vote on the proposed amendments.

Version (e) of Ordinance 2014-32 includes all of the changes previously considered at the June 16th, June 30th, and July 28th meetings. In addition, it reflects the changes recommended by the Committee of the Whole on September 22nd. The changes recommended by the Committee at the September 22, 2014 meeting were as follows:

- 1) An amendment to Table 1 (49.65.950) with respect to towers in Rural Reserve districts. Instead of specifying the minimum distance the towers in RR districts may be to the nearest dwelling, the ordinance now references the minimum distance to a recognized neighborhood association established in accordance with CBJ 11.35. (Note that the reference to neighborhood associations in 49.65.970(e)(18) was amended to include a reference to CBJ 11.35 for consistency.)
- 2) The section on photo-simulation representations in 49.65.970 was amended to clarify that the director would determine the reference locations for the pictorial representations. (The section was also amended by to fix some typographical and grammar errors and for clarity.)
- 3) The balloon test requirement was deleted.
- 4) The Committee also approved forwarding the changes made as a result of its July 28, 2014 meeting (indicated in bold type.)

The Manager recommends this ordinance be adopted.

C. Ordinance 2014-40 An Ordinance Amending the Public Ways and Property Code Relating to Right-of-Way Encroachment Permits.

This ordinance would amend CBJ 62.55 with respect to right-of-way encroachment permits. The proposed amendments would expand the availability of such permits, especially when the street vacation requirements (CBJ 49.15.450) cannot be satisfied.

The current purpose of CBJ 62.55 is to make a parcel that had an encroachment into the right-of-way prior to 1960 a marketable parcel, thus enabling prospective buyers the opportunity to obtain a traditional 30-year loan.

The proposed amendments would expand the availability of an encroachment permit in two ways. First, it makes the permits available to parcels that encroached into the right-of-way prior to 1990, instead of 1960. Second, it removes the 30 year permit duration. Once obtained, an encroachment permit would be perpetual unless the structure is substantially damaged.

The Public Works and Facilities Committee reviewed this ordinance at its August 18, 2014 meeting, and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be adopted.

D. Ordinance 2014-43 An Ordinance Amending the Penal Code Relating to Offenses Against Property.

This ordinance would make the CBJ penal code with respect to certain property crimes consistent with State law. The ordinance would make the CBJ code sections directed at larceny and related offenses (specifically: larceny of money or property; concealment of merchandise; issuing a bad check; theft of services; and criminal mischief) consistent with

newly enacted State law (SB 64).

Additionally, this ordinance makes certain housekeeping changes to correct inconsistencies both internally in the code, as well as with State law.

This ordinance would:

1. Amend the threshold levels for larceny and related crimes and impose a cap for A misdemeanors in order to be consistent with State law. The threshold level for an A misdemeanor would be more than \$250 but less than \$750, and for a B misdemeanor, would be less than \$250.
2. Provide that if the value of the item or service stolen or concealed is less than \$250, but the person being charged has been convicted and sentenced with two or more convictions for larceny or a related offense in the preceding five years, the offense would be charged as an A misdemeanor.
3. Amends CBJ 42.15.025 to be an A misdemeanor rather than a B, in order to be consistent with State law.
4. Amends certain code sections to remove the distinction between A and B misdemeanor charges based on dollar amount thresholds. The purpose of this amendment is to make these code sections (retention of lost property and theft by deception) consistent with State law.

The Manager recommends this ordinance be adopted.

E. Ordinance 2013-11(BF) An Ordinance Appropriating to the Manager the Sum of \$4,881,535 to Fund the City and Borough of Juneau's Fiscal Year 2014 Public Employee Retirement System Contribution; Funding Provided by the Alaska Department of Administration.

This ordinance would appropriate \$4,881,535, which is the State's FY14 13.68% on-behalf PERS benefit paid for CBJ. Funding is provided by the Alaska Department of Administration which was authorized by passage of HB65 during the 2013 legislative session.

This is a housekeeping ordinance to properly account for this on-behalf payment and has no impact on the CBJ's finances.

The Manager recommends this ordinance be adopted.

F. Ordinance 2014-24(I) An Ordinance Appropriating to the Manager the Sum of \$2,792 as Funding for Travel, Training, and Technology for the Juneau Public Library; Grant Funding Provided by the Alaska State Library.

This ordinance would appropriate an additional \$2,792 in grant funds from the Alaska State Library for employee travel, training, and technology funding.

The current Public Library Assistance grant operating budget for FY15 is \$17,158. This ordinance would increase the grant budget to \$19,950.

There is no CBJ match requirement for this grant.

The Manager recommends this ordinance be adopted.

G. Ordinance 2014-24(J) An Ordinance Appropriating to the Manager the Sum of \$3,228 as Funding for the Reimbursement of Bullet Proof Vests for JPD Officers, Funding Provided by the U.S. Department of Justice.

This ordinance would appropriate \$3,228 as partial reimbursement for bullet proof vests for JPD Officers.

This funding is provided by the U.S. Department of Justice. The Department of Justice offers a Bulletproof Vest Partnership program to law enforcement agencies across the nation. JPD has a mandatory vest wear-policy which makes our agency eligible for this partial reimbursement. JPD's estimated total cost for FY15 is \$6,744.

The Manager recommends this ordinance be adopted.

H. Ordinance 2014-24(K) An Ordinance Appropriating to the Manager the Sum of \$67,812 as Funding for the Purchase of Used Equipment to Facilitate the Wheelchair Boarding of Passengers at the Juneau International Airport, Grant Funding Provided by Federal Aviation Administration and Match by Alaska Department of Transportation.

This ordinance would appropriate \$67,812 to the Terminal Expansion Capital Project. Funding is provided as follows:

Federal Aviation Administration grant:	\$65,625
--	----------

Alaska Department of Transportation match:	\$ 2,187
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These funds would have been used to purchase used equipment to facilitate the wheelchair boarding of passengers from the two gates that have no boarding bridge to the terminal. The FAA was slated to fund 93.75% of the project, with the remainder split between Alaska DOT and the Juneau International Airport.

The Airport Board reviewed this request at its August 13, 2014 meeting and recommended forwarding it to the full Assembly for approval. However since that time, the FAA notified the CBJ that the federal funds are not available at this time.

As the funds are no longer available, the Assembly should table or postpone indefinitely this ordinance.

IX. UNFINISHED BUSINESS

A. Zenk et.al. v Planning Commission - Appeal Of Notice Of Decision Approving A Conditional Use Permit USE20130027 To Landscape Alaska For A Commercial Greenhouse In A D-3 Zoning District.

On February 11, 2014, the Planning Commission issued a final decision granting Conditional Use Permit USE20130027 for a commercial greenhouse in a D-3 zoning district to David Lendrum. A petitioner's group including members Anthony Zenk, G Ole Olson, David W. Wilson, Ruth Baumgartner and Elizabeth Miyasato, filed a timely Notice of Appeal of the decision with the Municipal Clerk's Office on February 26th.

The Assembly accepted the appeal and appointed Assemblymember Loren Jones as the presiding officer at its regular meeting of March 17, 2014. The Assembly held a hearing on August 18th. The draft decision was served on the parties pursuant to CBJ 01.50.140.

The packet contains the draft Notice of Decision, and comments from the appellants and the appellee-intervener.

CBJ Code 01.50.140, Decisions on Appeal, provides:

(b) *Appeal agency decisions.* In an appeal heard by the appeal agency:

(1) The attorney, if any, who advised the appeal agency at the hearing may be present during the deliberation on the decision of the case, and if requested, shall assist and advise the appeal agency;

(2) A member of the appeal agency who has not heard the evidence in person at the hearing may not participate in the decision;

(3) Deliberation shall be in executive session unless the agency votes to deliberate in open session; and

(4) The appeal agency shall itself prepare and adopt a written decision no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any; or the appeal agency may direct the attorney who advised the appeal agency, if any, or the prevailing party to prepare a proposed decision. A proposed decision prepared by the advising attorney or the prevailing party shall be filed with the municipal clerk and served on each party to the appeal or the party's representative no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any. The parties may file written objections to the proposed decision with the municipal clerk within five days after service of the proposed decision. The proposed decision and any objections to the proposed decision shall be placed before the appeal agency at the first regular meeting at which the matter may be scheduled or at a special meeting called for that purpose.

X. NEW BUSINESS

A. Notice of Appeal - Tall Timbers N.A. v. Planning Commission - Board of Adjustment - UNL20140001

On August 26, 2014, the Planning Commission, acting as the Board of Adjustment, made a "Similar Use Determination" under CBJ 49.20.320 as to Haven House, Inc.'s application to provide re-entry housing for women coming out of prison in the D5 zoning district per CBJ 49.20.320 (UNL 2014-0001). The Board's Notice of Decision indicated that the decision was not appealable until a final decision is made on the conditional use permit requested by Haven House, Inc., for its transitional housing use. The public hearing on the conditional use permit application is scheduled for October 14th. (USE 2014-0008).

On September 15th, Tall Timbers Neighborhood Association filed an appeal of the Board of Adjustment's unlisted use determination.

CBJ 01.50.020 provides that appeals "shall be filed only from a final agency decision." CBJ 01.50.030(e) provides that within 30 days of receipt of a notice of appeal, you must provide notice of the acceptance or rejection of the appeal (and if the latter, the reasons for rejection.) CBJ 01.50.030(e)(2) states that you must liberally construe the notice of appeal in order to preserve the rights of appellants and if, after doing so, you find that there has been a failure to comply with the appellate rules, or if the notice of appeal does not state grounds upon which any of the relief requested may be granted, you may reject the appeal.

The City Attorney recommends that the appeal be rejected, without prejudice, as untimely and unripe. The Board of Adjustment's similar use determination is not dispositive.

Though the determination results in Haven House, Inc.'s ability to apply for a conditional use permit, the ultimate decision as to whether the use will be permitted has not been made. CBJ 49.15.330 states "a conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses."

The Board's similar use determination is subsumed in the issue coming before the Commission on October 14th. The Commission's final decision on the proposed use, including its similar use determination, would be appropriately appealable after a decision in USE 2014-0008.

Should the Assembly decline to hear the appeal at this time, the notice should make clear that the Board of Adjustment's similar use determination will be appealable after the Commission issues a final decision in USE 2014-0008.

Alternatively, if you decide to accept the appeal, you must then decide whether the Assembly will hear the appeal itself or if it will assign the appeal to a hearing officer. If you decide to hear the appeal yourselves, you will be sitting in your quasi-judicial capacity and must avoid discussing the case outside of the hearing process. Additionally, you must comply with section 01.50.230 on impartiality.

The City Attorney recommends that the Assembly reject this appeal, without prejudice, as untimely and unripe.

XI. STAFF REPORTS

XII. ASSEMBLY REPORTS

- A. Mayor's Report
- B. Committee Reports
- C. Liaison Reports
- D. Presiding Officer Reports

XIII. ASSEMBLY COMMENTS AND QUESTIONS

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

XV. EXECUTIVE SESSION

- A. **Honsinger Pond Appeal Update from City Attorney**
- B. **Gastineau Apartments Update from City Attorney**

XVI. ADJOURNMENT

Note: Agenda packets are available for review online at www.juneau.org.

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city_clerk@ci.juneau.ak.us

**ASSEMBLY AGENDA/MANAGER'S REPORT
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Notice of Appeal - Tall Timbers N.A. v. Planning Commission - Board of Adjustment -
UNL20140001

MANAGER'S REPORT:

On August 26, 2014, the Planning Commission, acting as the Board of Adjustment, made a "Similar Use Determination" under CBJ 49.20.320 as to Haven House, Inc.'s application to provide re-entry housing for women coming out of prison in the D5 zoning district per CBJ 49.20.320 (UNL 2014-0001). The Board's Notice of Decision indicated that the decision was not appealable until a final decision is made on the conditional use permit requested by Haven House, Inc., for its transitional housing use. The public hearing on the conditional use permit application is scheduled for October 14th. (USE 2014-0008).

On September 15th, Tall Timbers Neighborhood Association filed an appeal of the Board of Adjustment's unlisted use determination.

CBJ 01.50.020 provides that appeals "shall be filed only from a final agency decision." CBJ 01.50.030(e) provides that within 30 days of receipt of a notice of appeal, you must provide notice of the acceptance or rejection of the appeal (and if the latter, the reasons for rejection.) CBJ 01.50.030(e)(2) states that you must liberally construe the notice of appeal in order to preserve the rights of appellants and if, after doing so, you find that there has been a failure to comply with the appellate rules, or if the notice of appeal does not state grounds upon which any of the relief requested may be granted, you may reject the appeal.

The City Attorney recommends that the appeal be rejected, without prejudice, as untimely and unripe. The Board of Adjustment's similar use determination is not dispositive. Though the determination results in Haven House, Inc.'s ability to apply for a conditional use permit, the ultimate decision as to whether the use will be permitted has not been made. CBJ 49.15.330 states "a conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses."

The Board's similar use determination is subsumed in the issue coming before the Commission on October 14th. The Commission's final decision on the proposed use, including its similar use determination, would be appropriately appealable after a decision in USE 2014-0008.

Should the Assembly decline to hear the appeal at this time, the notice should make clear that the Board of Adjustment's similar use determination will be appealable after the Commission issues a final decision in USE 2014-0008.

Alternatively, if you decide to accept the appeal, you must then decide whether the Assembly will hear the appeal itself or if it will assign the appeal to a hearing officer. If you decide to hear the appeal yourselves, you will be sitting in your quasi-judicial capacity and must avoid discussing the case outside of the hearing process. Additionally, you must comply with section 01.50.230 on impartiality.

RECOMMENDATION:

The City Attorney recommends that the Assembly reject this appeal, without prejudice, as

untimely and unripe.

ATTACHMENTS:

	Description	Upload Date	Type
<input type="checkbox"/>	Notice of Appeal - Tall Timbers NA v PC BOA re: Haven House, Inc. UNL20140001	9/15/2014	Appeal

**OFFICE OF THE MUNICIPAL CLERK**

155 S. Seward St., Room 202

Phone: (907)586-5278 Fax: (907)586-5385

eMail: Laurie_Sica@ci.juneau.ak.us

RECEIVED

SEP 12 2014

PERMIT CENTER/CDD

Notice of Appeal

This appeal is governed by CBJ 01-50, the Municipal Appellate Code. This code establishes the standards and procedures for appeals. Anyone who files an appeal should be familiar with the appellate code. The clerk can give you a copy of the code.

Attach a copy of the decision being appealed. Do not attach any other documents, exhibits, or additional pages to this form, except for any pages needed to continue the answers to the requested information below. The clerk will accept this form only if the appropriate filing fee is attached. The fee to file an appeal to the assembly is \$250.00. To be timely, an appeal must be filed within 20 days of the date the decision being appealed is filed with the clerk.

Action Being Appealed

Board decisions are appealable: board recommendations and most staff decisions are not.

☐ Agency Appealed From:

Planning Commission sitting as Board of Adjustment

☐ Description and Date of Decision:

Determination that re-entry home is a use not listed in D-5 zone

Notice of Decision dated 8/27/14

Concerned Parties

Identify the people who have an interest in the action being appealed: yourself and others.

☐ Party Filing Appeal Mailing Address Telephone Fax Email

Tall Timbers Neighborhood Assoc., Inc. 217 2nd St Ste 204, Juneau, AK 99801 586-8110, 586-8059 spitz@gci.net

and Andrew Hughes, 3200 Malissa Dr, Juneau, AK 99801, 789-7470, andy.hughes@alaska.gov

☐ Parties Who Won the Decision Appealed Mailing Address Telephone Fax Email

Haven House, Inc., PO Box 22977, Juneau, AK 99802

-over-

Issues on Appeal¹

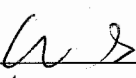

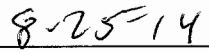
Concisely describe the errors in the decision appealed. Do not argue them: argument will be heard later.

See Attached

Relief Requested

What should the Assembly do with the action being appealed: send it back, modify it, or something else?

See Attached

		
Signature		Date

If you are representing any group, or a person other than yourself, you must sign a notarized statement that you are authorized to represent them.

- 1 01.50.070 STANDARD OF REVIEW AND BURDEN OF PROOF. (a) The appeal agency may set aside the decision being appealed only if:
- (1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
 - (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency of the basis upon which the decision appealed from was made; or
 - (3) The agency failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.
- (b) The burden of proof is on the appellant. (Serial No. 92-36, 2 (part), 1992).1

-over-

NOTICE OF APPEAL ATTACHMENT

Issues On Appeal

The proposed Haven House use of a re-entry home for persons coming out of prison is not a use not listed as it is not of the same general character as any permitted use in the D-5 zone, and hence the requirements of Code 49.20.320 have not been met. Any limitation of the use to women coming out of prison is a violation of equal protection and due process and statutory prohibitions on discrimination based on gender. Code 49.20.320 is an unconstitutional delegation of powers to the Board of Adjustment, and as such the ordinance is not enforceable.

The decision is a final decision capable of being appealed.

Relief Requested

The Assembly reverse the decision of the Board of Adjustment and determine the proposed Haven House use of a re-entry home for persons coming out of prison is not a use not listed as it is not of the same general character as any permitted use in the D-5 zone, and hence the requirements of Code 49-20.320 have not been met. The Assembly determine Code 49.20.320 is an unconstitutional delegation of powers to the Board of Adjustment, and as such the ordinance is not enforceable.

Representation Statement

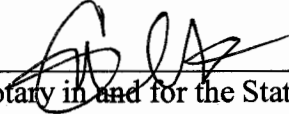
The undersigned is authorized to represent Tall Timbers Neighborhood Association and Andrew Hughes.^{INC.}

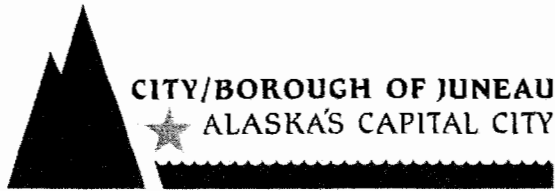
Cordially,


Robert S. Spitzfaden

SUBSCRIBED AND SWORN TO before me this 25 of August 2014, at Juneau, Alaska.




Notary in and for the State of Alaska
My Commission Expires: APR 26



**BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Date: August 26, 2014

File No.: UNL2014 0001

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

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

Legal Description: Tall Timbers 1 Block G Lot 3

Property Address: 3202 Malissa Drive

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

Hearing Date: August 21, 2014

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

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


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

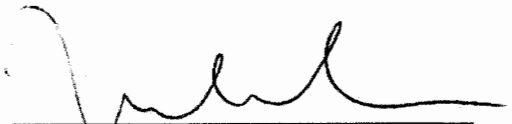
Attachments: August 13, 2014 memorandum from Beth McKibben Community Development, to the CBJ Planning Commission regarding UNL2014 0001.

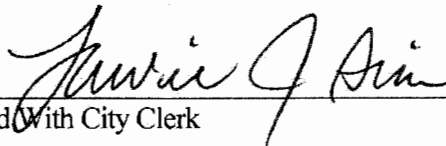
This Notice of Decision is not appealable until the Planning Commission makes a final decision on the Conditional Use permit requested for this transitional housing use. CBJ 01.50.020(b).

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

Project Planner:


Beth McKibben, Planner
Community Development Department


Michael Satre, Chair
Board of Adjustment


Filed With City Clerk

8/27/14
Date

cc: Plan Review

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

THE CITY AND BOROUGH OF JUNEAU, ALASKA

Meeting Minutes - September 29, 2014

MEETING NO. 2014-25: The Regular Meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 7:00 p.m. by Mayor Merrill Sanford.

I. ROLL CALL

Assembly Present: Mary Becker, Karen Crane, Loren Jones (teleconference), Jesse Kiehl, Jerry Nankervis (teleconference), Merrill Sanford, Carlton Smith, Kate Troll and Randy Wanamaker.

Assembly Absent: None.

Staff Present: Rob Steedle, Deputy City Manager; Amy Mead, Municipal Attorney; Laurie Sica, Municipal Clerk; Beth McEwen, Deputy Clerk; Bob Bartholomew, Finance Director; Hal Hart, Community Development Director; Travis Goddard, Planning Manager; Beth McKibben, Planner; Eric Feldt, Planner; Rorie Watt, Engineering Director; Greg Chaney, Lands and Resources Manager; and Matt Lillard, Eaglecrest Ski Area Manager.

II. SPECIAL ORDER OF BUSINESS

None.

III. APPROVAL OF MINUTES

A. September 8, 2014 Regular Assembly Meeting 2014-24 Minutes

Hearing no objection, the minutes of the September 8, 2014 Regular Assembly Meeting 2014-24 were approved.

IV. MANAGER'S REQUEST FOR AGENDA CHANGES

None.

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None.

VI. CONSENT AGENDA

A. Public Requests for Consent Agenda Changes, Other Than Ordinances for Introduction

None.

B. Assembly Requests for Consent Agenda Changes

None.

C. Assembly Action

MOTION, by Becker, to adopt the consent agenda. Hearing no objections, the consent agenda was adopted.

1. Ordinances for Introduction

- a. Ordinance 2014-45 An Ordinance Amending the Official Zoning Map of the City and Borough to Change the Zoning of 43 Parcels Along the North Douglas Highway, between mile 1.3 and 1.9, from RR(T)D3, RR(T)D15, and D1(T)D3 to D-3, D-5, and D-15.

In December 2013, the Community Development Department initiated a rezone of 43 parcels along North Douglas Highway extending from mile 1.3 to 1.9. The parcels are currently identified as transition zones, RR(T)D-3, RR(T)D-15, and D-1(T)D-3.

On June 25, staff held an informational meeting to discuss the proposed rezoning with all property owners in the affected area. No one from the public participated in the meeting.

The Planning Commission heard the rezone proposal at its August 26, regular meeting. The Planning Commission recommended approving the rezone with modifications, up-zoning a portion of the lots currently zoned D-1(T)D-3 to D-5 and a portion of the lots zoned RR(T)D-3 to D-15. The Planning Commission believed the modifications were, needed for consistency with the Land Use Maps of the Comprehensive Plan.

Ordinance 2014-45 reflects the Planning Commission's recommendations.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- b. Ordinance 2014-46 An Ordinance Amending the Official Zoning Map of the City and Borough to Change the Zoning of Black Bear, Lot 3, Located at the South End of Silver Street in the Northwest Mendenhall Valley, from D-1 to D-3.

In July 2014, the applicant applied to have Lot 3 of Black Bear Subdivision, located at the south end of Silver Street, rezoned from D-1 to D-3. On July 28, staff held an informational meeting to discuss the proposed rezoning with all property owners in the affected area.

The areas surrounding the lot at issue are either zoned D-1 or D-3. There are single-family developments in the D-3 neighborhood north of the proposed rezone, which would be consistent with the requested D-3 zoning for Lot 3.

The Planning Commission considered the rezone application at its August 26th, and September 9th meetings. The Planning Commission recommends that the Assembly approve the rezone of the subject parcel from D-1 to D-3.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- c. Ordinance 2014-24(L) An Ordinance Transferring the Sum of \$650,000 of Budget Reserve Fund Balance from the Sales Tax Special Revenue Fund to the General Fund.

This ordinance would transfer \$650,000 to the General Fund from the Sales Tax Fund in the FY15 Budget.

On June 30, 2014, the Assembly adopted Ordinance 2013-11(AT), effectively consolidating all budget reserve funds in the General Fund. The objective was to make it simple for the Assembly, public and bond rating agencies to determine the balance of the reserve.

When addressing the consolidation of the FY15 \$650,000 allocation, revenue from the 2012 voter-approved 1% sales tax to the budget reserve was not included. A supplemental appropriation is needed to address this. In the future, the sales tax allocation to the budget reserve will be included in the overall operating budget adopted by the Assembly.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- d. Ordinance 2014-24(M) An Ordinance Appropriating to the Manager the sum of \$17,032 as Partial Funding for Research and Mapping of the Evergreen Cemetery for Historic Preservation Purposes, Grant Funding Provided by the State of Alaska, Department of Natural Resources.

The Evergreen Cemetery Mapping project received funds from the Certified Local Government grant program administered by the Alaska Office of History and Archaeology to hire a consultant to locate and map graves in the Evergreen Cemetery, as well as design and create a pamphlet highlighting key people buried who have ties to Juneau's historic structures.

The work performed under this project will be a combined effort of a contracted mapping consultant, a contracted design professional, the Historic Resources Advisory Committee, Parks and Recreation Department, the City Museum, and the Project Manager. Total project costs are estimated to be \$28,386. In accordance with using Certified Local Government Funds the City is required to provide a 40% match, which will be fulfilled through staff wages from the varied CBJ departments' operating budget.

Total project costs include a 10% State administrative surcharge.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- e. Ordinance 2014-24(N) An Ordinance Appropriating to the Manager the Sum of \$1,800,000 as Funding for Water Main Replacement - Egan Drive – 10th to Main, Loan Funding Provided by the State of Alaska Department of Environmental Conservation, Alaska Drinking Water Fund State Revolving Fund.

This Ordinance would appropriate to the Manager \$1,800,000 of loan funds from the State of Alaska, Department of Environmental Conservation (ADEC), Alaska Drinking Water Fund (ADWF) State Revolving Fund.

The loan funds would be used to fund the construction phase of the Water Main Replacement – Egan Drive - 10th to Main Street Capital Improvement Project.

The terms of the low interest loan are 20 years at 1.5-percent per annum.

Assembly Resolution 2668, adopted on November 25, 2013, authorized the City

Manager to enter into this loan agreement with ADEC.

The Public Works and Facilities Committee reviewed this action at its June 2, 2014 meeting and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- f. Ordinance 2014-24(O) An Ordinance Appropriating to the Manager the Sum of \$2,000,000 as Funding for the Last Chance Basin Well Field Capacity Improvements Project, Loan Funding Provided by the State of Alaska Department of Environmental Conservation, Alaska Drinking Water Fund State Revolving Fund.

This Ordinance would appropriate to the Manager \$2,000,000 of loan funds from the State of Alaska, Department of Environmental Conservation (ADEC), Alaska Drinking Water Fund (ADWF) State Revolving Fund.

The loan funds would be used to fund the Last Chance Basin Well Field Capacity Improvements Project.

The terms of the low interest loan are 20 years at 1.5-percent per annum.

Assembly Resolution 2679, adopted on February 24, 2014, authorized the City Manager to enter into this loan agreement with ADEC.

The Public Works and Facilities Committee reviewed this action at its June 2, 2014 meeting, and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

- g. Ordinance 2014-24(P) - An Ordinance Forfeiting a \$2,500 Performance Bond and Appropriating to the Manager the Sum of \$2,500 as Funding to Complete the Installation of Water Service on Lot 7A, Curry Subdivision according to Plat 95-3, Juneau, Recording District, First Judicial District, State of Alaska, Funding Provided by a Cash Bond.

This Ordinance would appropriate to the Manager \$2,500 for the installation of water service for Lot 7A, Curry Subdivision. The funds are a cash bond that were posted to guarantee the installation of a water service. The original sub divider of the property posted the bond, but failed to install the required water service and is non-responsive. The new owner of the property has agreed to accept the funds and install the water service.

The Public Works and Facilities Committee heard this request at its September 22, 2014 regular meeting and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be introduced and set for public hearing at the next regular Assembly meeting.

2. Bid Award

a. B15-027 - Term Contract for Trucking Services

The purpose of this bid is to establish a term contract for dump trucks with drivers, primarily for snow removal as well as other needs such as, debris hauling or material hauling. All services will be used on an as needed basis. The Streets Division of Public Works will be the primary user of this contract; however other departments may use the contract for trucking services as needed.

The resulting contract would be awarded based on a "per hour" payment schedule. \$109,000 was committed for this project, based on prior term contract pricing. Final actual costs would be dependent on the amount of snowfall and CBJ hauling needs.

The Manager recommends the award of Bid No. 15-027 to Alaska Juneau Construction, Inc., for \$131,668.75.

VII. PUBLIC HEARING

A. Ordinance 2014-14(c) An Ordinance Amending the Land Use Code Relating to Rezoning Procedures.

This ordinance was introduced on May 19, 2014, and referred to the Assembly Committee of the Whole on June 16th. At that meeting, the Assembly Committee of the Whole discussed the matter in a joint meeting with the Planning Commission, and forwarded the matter to the Assembly for public hearing on June 30, 2014. At the June 30th Assembly meeting, the Assembly referred the matter back to the Committee of the Whole. The Committee of the Whole considered the ordinance at its July 28th meeting and decided to continue its discussion to the September 22nd Committee of the Whole meeting.

The Committee of the Whole, at its September 22nd meeting, recommended forwarding the ordinance, with changes, to the full Assembly for approval. Version (c) reflects the changes, in bold font, recommended by the Committee of the Whole.

The Manager recommends this ordinance be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Becker, to adopt Ordinance 2014-14(c).

MOTION, by Troll, to amend Ordinance 2014-14(c) to change the effective date to read, "...this ordinance shall be effective 30 days after current, outstanding appeals are resolved."

Ms. Troll said she did not want to change any rules mid-stream on any appeals under-way. She understood the reason for the change but wanted to do it in the least disruptive manner. Ms. Mead said the motion was within the Assembly's discretion and there was a current appeal pending that would be directly effected by this ordinance.

Hearing no objections, the amendment passed.

MOTION, by Kiehl, to amend, to insert a new section,

"A challenge of a zoning map amendment is any written communication received by the municipal clerk after notice of a public hearing before the assembly on a zoning map amendment and at least one business day before the time set for the assembly public hearing on the zoning map amendment. In order to be valid, a challenge must object to the zoning map amendment, contain a legal description of the property on behalf of which the protest is made and be signed by the owner of that property, and shall state the basis for the protest.

Assembly approval of a zoning map amendment must be by affirmative vote of six assembly members if the amendment is challenged by the owners of at least one-third in area, excluding rights-of-way, of:

1) the land to which the amendment applies; or

2) the land within 300 feet of the outer boundary of the land to which the amendment applies, excluding land owned by the municipality, except where the municipality joins in the protest."

Mr. Kiehl said he drew from the Municipality of Anchorage Code regarding this motion. This allows that when someone brings forward a rezone to the Assembly, it allows the property owners most impacted to object and if they object in significant quantities, then to make the zoning change would require a super majority of the Assembly, or a vote of six members in the affirmative. The intention is also to defer to the Planning Commission's expertise and review.

Mr. Jones said he did not have the information in front of him and was curious why this was necessary. There are three places in the existing ordinance that provide applicants with a protest of a Planning Commission's recommendation to approve a rezone request and this seems to add a fourth one that doesn't need to be filed until the day before a public hearing. He did not see how the motion contributed or was necessary.

Mr. Kiehl said this was not an additional way to challenge. If the Planning Commission (PC) recommended yes on a rezone it would come before the Assembly as an ordinance. If the PC recommended denial, then someone would have to file to bring forward an ordinance to the Assembly. This amendment would give property owners, either within the rezone area or adjacent to it, the chance to bump up the standard of review, and to demand a higher standard. His concern is that by "bumping up" potentially every rezone to the Assembly the expertise of the PC is replaced by politics.

Mr. Wanamaker said he was troubled by requiring a super majority of the assembly to take action. A super majority was limited to very specific actions, such as emergencies. This places an impediment to people to bring a matter to the Assembly. The more members absent the harder it was to get to an affirmative vote.

The Assembly and Ms. Mead continued discussion on the motion to amend.

Roll call:

Aye: Crane, Kiehl, Troll

Nay: Becker, Jones, Nankervis, Smith, Wanamaker, Sanford

Motion failed, 3 ayes, 6 nays.

Ms. Crane said she could not support this ordinance because there was a lack of clarity as to what the public process would be on these matters. Until one was outlined in the ordinance she could not support it.

Roll call on main motion, as amended:

Aye: Becker, Nankervis, Smith, Troll, Wanamaker, Sanford

Nay: Crane, Jones, Kiehl

Motion passed, 6 ayes, 3 nays.

B. Ordinance 2014-32(e) An Ordinance Amending the Land Use Code of the City and Borough to Provide for the Regulation of Wireless Communication Facilities and Providing for a Penalty.

Ordinance 2014-32 was introduced on June 9, 2014, set for public hearing on June 30th, and discussed by the Committee of the Whole in a joint work session with the Planning Commission on June 16th. At the June 30th Assembly meeting, public testimony was heard and the Assembly referred the ordinance back to the Committee of the Whole. The Committee of the Whole considered the ordinance at its July 28th meeting, after which the Committee moved to continue its consideration of the ordinance to its September 22nd meeting.

At the September 22nd meeting, the Committee discussed a number of proposed amendments to the ordinance. At the close of the meeting, the Committee approved forwarding the ordinance to the Assembly along with its proposed amendments for public hearing on September 29th.

The motion to move the ordinance to the September 29th hearing, as well as a motion to propose amending Table 1 of the ordinance with respect to towers located in the Rural Reserve districts, was passed by the Committee after 9 p.m. At 9 p.m., the doors to City Hall were inadvertently locked without the Committee's knowledge.

Subsection (f) of the Open Meetings Act states that "Action taken contrary to [the Open Meetings Act] is voidable."

Subsection (g), however, reads: "Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity."

Since the Assembly was sitting as the Committee of the Whole, which is an advisory body to the Assembly (for example, the Committee cannot amend an ordinance, it can only recommend amendments to be adopted by the Assembly), the last two motions voted on at the Committee of the Whole meeting are not voidable under the Open Meetings Act. Additionally, since the motions to amend the ordinance were only recommendations to amend, the Assembly must, as per its usual practice, consider and vote on the proposed amendments.

Version (e) of Ordinance 2014-32 includes all of the changes previously considered at the June 16th, June 30th, and July 28th meetings. In addition, it reflects the changes recommended by the Committee of the Whole on September 22nd. The changes

recommended by the Committee at the September 22, 2014 meeting were as follows:

- 1) An amendment to Table 1 (49.65.950) with respect to towers in Rural Reserve districts. Instead of specifying the minimum distance the towers in RR districts may be to the nearest dwelling, the ordinance now references the minimum distance to a recognized neighborhood association established in accordance with CBJ 11.35. (Note that the reference to neighborhood associations in 49.65.970(e)(18) was amended to include a reference to CBJ 11.35 for consistency.)
- 2) The section on photo-simulation representations in 49.65.970 was amended to clarify that the director would determine the reference locations for the pictorial representations. (The section was also amended by to fix some typographical and grammar errors and for clarity.)
- 3) The balloon test requirement was deleted.
- 4) The Committee also approved forwarding the changes made as a result of its July 28, 2014 meeting (indicated in bold type.)

The Manager recommends this ordinance be adopted.

Public Comment:

Sue Ann Randall spoke in favor of the balloon test in addition to the photo simulation. She said that photo simulation in the case of the tower on Spuhn Island failed. She spoke on behalf of residents in neighborhoods in rural reserve. She spoke about the negative affects of the flashing strobe lights and said she had trouble sleeping and could not leave her windows open to see the view from their home. She said her sister who had epilepsy could not stay at her home because of the view of the flashing light that could cause seizures. She asked the Assembly to have empathy with her situation.

Margo Waring thanked everyone for their patience in working on this ordinance. She provided additional suggestions, which included:

- Require a post installation testing to determine if a tower is functioning properly.
- Require that lighting on older towers come in to compliance within a year, so that baffles and louvers could be installed, if possible.
- The photo simulation should include the extent of land clearance, which would help the public identify what the site would look like after development.
- Regarding public notice, consider adding the wording "or those within direct visual connection," so if it was clear there were one or more houses in the direct line of site, those would be included in the public notice.

Doug Mertz thanked the Assembly for its work. He said the main problem with this ordinance was that there was nothing addressing existing cell towers. He said this sent a message that Verizon had a free pass. The people negatively affected by the Spuhn Island tower had been trying to meet with Verizon and had no response. Some of this ordinance should be applicable to existing towers.

Mr. Jones asked Mr. Mertz what remedy might be available regarding Spuhn Island, given the location of the tower and the testimony by Mr. Wahto of the FAA at the recent Committee of the Whole meeting.

Mr. Mertz said the FAA official seemed to say the Borough could not mandate a particular change if it was opposed to an FAA mandate, but if all the parties could have community mediation, there was no barrier to accomplishing change. Community mediation was necessary. Their alternative was litigation, but that was their last option. We should try to reach agreement on a better configuration.

Mary Irvine distributed written comments and focused on three points. 1) She asked the Assembly to insert "legally permitted" on page 3, line 14, as a modifier to all existing tower installations. 2) Correct the description of the North Douglas Scenic Area on page 19 to be consistent with the language of the comprehensive plan. 3) She asked the Assembly to consider to naming a joint citizen-stakeholder task force to address currently existing lighted cell towers. She was surprised that no one had consulted with Mr. Wahto regarding the siting of the cell tower on Spuhn Island. She spoke about the intrusive impacts of lighted cell phone towers and said the permitting of those in Juneau was fraught with inconsistencies, and had to be addressed now.

Assembly Action:

MOTION, by Becker, to adopt Ordinance 2014-32(e).

Mr. Keihl clarified that all changes made in the Committee of the Whole meeting were included in version (e) and Ms. Mead said that was true.

Ms. Mead said a letter was sent to the Assembly by the AT&T attorney referencing the special use permit process needing to track federal law more clearly. Ms. Mead agreed and distributed her recommended change to the Assembly.

MOTION, by Keihl, to amend to add the words "less any tolling periods under federal law" to page 11, line 23, and on page 12, line 20. Hearing no objection, it was so ordered.

MOTION, by Troll, to reinsert the requirement for a balloon test for public notification, in additon to photo simulation.

Mr. Wanamaker said there was significant discussion on the balloon test previously and he objected to adding that language back in to the ordinance.

Roll call:

Aye: Crane, Jones, Kiehl, Smith, Troll

Nay: Becker, Nankervis, Wanamaker, Sanford

Motion passed, 5 ayes, 4 nays.

Hearing no objection, the Assembly accepted recommended changes from Ms. Mead for clarification as follows on Page 16, lines 25 - 27: "The applicant shall inform the director, in writing, of the dates and times of the test, at least two days in advance, and abide by any federal law requirements." The line, "The applicant may also need to notify the Federal Aviation

Administration" was removed.

MOTION, by Jones, to insert the words "legally permitted" on Page 3, Line 14.

Mr. Wanamaker objected and asked who would determine whether something was legally permitted. He said it sounded like an invitation to litigation.

Ms. Mead said the Community Development Department was responsible for enforcement.

Ms. Becker said any installation permitted under the code would be legal, or appealed.

Roll call:

Aye: Crane, Jones, Kiehl, Nankervis, Troll

Nay: Becker, Smith, Wanamaker, Sanford

Motion passed, 5 ayes, 4 nays.

Mr. Nankervis objected to the adoption of the ordinance.

Mr. Jones asked about the language in Table 1 regarding "recognized neighborhood associations," if there was a geographic description of the area of the association on file. Ms. Mead said that CBJ Code 11.35 did require a recognized neighborhood association to provide a description of the geographic area of the neighborhood.

Ms. Troll offered a motion regarding the concern of Ms. Irvine regarding the scenic viewshed cited in the ordinance and the comprehensive plan. She withdrew the motion following explanation by Ms. Mead regarding the reference in the comprehensive plan about scenic viewsheds in general and a very specific scenic corridor viewshed directly from the comprehensive plan - the only one identified specifically, and said that the ordinance as written was consistent with the comprehensive plan.

Mr. Wanamaker objected to the ordinance based on what he said was development of the ordinance under a violation of the open meetings act.

Mr. Nankervis objected to the ordinance due to the number of amendments at the point of public hearing, the requirement for dismantling of unused towers that was more strict than that of abandoned buildings, the requirement for camouflage of the accoutrements of a tower, and that the Spuhn Island tower permit prompted this "hoop-jumping."

Mr. Kiehl spoke in favor of the ordinance. It did not have everything in it that he desired, but the vast majority of towers erected would go up "the easy way" with limited permitting and review, those that had the least impact. Those with more impact on the public would require the more

difficult permitting process.

Ms. Crane agreed with Mr. Kiehl and said she supported creating a joint citizen stakeholder and city task force separately from the adoption of the ordinance.

Ms. Troll agreed with Ms. Crane and Mr. Kiehl and said CBJ had created a fast track, business friendly ordinance for cell tower permitting, which was balanced with more extensive public notice for potentially problematic towers.

Roll call on Ordinance 2014-32(e) as amended:

Aye: Becker, Crane, Jones, Kiehl, Smith, Troll, Sanford

Nay: Nankervis, Wanamaker

Motion passed, 7 ayes, 2 nays.

C. Ordinance 2014-40 An Ordinance Amending the Public Ways and Property Code Relating to Right-of-Way Encroachment Permits.

This ordinance would amend CBJ 62.55 with respect to right-of-way encroachment permits. The proposed amendments would expand the availability of such permits, especially when the street vacation requirements (CBJ 49.15.450) cannot be satisfied.

The current purpose of CBJ 62.55 is to make a parcel that had an encroachment into the right-of-way prior to 1960 a marketable parcel, thus enabling prospective buyers the opportunity to obtain a traditional 30-year loan.

The proposed amendments would expand the availability of an encroachment permit in two ways. First, it makes the permits available to parcels that encroached into the right-of-way prior to 1990, instead of 1960. Second, it removes the 30 year permit duration. Once obtained, an encroachment permit would be perpetual unless the structure is substantially damaged.

The Public Works and Facilities Committee reviewed this ordinance at its August 18, 2014 meeting, and recommended forwarding it to the full Assembly for approval.

The Manager recommends this ordinance be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Becker, to adopt Ordinance 2014-40.

MOTION, by Becker, to amend on page 2, line 22/23 - after the word "that" add " the issuance of the permit is in the best interest of the city and borough and that the..."

Ms. Becker said the amendment was meant to clarify that a permit must be found to be in the best interest of the city, and it was not just an automatic permit. Ms. Mead said it also clarified what the word "may" meant to the public, it showed that it is discretionary to the city as the permit was perpetual in nature. If there was an application and the city had a use for the property even if all the permit requirements were met, the city could say it was not in the best interest of the city.

Mr. Kiehl asked the process for a disagreement with the best interest determination. Ms. Mead said there was no right to an encroachment in a right of way, it was purely discretionary.

Hearing no objection, the amendment was adopted.

Hearing no objection, Ordinance 2014-40 was adopted as amended.

D. Ordinance 2014-43 An Ordinance Amending the Penal Code Relating to Offenses Against Property.

This ordinance would make the CBJ penal code with respect to certain property crimes consistent with State law. The ordinance would make the CBJ code sections directed at larceny and related offenses (specifically: larceny of money or property; concealment of merchandise; issuing a bad check; theft of services; and criminal mischief) consistent with newly enacted State law (SB 64).

Additionally, this ordinance makes certain housekeeping changes to correct inconsistencies both internally in the code, as well as with State law.

This ordinance would:

1. Amend the threshold levels for larceny and related crimes and impose a cap for A misdemeanors in order to be consistent with State law. The threshold level for an A misdemeanor would be more than \$250 but less than \$750, and for a B misdemeanor, would be less than \$250.
2. Provide that if the value of the item or service stolen or concealed is less than \$250, but the person being charged has been convicted and sentenced with two or more convictions for larceny or a related offense in the preceding five years, the offense would be charged as an A misdemeanor.
3. Amends CBJ 42.15.025 to be an A misdemeanor rather than a B, in order to be consistent with State law.
4. Amends certain code sections to remove the distinction between A and B misdemeanor charges based on dollar amount thresholds. The purpose of this amendment is to make these code sections (retention of lost property and theft by deception) consistent with State law.

The Manager recommends this ordinance be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2014-43. Hearing no objection, it was so ordered.

- E. Ordinance 2013-11(BF) An Ordinance Appropriating to the Manager the Sum of \$4,881,535 to Fund the City and Borough of Juneau's Fiscal Year 2014 Public Employee Retirement System Contribution; Funding Provided by the Alaska Department of Administration.

This ordinance would appropriate \$4,881,535, which is the State's FY14 13.68% on-behalf PERS benefit paid for CBJ. Funding is provided by the Alaska Department of Administration which was authorized by passage of HB65 during the 2013 legislative session.

This is a housekeeping ordinance to properly account for this on-behalf payment and has no impact on the CBJ's finances.

The Manager recommends this ordinance be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Kiehl, to adopt Ordinance 2013-11(BF).

Mr. Jones asked if Bartlett Regional Hospital was a part of this ordinance or would there be a separate ordinance. It was determined that BRH would appear in a separate ordinance.

Hearing no objection, it was so ordered.

- F. Ordinance 2014-24(I) An Ordinance Appropriating to the Manager the Sum of \$2,792 as Funding for Travel, Training, and Technology for the Juneau Public Library; Grant Funding Provided by the Alaska State Library.

This ordinance would appropriate an additional \$2,792 in grant funds from the Alaska State Library for employee travel, training, and technology funding.

The current Public Library Assistance grant operating budget for FY15 is \$17,158. This ordinance would increase the grant budget to \$19,950.

There is no CBJ match requirement for this grant.

The Manager recommends this ordinance be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2014-24(I). Hearing no objection, it was so ordered.

- G. Ordinance 2014-24(J) An Ordinance Appropriating to the Manager the Sum of \$3,228 as Funding for the Reimbursement of Bullet Proof Vests for JPD Officers, Funding Provided by the U.S. Department of Justice.

This ordinance would appropriate \$3,228 as partial reimbursement for bullet proof vests for JPD Officers.

This funding is provided by the U.S. Department of Justice. The Department of Justice offers a Bulletproof Vest Partnership program to law enforcement agencies across the nation. JPD has a mandatory vest wear-policy which makes our agency eligible for this partial reimbursement. JPD's estimated total cost for FY15 is \$6,744.

The Manager recommends this ordinance be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Smith, to adopt Ordinance 2014-24(J). Hearing no objection, it was so ordered.

- H. Ordinance 2014-24(K) An Ordinance Appropriating to the Manager the Sum of \$67,812 as Funding for the Purchase of Used Equipment to Facilitate the Wheelchair Boarding of Passengers at the Juneau International Airport, Grant Funding Provided by Federal Aviation Administration and Match by Alaska Department of Transportation.

This ordinance would appropriate \$67,812 to the Terminal Expansion Capital Project. Funding is provided as follows:

Federal Aviation Administration grant:	\$65,625
--	----------

Alaska Department of Transportation match:	\$ 2,187
--	----------

These funds would have been used to purchase used equipment to facilitate the wheelchair boarding of passengers from the two gates that have no boarding bridge to the terminal. The FAA was slated to fund 93.75% of the project, with the remainder split between Alaska DOT and the Juneau International Airport.

The Airport Board reviewed this request at its August 13, 2014 meeting and recommended forwarding it to the full Assembly for approval. However since that time, the FAA notified the CBJ that the federal funds are not available at this time.

As the funds are no longer available, the Assembly should table or postpone indefinitely this ordinance.

Public Comment: None.

Assembly Action:

-

MOTION, by Keihl, to lay Ordinance 2014-24(K) on the table. Hearing no objection, it was so ordered.

VIII. UNFINISHED BUSINESS

- A. Zenk et.al. v Planning Commission - Appeal Of Notice Of Decision Approving A Conditional Use Permit USE20130027 To Landscape Alaska For A Commercial Greenhouse In A D-3 Zoning District.

On February 11, 2014, the Planning Commission issued a final decision granting Conditional Use Permit USE20130027 for a commercial greenhouse in a D-3 zoning district to David Lendrum. A petitioner's group including members Anthony Zenk, G Ole Olson, David W. Wilson, Ruth Baumgartner and Elizabeth Miyasato, filed a timely Notice of Appeal of the decision with the Municipal Clerk's Office on February 26th.

The Assembly accepted the appeal and appointed Assemblymember Loren Jones as the presiding officer at its regular meeting of March 17, 2014. The Assembly held a hearing on August 18th. The draft decision was served on the parties pursuant to CBJ 01.50.140.

The packet contains the draft Notice of Decision, and comments from the appellants and the appellee-intervener.

CBJ Code 01.50.140, Decisions on Appeal, provides:

(b) *Appeal agency decisions.* In an appeal heard by the appeal agency:

- (1) The attorney, if any, who advised the appeal agency at the hearing may be present during the deliberation on the decision of the case, and if requested, shall assist and advise the appeal agency;
- (2) A member of the appeal agency who has not heard the evidence in person at the hearing may not participate in the decision;
- (3) Deliberation shall be in executive session unless the agency votes to deliberate in open session; and
- (4) The appeal agency shall itself prepare and adopt a written decision no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any; or the appeal agency may direct the attorney who advised the appeal agency, if any, or the prevailing party to prepare a proposed decision. A proposed decision prepared by the advising attorney or the prevailing party shall be filed with the municipal clerk and served on each party to the appeal or the party's representative no later than 45 days after the close of the hearing and the filing of all post-hearing briefs, if any. The parties may file written objections to the proposed decision with the municipal clerk within five days after service of the proposed decision. The proposed decision and any objections to the

proposed decision shall be placed before the appeal agency at the first regular meeting at which the matter may be scheduled or at a special meeting called for that purpose.

MOTION, by Jones, to adopt the decision previously reviewed and provided in the meeting packet. Hearing no objection, it was so ordered

IX. NEW BUSINESS

A. Notice of Appeal - Tall Timbers N.A. v. Planning Commission - Board of Adjustment - UNL20140001

On August 26, 2014, the Planning Commission, acting as the Board of Adjustment, made a "Similar Use Determination" under CBJ 49.20.320 as to Haven House, Inc.'s application to provide re-entry housing for women coming out of prison in the D5 zoning district per CBJ 49.20.320 (UNL 2014-0001). The Board's Notice of Decision indicated that the decision was not appealable until a final decision is made on the conditional use permit requested by Haven House, Inc., for its transitional housing use. The public hearing on the conditional use permit application is scheduled for October 14th. (USE 2014-0008).

On September 15th, Tall Timbers Neighborhood Association filed an appeal of the Board of Adjustment's unlisted use determination.

CBJ 01.50.020 provides that appeals "shall be filed only from a final agency decision." CBJ 01.50.030(e) provides that within 30 days of receipt of a notice of appeal, you must provide notice of the acceptance or rejection of the appeal (and if the latter, the reasons for rejection.) CBJ 01.50.030(e)(2) states that you must liberally construe the notice of appeal in order to preserve the rights of appellants and if, after doing so, you find that there has been a failure to comply with the appellate rules, or if the notice of appeal does not state grounds upon which any of the relief requested may be granted, you may reject the appeal.

The City Attorney recommends that the appeal be rejected, without prejudice, as untimely and unripe. The Board of Adjustment's similar use determination is not dispositive. Though the determination results in Haven House, Inc.'s ability to apply for a conditional use permit, the ultimate decision as to whether the use will be permitted has not been made. CBJ 49.15.330 states "a conditional use is a use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses."

The Board's similar use determination is subsumed in the issue coming before the Commission on October 14th. The Commission's final decision on the proposed use, including its similar use determination, would be appropriately appealable after a decision in USE 2014-0008.

Should the Assembly decline to hear the appeal at this time, the notice should make clear that the Board of Adjustment's similar use determination will be appealable after the Commission issues a final decision in USE 2014-0008.

Alternatively, if you decide to accept the appeal, you must then decide whether the

Assembly will hear the appeal itself or if it will assign the appeal to a hearing officer. If you decide to hear the appeal yourselves, you will be sitting in your quasi-judicial capacity and must avoid discussing the case outside of the hearing process. Additionally, you must comply with section 01.50.230 on impartiality.

The City Attorney recommends that the Assembly reject this appeal, without prejudice, as untimely and unripe.

Ms. Mead recommended that the Assembly reject the matter without prejudice, as untimely and unripe, and as it would be subsumed in conditional use process that would be heard by the Planning Commission on October 14. Mr. Kiehl asked to ensure that the appellant's rights were preserved by taking that action. Ms. Mead said yes.

MOTION, by Wanamaker, to decline to accept the appeal, without prejudice. Hearing no objection, it was so ordered.

X. STAFF REPORTS

None.

XI. ASSEMBLY REPORTS

A. Mayor's Report

Mayor Sanford asked staff to review the public notice requirements in Title 49 for consistency and clarity within the next six months. Hearing no objection, the Assembly gave that direction to the staff.

Mayor Sanford said he attended the Southeast Conference annual meeting in Wrangell and it was a very good meeting.

B. Committee Reports

Committee of the Whole: Chair Becker said the committee met and discussed the draft economic development plan, the rezoning ordinance, the cell tower ordinance, and heard an update on the Spuhn Island Cell tower from Doug Wahto of FAA. The next meeting was set for October 6.

Tax Exemption Review Committee: Chair Becker said the subcommittee met on September 26 and discussed the sales tax cap, out of borough sales and lobbyist exemption. The next meeting was set for October 23 and would be in the Assembly Chambers at 5 p.m.

Public Works and Facilities Committee: Chair Wanamaker said the PWFC met on September 22 and discussed Last Chance Basin Well Field construction and Salmon Creek Water Filtration. The next meeting was set for October 6.

Human Resources Committee: Chair Kiehl said the HRC met and heard Annual Reports from the Americans with Disabilities Act Committee, the Douglas Advisory Board, the Social Services Advisory Committee and the Utility Advisory Board.

Hearing no objections, the following appointments were confirmed:

Americans with Disabilities Act Committee:

Reappointment of Marianne Milles, Allen Hulett and Melanie Zahasky for terms expiring 8/31/2017.

Douglas Advisory Board:

Reappointment of Joyce Vick and Marcheta Moulton to terms expiring 9/30/2017.

Jensen Olson Arboretum Advisory Board:

Appointment of Dr. Bridget Weiss to represent the Juneau School District for a term expiring 1/31/2017.

Juneau Human Rights Commission:

Appointment of Markus Bressler to a term expiring 5/31/2105.

Sister Cities Committee:

Appointment of Eli Olson to a term expiring 1/31/2018.

Social Services Advisory Board:

Appointment of Elizabeth Lange and Scott McAdams to terms expiring 9/30/2017.

Mr. Kiehl said the HRC wished the outgoing chair well, there were still a number of vacancies, and there were some questions about work the work of the committee and staff. There is significant grant administration and HRC planned to schedule a worksession with the remaining members to determine how to move forward, clarify the mission and provide adequate support for the work.

Mr. Kiehl said the HRC reviewed applications for the Community Development Block Grant and directed staff work with Tlingit Haida Regional Housing Authority to develop a project proposal and resolution for the proposal. \$850,000 was available to communities outside of Anchorage, and this project allowed the state to spread the funds to several communities.

Finance Committee: Chair Crane said the next meeting was set for October 22.

Lands and Resources Committee: Chair Smith said the next meeting was set for October 6.

C. Liaison Reports

Treadwell Arena Task Force: Liaison Jones said the task force would meet October 2 to get a report from Eaglecrest and Parks and Recreation regarding historical and background information.

Downtown Business Association: Liaison Jones said the next meeting was set for October 1.

Docks and Harbors Board: Liaison Jones said the Board had directed the Port Director and Engineer to pursue options at Douglas Harbor to reduce the dredging depth so movement could happen on an amendment to the Army Corps of Engineers permit. All vessels have been moved from the project area in Aurora Harbor and construction would begin in October. The Alaska Marine Exchange was looking at constructing a building with Docks and Harbors as a long term tenant at the area of the old Public Works shop near the Douglas Bridge, however, the Marine Exchange has purchased the property next to the Juneau Electronics Building and would no longer be pursuing the CBJ property.

Tongass Advisory Committee: Liaison Troll attended recent meetings in Juneau and said she was serving on subcommittee tasked with finding additional acreages of young growth forest and the committee would next meet on Prince of Wales Island.

Eaglecrest Board: Liaison Smith said the next meeting was set for October 2.

Affordable Housing Commission: Liaison Kiehl said the next meeting was set for October 7.

Juneau School District: Liaison Kiehl said the next meeting was October 21, preceded by a worksession on the budget process.

Juneau Economic Development Council: Liaison Wanamaker said the next meeting was set for October 1.

Alaska Committee: Liaison Becker said the Alaska Committee would be meeting with groups of citizens meeting in town to facilitate their experience in the capital.

Downtown Improvement Group: Ms. Becker said the group held a clean up day on October 24.

UAS Campus Council: Liaison Becker said there was a recent meeting with the Board of Regents, there was a tour of the new dormitory, and the next meeting would be on Title 9 and gender equity.

Chamber of Commerce: Liaison Becker said the candidate forums were very well done.

Body and Mind Afterschool Activity Program: Ms. Becker said the middle school programs were underway and they would be making a video of the projects.

JSD Activity Advisory Committee: Ms. Becker said the group met and discussed the philosophy of middle school activities - inter and intra-mural sports and travel. Other towns travel to Juneau to play and tournaments are held for Southeast, and the two Juneau middle schools competed with each other.

D. Presiding Officer Reports

None.

XII. ASSEMBLY COMMENTS AND QUESTIONS

Mayor Sanford requested that the Assemblymembers let him know their interest in committee and liaison assignments.

Ms. Becker reported on attendance at the 9/11 Memorial Service at Rotary Park, the Totem Pole Raising ceremony and the BRH Foundation fundraiser.

Mr. Wanamaker provided his travel plans and said he would be available at the October 20 Assembly meeting.

Mr. Kiehl said he attended the Southeast Conference meeting, which was an excellent event for the region and showcased good examples of Wrangell projects. The new UAS dormitory was a beautiful facility and an enhancement to the sustainability to the campus as far as supporting the freshman year program as a four year institution. He also attended the totem pole raising and it was a privilege and honor to be there in the rain. He thanked the League of Women Voters for rescheduling the candidate forum to honor a religious holiday. He asked for a report on the direction CBJ would be taking with social media.

Ms. Crane notified the public about the LOWV candidate forum. She also attended the totem pole raising event. She would like to know what was happening with the CBJ social media policy.

Mr. Smith said he was pleased to be at the totem pole raising. It was unique event and an unusual gathering of three tribes, which signalled a reestablishment of native identity in that area and downtown revitalization. His hope is that Juneau becomes capital of Northwest coast art and this is a signal/switch/change in identify in that area.

Ms. Troll took away a wonderful sense of community pride, wide open, youth there, and combination of people and said she was happy to be a part of the event. Just as the totem poles went up, the ravens came out, and a bear came out. She attended the high school home build event. She thanked people for the Juneau Votes participation. She will continue to work with Mayor Sanford on the honorary mayor program. She would like feedback from CDD regarding idea of stakeholder or task force to deal with existing towers - through city manager - to get the ideas from staff on how to proceed.

Mr. Nankervis encouraged everyone to get out and vote.

Mr. Jones encouraged people to vote in October and November.

Mayor Sanford acknowledged an invitation from Juneau NAMI to participate in their 5K walk or run on October 11 at Riverbend School. He said VIGOR shipyards in Ketchikan would get the contract to build the new ferries, which would be a big boost to Southeast - 180 employees building two boats over the next four years.

XIII. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None.

XIV. EXECUTIVE SESSION

MOTION, by Becker, to enter executive session to discuss two matters with the City Attorney, the Honsinger Pond Appeal and the Gastineau Apartments.

Hearing no objection, the Assembly entered executive session at 9:20 p.m. and returned at 9:44 p.m. to regular session. Upon returning to regular session, Ms. Becker said the Assembly received an update and provided direction to the City Attorney.

- A. Honsinger Pond Appeal Update from City Attorney
- B. Gastineau Apartments Update from City Attorney

XV. ADJOURNMENT

There being no further business to come before the Assembly, the meeting adjourned at 9:45 p.m.

Signed:_____

Laurie Sica, Municipal Clerk

Signed:_____

Merrill Sanford, Mayor

From: [Laurie Sica](#)
To: ["Bob Spitzfaden \(spitz@gci.net\)"; "andyhughesusa@hotmail.com"; "havenhousejuneau@gmail.com"; Beth McKibben; Amy Mead; Kim Kiefer; Rob Steedle; Robert Palmer; Deb Senn; Audrey Dean; Sam Sanbei; Diane Cathcart](#)
Cc: [Borough Assembly; Planning Commission](#)
Subject: RE: Notice of Appeal Filed - Tall Timbers NA v PC BOA re Haven House UNL2014-0001
Date: Wednesday, October 15, 2014 8:38:29 AM

Hello,

My apologies for the delay in reporting the Assembly's action to you regarding this appeal.

The Assembly declined to hear the appeal, without prejudice, determining that the issue was not "ripe" as the Planning Commission was considering the conditional use application, and once that PC decision was made, the appellants would have a final decision to appeal. The Assembly noted that all issues, including the use not listed determination, would be appealable once a final decision is made by the Planning Commission.

Please contact the Clerk's office with any questions.

Laurie Sica

PLEASE NOTE – NEW EMAIL ADDRESS: laurie.sica@juneau.org

Municipal Clerk
City and Borough of Juneau
155 S Seward St.
Juneau, AK 99801
(907) 586-0216 phone
(907) 586-4552 fax
www.juneau.org

-----Original Message-----

From: Laurie Sica
Sent: Friday, September 26, 2014 3:50 PM
To: 'Bob Spitzfaden (spitz@gci.net)'; 'andyhughesusa@hotmail.com'; 'havenhousejuneau@gmail.com'; Beth McKibben; Amy Mead; Kim Kiefer; Rob Steedle; Robert Palmer; Deb Senn; Audrey Dean; Sam Sanbei; Diane Cathcart
Cc: Borough Assembly; Planning Commission
Subject: RE: Notice of Appeal Filed - Tall Timbers NA v PC BOA re Haven House UNL2014-0001

Just a reminder to all that this item is on the Assembly Agenda under New Business on Monday, September 29, meeting beginning at 7 p.m. There is no public testimony on this agenda item at this time, just in case you are wondering. The meeting will also be broadcast on KTOO.

Letting you know as there is likely a lot of interest in this topic, but no opportunity to speak, and we are expecting a full house Monday night due to other agenda items. The agenda and manager's report can be found on-line at:

<http://www.juneau.org/assembly/novus.php>

Thank you. Let me know if you have any questions.

Laurie Sica

-----Original Message-----

From: Laurie Sica

Sent: Monday, September 15, 2014 11:58 AM

To: Bob Spitzfaden (spitz@gci.net); 'andy.hughes@alaska.gov'; 'havenhousejuneau@gmail.com'; Beth McKibben; Amy Mead; Kim Kiefer; Rob Steedle; Robert Palmer; Deb Senn; Audrey Dean; Sam Sanbei; Diane Cathcart

Cc: Borough Assembly; Planning Commission

Subject: Notice of Appeal Filed - Tall Timbers NA v PC BOA re Haven House UNL2014-0001

Hello,

A timely notice of appeal was filed in the Municipal Clerk's office today regarding the Notice of Decision UNL2014 0001 of the Planning Commission Board of Adjustment to Haven House, Inc. for a Use Not Listed determination for re-entry housing for women coming out of prison in the D5 zoning district per CBJ 49.20.320.

This item will appear on the next regular Assembly meeting agenda on September 29, 2014 under new business. The Assembly will review the following questions:

1. Will the Assembly accept the appeal?
2. Will the Assembly hear the appeal itself or assign to a hearing officer?
3. If the Assembly hears the appeal itself, will the Mayor preside, or will he designate another member as presiding officer?

This matter is before the Assembly sitting in its quasi-judicial capacity. Accordingly, please avoid discussing the case with the Assembly outside of the hearing process.

If you have any questions about this matter, please direct all communication through the Municipal Clerk's office.

Laurie Sica
Municipal Clerk
City and Borough of Juneau
155 S Seward St.
Juneau, AK 99801
(907) 586-0216 phone
(907) 586-4552 fax
www.juneau.org