

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
August 27, 2019

I. ROLL CALL

Ben Haight, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:00 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Nathaniel Dye; Ken Alper; Shannon Crossley; Dan Hickok (joined at 7:08pm); Travis Arndt

Commissioners absent: Michael LeVine,

Staff present: Jill Maclean, CDD Director; Beth McKibben, CDD Senior Planner; Alex Pierce, CDD Planning Manager; Jane Mores, CBJ Law;

Assembly members: None

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

III. APPROVAL OF MINUTES

A. July 23, 2019 DRAFT Minutes – Planning Commission Regular Meeting

MOTION: *by Mr. Dye to approve the July 23, 2019, Committee of the Whole and July 23, 2019 Planning Commission Regular Meeting minutes noting any staff corrections or commissioner comments.*

The motion passed with no objection.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Mary Alice McKean – 212 W 9th Street - Invited Commission members to Climate Change event to be held Friday, September 13, 5:00-6:15pm at the University of

Alaska Southeast Campus “Building Consensus for Climate Change Across the Political Spectrum” with guest speaker Dr. Katharine Hayhoe.

Mr. Alper asked for background on name of the group “Alaska Interfaith Power & Light”. She explained they are an interfaith group interested in climate change.

V. ITEMS FOR RECONSIDERATION - None

VI. CONSENT AGENDA- None

VII. UNFINISHED BUSINESS- None

VIII. REGULAR AGENDA

AME2018 0009: A text amendment to revise Title 49 to repeal and replace 49.30 – Nonconforming Development
Applicant: City & Borough of Juneau
Location: Borough-wide

Staff Recommendation

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

CDD staff Beth McKibben presented on the proposed code to replace Title 49.30– Nonconforming Development

- Zoning nonconformities are defined as existing uses, structures, or lots that were legally established prior to a change in zoning provisions, which do not comply with new (current) zoning regulations. This is commonly referred to as “grandfathered”. Ms. McKibben explained that the zoning rules and districts are ‘forward facing’ to the future implementing CBJ plans and the vision drawn into those plans. Sometimes what is already on the ground does not match the direction the plans are trying to go. That is how nonconforming situations arise.
- There were several weaknesses identified in the current Title 49.30. For example, various nonconforming situations are blended into single paragraphs; some sections are poorly written making it difficult to understand; and they found certain nonconforming situations can create challenges for financing.
- Prior to undertaking this project, CDD Staff conducted research using information obtained from the Planners Advisory Service through the American Planning Association, various articles, and nonconforming ordinances from communities around the country.

- There are four options for dealing with nonconforming situations. These include, phasing them out over time; maintaining the status quo; allowing limited modification and expansion; and changing zoning standards to make the properties conforming.
- Not all nonconformities are the same. Some are benign while others have detrimental effects. Benign nonconformities are treated differently than those likely to be detrimental.

The proposed ordinance mixes phasing out detrimental nonconformities and maintaining the status quo or allowing limited modification and expansion to benign nonconformities; repeals and replaces all of Title 49.30; and clarifies and defines nonconforming situations.

- The purpose of the Code is to provide standards for review and development of nonconforming properties and to provide processes for obtaining certification of legal status by the Director and Board of Adjustment nonconforming situation review.
- The intent is to reduce negative impacts, promote health, safety and welfare, and to avoid unnecessary burdens to use and development of property impacted by zoning changes.
- In general, except as otherwise provided in the chapter, legally nonconforming situations may continue. Nonconforming situations can be changed to conforming but cannot be changed back to nonconforming. Nonconforming situations are tied to the land and transfer from owner to owner. Normal maintenance and routine repairs are allowed. Except as otherwise provided in the chapter, failure to maintain a nonconforming situation for 365 consecutive days creates a presumption of abandonment.
- Property owners may seek certification of legal nonconforming status at any time prior to issuance of permit for work. A nonconforming structure is deemed destroyed when damaged to an extent of 75% or more of replacement cost as determined by the Building Official. All nonconforming rights are lost if intentionally damaged or destroyed by the owner or an agent of the owner. The percentage varies between communities and the average is about 50%.
- As an example of how the law would work, Ms. McKibben described a gas station in a D-5 zone district. This business would have several options, including continuing unchanged, changing to another nonconforming use, changing to a conditional use, or abandoning the nonconforming use altogether.
- Currently, the only residential uses allowed in Industrial and Waterfront Industrial zoning districts are caretaker units any others are nonconforming. When there is nonconforming

residential use in Industrial or Waterfront Industrial zoning districts, and the dwelling structure is damaged by causes beyond the owner's control, the nonconforming rights continue and the structure may be rebuilt within 3 years if the nonconforming use is accepted with a certification of legal nonconforming status, written notice of intent to reconstruct is submitted within 365 days, the structure is not deemed destroyed, and the reconstruction complies with district specific standards. If a temporary certificate of occupancy is not obtained within 3 years, the nonconforming use rights are lost. An 18-month extension to this can be given with written request showing good cause.

- Nonconforming Residential Density is a new concept to be added to the Title. This is an allowed use. For example, an existing 4-plex in D-5 zoning district. The use is residential but D-5 does not allow 4-plexes. Currently, if the 4-plex is destroyed, only 1 or 2 units could be rebuilt depending on lot size. Because of this limitation, financing institutions are reluctant to lend on a 4-unit structure that could only be rebuilt to a 1- or 2-unit structure if it were to be destroyed. The intent of this section is to address those financing challenges and to implement some of the goals of the comprehensive plan and the housing action plan and maintaining existing dwelling units.

Structures with nonconforming residential density certification can be modified, improved, maintained once it is legally accepted with a certificate of legal nonconforming status and it meets the required setbacks. If it is accidentally destroyed, it can be replaced regardless of the cost of replacement. The 75% threshold does not apply here.

Mr. Dye asked for clarification between the Use and Density nonconformities of the 4-plex in a D-5 example.

Ms. McKibben explained if the area is Residential and this is a 4-plex, then the use (residential) is allowed but the density (4-plex in D-5 district) is nonconforming. This concept separates the use from density. She explained that this concept will be addressed further later in the presentation with definitions.

Mr. Alper asked about the gas station slide. If the new Code incentivizes residential uses at additional density by allowing a structure normally allowed in a D-10 district to be built in a D-5, how far are they allowed to go? Is there a limit to the amount of allowed increase in density? Ms. McKibben said there are limits and she would address that later in the presentation.

Mr. Alper asked for clarification regarding the proposed requirement to obtain certification of legal nonconformance. and noted that there are many nonconforming residential properties downtown based on lot size. He asked if there would be notification sent to all of the property owners informing them of the new requirement and whether, once they obtained the certificate, they would then have all the other rights afforded to certified nonconforming residential properties. Ms. MacLean responded explaining that yes, it is a new requirement and it is of benefit to the property owners. Once they obtain the certification, it will be easier to obtain financing and

probably insurance as well. Mr. Alper asked whether the certification would be something that attached to the deed and would transfer from owner to owner with the property. Ms. McKibben explained that they met with realtors, appraisers, and mortgage professionals and a suggestion from them was to have the certificates recorded. That requirement is not included in this draft ordinance but it is something that could be added.

- If a legal nonconforming structure is accidentally destroyed then it can be rebuilt back to what is allowed in its Certificate of Legal Nonconformance. The total number of units established by the Certificate may not be increased. Nonconforming residential rights continue even if the building is unoccupied. It is not considered abandoned after 365 days. When a nonconforming use is converted to a nonconforming residential density it must have no net increase in detrimental impacts to the surrounding area and the density cannot exceed 1.5 times the base density for the zoning district.
- Nonconforming Structures are those that do not meet one or more of the dimensional standards such as height, setbacks, or lot coverage. These may be maintained and expanded so long as it does not increase nonconformity.
- Nonconforming Lots do not comply with minimum lot area, depth, width, or other lot requirement for the area in which it is located. Which legal nonconformity status, these lots may be used for any use permitted in the district so long as that use does not require a minimum lot size greater than the minimum lot size required by that zoning district. In cases of accidental loss, the structure may be rebuilt on the same footprint, provided they do not encroach onto rights-of-way or adjacent properties. Single family dwellings are allowed with the exception of Industrial and Waterfront Industrial districts.

Mr. Arndt asked about reconstruction on these lots. Would a nonconforming structure be allowed to be rebuilt on a nonconforming lot? Ms. McKibben clarified that would be the reconstruction of a nonconforming residential density but this section applies to vacant lots.

- Nonconforming Parking is currently provided for in code. The proposed ordinance adds new language to clarify when a use has nonconforming number of off-street parking spaces and later becomes more conforming, it may not revert back to less conforming parking.
- Overcoming the Presumption of Abandonment – The proposed ordinance creates a method for a property owner to overcome a determination that a nonconforming situation has been abandoned. This would be approved by the Director and could be appealed to the Planning Commission.
- Nonconforming Status is obtained via a new review process to establish legal nonconforming status called “certification of nonconforming status”. The responsibility

is on the property owner to prove the nonconforming situation was allowed when established and has been maintained over time.

- Nonconforming Situation Review (NCSR) is a new process which allows the Board of Adjustment to review, limit, or deny changes of nonconforming use to a different nonconforming use or to nonconforming residential density.

McKibben added that when meeting with realtors, financing personnel, VA loans are strict and often are not able to finance in these nonconforming areas. Homes too near the AmeriGas location was given as an example.

Mr. Dye clarified even if the AmeriGas station was conforming and existed to code the VA loan would still not be allowed in this area.

- Fees proposed for the NCSR and Certification of Legal Nonconforming Status are \$400 to the planning commission and \$150, respectively.
- The proposed ordinance is in compliance with Comprehensive Plan Policies, including the 2015 Juneau Economic Development Plan and the 2016 Housing Action Plan.
- The proposed ordinance is in compliance with the purpose and intent Title 49.05.100

Questions for Staff

Mr. Voelckers asked for clarification as to which types of nonconforming properties will be affected by this. Are they mostly residential properties located in Douglas and Downtown?

Ms. McKibben pointed out there is already nonconforming code regarding situations, lots, structures, and uses. This proposed code changes how we address those nonconforming situations as well as nonconforming densities. CDD staff regularly work with the public primarily on nonconforming residential densities, lots, and structures. They field questions from appraisers, real estate agents, and people buying/selling properties. In her 11 years as a planner, she has encountered only a couple nonconforming use situations

Mr. Voelckers wondered about all the focus on the sections on nonconforming industrial uses converted to housing. He was not aware of many properties 'cued up' and waiting to do this. Are we spending a lot of time and energy on something we may not need?

Ms. Maclean said even though there may not have been not many instances of these in the past that are legally nonconforming, if they were taking the time to improve upon the current code, it made sense to address items that potentially could pose problems in the future. An example of a foreseeable situation is the Lemon Creek area that is currently zoned industrial but there are several much more commercial uses. The Department has been tasked by the Assembly and the

Commission to look at updating the current TPU. As a result of that, many of the currently conforming commercial uses could become legally nonconforming.

Mr. Voelckers noted that the proposed ordinance seems to pertain only to legal nonconforming properties. What about illegally nonconforming properties? Ms. McKibben explained that illegally nonconforming situations present enforcement issues dealt with in other sections of code.

Mr. Arndt asked what assurances there are that financiers will accept the certifications of legal nonconformance if we issue them. Ms. McKibben explained that when they met with financial representatives, they told staff the certifications would be helpful to expedite their processes for them and their clients.

Mr. Arndt took issue with the \$150 fee as this is not an issue created by the property owner, this is an CBJ created issue and not the fault of the owner. Ms. Maclean countered that as a voting public, residents have opportunities to provide input by voting for Assembly members and public testimony at commission meetings as it applies to zoning changes. While the owner may not have created the situation, it is to their benefit to obtain the certification. Given the amount of staff time and effort required, the \$150 does not even cover the staff time costs.

Ms. Crossley asked if there are any situations in which the financiers will not accept the certifications or where the certification would not be enough to solve the lending issues. Ms. McKibben said that the issues with VA loans requirements regarding the proximity to explosives regarding the AmeriGas station is one where they may not be able to fix the problem with a certificate.

MS. Crossley clarified that her question was regarding the undersized lot/zero setback example. Would there be a case where a lender would say the undersized lot is acceptable but the zero setback is a fire hazard and even with a letter or certification, we will not lend on this? Ms. McKibben was not aware of. Those issues would be dealt with in the building code.

Ms. Crossley asked if there are situations in which people do not know they are nonconforming or does the Department expect there are people waiting to run in and claim their certificates. McKibben knows of a few properties where the owners are already waiting for this so they can get their letters or certifications right away. There is a significant portion of the community who do not know what nonconforming is and they will not know it is an issue until they sell or try to add an addition.

Mr. Hickok inquired on how long will it take to get the certificate. Ms. McKibben said it can take anywhere from 30 minutes to several days. Applicants will have to provide information but if they do not have the historical building permits or other documentation, then CDD staff will help to do the research. The good news is that once the work is done, it does not have to be done again. Mr. Hickok wanted to know if this process would hold up closing if someone was in the middle of a

deal. Ms. McKibben said it would not be any different than it is today. The issue normally comes up at appraisal rather than at closing.

Mr. Alper asked about the sequence of events for getting a permit for a nonconforming situation. Does a property owner have to apply for the certificate of nonconformance prior to applying for the permitting or can these happen concurrently? Ms. McKibben is not certain at the moment but most likely certificate would be required prior to the permitting. She believes they could be submitted at the same time but the permit would not be approved before the certificate of nonconformance. Ms. Maclean clarified that there are so many variables that it would depend on the situation. She also believes they could run concurrently.

Mr. Voelckers agreed with Mr. Alper that there could be situations wherein an applicant needs timely process. In property transactions there are often initiation/response timelines that must be met and he is sensitive to the chance that this new process could hold up a transaction.

At Ease - 8:12 to 8:18

Open for Public Testimony – None

Ordinance Discussion by page

- Page 1

Mr. Voelckers noted that the last sentence of first page shows a bias to residential issues and wondered if it was useful or necessary to do so.

Mr. Dye had issue with the word ‘development’ on Line 19 and thinks another word should be used here. Additionally, on line 23 ½ -24 ½ “avoid unnecessary and unreasonable burdens to the use and development of property impacted by zoning changes” and suggested striking it or rewording it to read “minimize unintended impacts caused by zoning changes that cause unreasonable burdens to the use and maintenance of the affected property.”

Ms. McKibben asked for written copy of Mr. Dye’s comments. He will provide them tomorrow.

- Page 2

Ms. Maclean suggested reordering lines 9-14 to match the order they appear in the current ordinance and moving lines 16-19 up to line 7. Ms. Mores said as written, this is still a fairly rough ordinance.

Mr. Dye said Nonconforming Lots should have the same title as 49.30.260 ‘Nonconforming Lots and Lot Fractions’ and include code citations to those sections for reference.

Mr. Alper's understanding was that the Commission was at this stage to review and suggest changes and then will receive a new draft at the next meeting to be finalized to go to the Assembly. Ms. Mores agreed and explained she has an issue with the abandonment sections stating that there are legal implications of 'abandonment'.

Mr. Haight explained that this is a working session to better craft the ordinance so it can be moved at the next meeting. Ms. Maclean suggested they form an ad hoc committee to meet in the next week with the intent to bring this back at the meeting on September 10th. Mr. Haight asked whether the ad hoc meetings needed to be public notices. Ms. Maclean replied the requirement is 24 hours.

Mr. Arndt suggested the sentence in lines 16-19 is very important and does not seem to fit where it is. To where would Ms. Maclean suggest they move it? Ms. Maclean said it should go to the top of the section at line 7 as an intro to the section.

- Page 3

Mr. Voelckers said section (e) at lines 10-12 seems duplicative of section .220 (b)(7) on the next page. He also suggested adding the phrase "and all nonconforming rights extinguished" after 'destroyed'. Mr. Dye suggested in the same section changing 'nonconforming use' to 'nonconforming situation'.

- Page 4

Mr. Alper asked how the determination is made when the determining the percentage of damage. Mr. McKibben said the determination is made by the building official. If the cost to repair replace is more than 75% of the cost to rebuilt the original structure. Ms. Maclean reminded the Commission that the 75% does not apply to residential structures.

Mr. Hickok asked whether the 365-day timeline described in Line 24 -25 is enough time in instances of death/probate of the property owner considering how long it can take to get through probate. Ms. McKibben said the timeline to rebuild is 3 years but the heirs must give notice of intent to reconstruct within 365 days. The 3-year requirement was added specifically with probate situations in mind.

Mr. Voelckers pointed out the words 'discontinuation' and 'abandonment' appear in the proposed ordinance and asked for the difference between the two. Ms. Mores explained abandonment is discontinuance plus intent.

Mr. Voelckers said that section (b) implies there is someone making the determination when a property has reached the abandonment threshold. Is somebody going to be tracking that and making some sort of evaluation? Ms. Mores described items in this section stating that some of

them create abandonments in fact and not by presumption. Specifically, items (2), (4), and (5) are by definition abandonment whereas the other items create presumptions of abandonment. Mr. Dye asked for clarification regarding whether Ms. Mores was suggesting items (2), (4), and (5) be in their own section of code or be removed altogether and what would be helpful for the commission to do regarding sections .220 and .225 for this to move forward. Ms. Mores said it is a policy issue based on how much you want to support or phase out nonconforming situations.

Mr. Hickok asked if a property owner applies for a conditional use permit and that is denied, have they lost their nonconforming status? Ms. Mores answered the act of getting a conditional use permit could be evidence that of abandonment of the nonconforming status.

CDD staff Ms. Pierce explained there are different levels being considered. You can change from a nonconformity to a more benign nonconformity, you can change from nonconformity to an approved conditional use and you can abandon the nonconformity altogether and become conforming.

- Page 5

Mr. Voelckers said in section .225 there appears to be an implied action by director or commission to determine abandonment. If so, it should explain clearly what the director or commission would do. Ms. Maclean explained the Department would not be actively looking for abandonment situations. The Department would become aware by neighbor reports of when the property comes up for sale.

Mr. Voelckers asked what if a situation is determined to be an illegal use? Ms. Mores replied there is either 'legal nonconforming use' or 'noncompliant property'.

Mr. Dye felt section .220 needs to start with a statement of what will happen stating what the director will do and can do.

Mr. Dye said that once they complete Title 49.30 they could look at Title 49.31.

Mr. Arndt asked what happens when the person says they want out of the gas station business and put it up for sale, and it takes 14 months to sell? That is beyond the 365 days. Can the new owners continue the nonconforming use? Ms. McKibben explained that was the intent with the option to overcome the presumption of abandonment.

Mr. Voelckers added that we need to be cognizant we may not always be able to find all the documentation to reconstruct what made an item legally nonconforming. There could be unintended consequences and we need to take care not to infringe upon or take away their rights.

Ms. Crossley noted line 10 and asked if taxes are not paid on a nonconforming property can that be used as evidence of abandonment? What if they then pay all back taxes? Ms. McKibben said that is not listed explicitly.

- PAGE 6

Mr. Dye asked for clarification with item (b) *Change of nonconforming use to conditional use*. Does (b) need to be there? Is it reiterating item (a) *Change of nonconforming use to another nonconforming use*? Ms. Maclean clarified that an owner can, at any time, file for a conditional use. In doing so, they will give up the nonconforming status. She agreed that Mr. Dye that item (b) may not be necessary.

Mr. Dye asked if a property holds nonconforming status and the owner wants to use half of the nonconforming structure for conditional use purposes, what is stopping them from doing that? Ms. McKibben said that is allowable and there is nothing saying that cannot be done. Mr. Arndt noted that he likes that but does not see this in the proposed title. Ms. McKibben said there is nothing in the proposed ordinance saying that could not be done. Ms. Maclean suggested that the item is not necessary and to strike it entirely.

Mr. Dye asked if a building has a legally nonconforming use can a new building be constructed on the same lot, the nonconforming use moved to that structure and the original structure demolished? If not, why not? Ms. McKibben pointed him to item (c) on page 6 where it states the nonconforming use cannot be extended to other structures. Mr. Dye said he did not read that item the same way. It specifies the nonconforming use may not be *expanded* to another structure but if the nonconforming use takes up the same amount of space in the new structure as it use to in the old structure then it has not been 'expanded' and, therefore, should it be not allowed?

Ms. Maclean explained the intention of the nonconforming ordinance is to allow a property owner to keep what they legally had prior to a zoning change. Moving the nonconforming use to another building is not covered under the ordinance.

Mr. Voelckers pointed to line 17 ½ and the last sentence on page 6 noting both sections reference destroyed or fire. It seems these should also reference the 75% threshold. Ms. McKibben explained that this section is nonconforming residential, which does not have the percentage. She said a question for the Commission is do they want residential nonconformities to have the 75% threshold?

Mr. Dye asked if there is a higher bar in industrial compared to residential nonconforming use and if so, is that a taking? Ms. Mores was unsure of Mr. Dye's question but said they could follow up and added she wondered whether 'deemed destroyed' should be added to definitions or should the 75% be presented throughout?

Ms. McKibben explained the 75% is in the original ordinance in this rewrite, they replaced the 75% with deemed destroyed for residential because when deemed destroyed residential nonconforming use can still keep that status.

- Page 7

Mr. Dye asked about the requirement in Item (3) on line 9 for the Director and the building official to be in concurrence in order to approve the 18-month extension. He asked if that concurrence is required only for the first extension or does the building official have to approve all extensions? He does not recall needing building official concurrence for other extensions and wondered if it is necessary to require the building official to concur or if it could be just the Director's approval.

Ms. Maclean answered that this was based on staff meetings with relators related a structure being rebuilt running into insurance issues holding up the reconstruction and that it may require consultation with a building official. Ms. McKibben explained that there is already a 3-year window for reconstruction. If the owner has not obtained a certificate of occupancy by the end of the 3 years, they can apply for one 18-month extension at the discretion of the director with good cause. The building official is often needed to determine the good cause. Ms. Maclean asked what happens if the director and the building official do not agree. Mr. Arndt believes that the building official works for the director, therefore, it could be assumed they are discussing it already. Mr. Voelckers suggested striking 'in concurrence with the building official'. Mr. Dye suggested striking it throughout the proposed ordinance.

Mr. Voelckers said there are places in the proposed ordinance where it says a Director's decision is appealable and other places where it does not say it. Ms. McKibben and Ms. Mores both said that it should be removed.

Mr. Voelckers asked about the legal importance of the word "improved" on line 14. He asked how improved differs from modified.

- Page 8

Mr. Dye had issue with item (c) Occupancy Status. He did not agree that it should go back 'for any length of time'. He equates that to abandonment. Mr. Voelckers agreed and suggested 3 years or something lenient but not 172 years.

Mr. Voelckers suggested adding the phrase ", and complies with underlying zoning district requirements" to the last line of the page.

Ms. Maclean suggested striking 'public' from 'public rights of way' throughout.

- Page 9

Mr. Voelckers had concern that the nonconforming structure could add levels within the setback but could not add width. Ms. McKibben explained that setbacks are considered 3-dimensional and when adding floors to the structure, they are not allowed to encroach on the setback unless allowed by the Commission through a conditional use permit.

Mr. Dye suggested the language might need to be modified regarding the number of stories. He asked whether the expansions are limited to 2 or 3 floors and suggested removing 'second or third' so it just reads 'floors' at CBJ 49.25.430(4)(M).

Mr. Voelckers suggested adding "if compliant with the dimensional standards of the district" to line 17.

Mr. Dye suggested line 24 "moved for any distance" should be "moved any distance" and asked if the proposed change makes a nonconforming structure 'less nonconforming' why would it not be allowed? Mr. Voelckers said that if a nonconforming structure is changed it should be moved to current setbacks instead of to 'almost' to current setbacks.

- Page 10

Mr. Voelckers asked for clarification from Staff of the phrase "unless otherwise authorized by this title" on line 16 ½. Ms. McKibben explained that there are some uses that required larger lot sizes. One example would be extra-large accessory apartments in duplexes.

Mr. Dye suggested adding wording to section (g) 'damaged' to indicate instances when the structures could be rebuilt to be in conformance with wording in other sections.

Mr. Dye spoke regarding section (5) on line 24 and suggested forcing to consolidation in cases where there are several adjoining undersized lots. Mr. Arndt was concerned that forcing to consolidate could negatively impact property values. Mr. Crossley added that the combining two lots is expensive and involves engineers for the replat. Mr. Voelckers also spoke against forced consolidation because when the plat was originally written it was considered to be adequately sized.

Ms. McKibben said that may be partly addressed when we look at vacant lots. There may be some small enough that they will be non-developable. In those cases, owners may choose to consolidate on their own as there is no economic value in developing the lot otherwise.

Mr. Arndt asked if those proposed small lots were located in general commercial district would they be restricted to only construction of single-family homes.

McKibben explained this language exists in current code. As it is written the vast number of these nonconforming lots are in residential and there are not many in general commercial districts. The idea of requiring consolidation was discussed extensively. Mr. Arndt asked if it was intended to be restricted to single family dwellings only or if it were in a general commercial district, would

there be other options. Ms. McKibben responded that you can always build with the use permitted if it meets the requirements of the district. Ms. McKibben agreed that the item was unclear and could use rewriting.

- Page 11

Mr. Voelckers suggested striking the sentence at the top of the page.

Mr. Voelckers suggested changing 'building' on line 6 ½ to 'structure' and adding a comma. He also suggested changing 'nonconforming' to 'legally nonconforming' on line 7 ½.

Mr. Maclean added that the section on parking spaces needs to be reviewed.

- Page 12

Mr. Voelckers suggested they define 'interruption' on line 4.

- Page 13

Mr. Voelckers suggested adding friendly language to the effect of "while city staff will endeavor to work with an applicant, the burden of proof..." to line 13. Ms. Mores advised against it stating it is always the policy of the department to do that but if it is added to code it can become leverage to be used against the department.

- Page 14

Mr. Voelckers suggested striking the word 'harmony' from item (c) near the bottom of the page. Ms. McKibben replied that the word harmony was added as a result of commission suggestion.

- Page 15

Mr. Voelckers suggested a grammatical change to item (D) to start it in the positive like "that benefits to the community outweigh any disadvantages. Taking into account factors such as..." and continue the list. He continued by suggesting striking the first four lines in item (E) and making (i), (ii), (iii), (iv) in E part of section D as (vi), (vii), (viii), (ix). Mr. Voelckers also noted item (F) is same, verbatim as (B) on page 15.

Mr. Voelckers noted item (C) was nearly duplicative of item (B) saying about the same thing.

- Page 16 – No changes
- Page 17 – No changes
- Page 18 – No changes

Mr. Dye suggested the fee of \$150 for the Certification of Legal Nonconforming Status in item (20) seems low considering the amount of filing information and the amount of support that staff would have to provide to an applicant. He asked which current scope of work in 49.85.100 is most comparable to what will be needed to produce the certification they'll need. Ms. Maclean answered that it could vary depending on what is readily available. Sometimes it could be similar to the letter of zoning compliance which is currently \$150 and other times it could be as close to the amount of effort needed for a variance. Mr. Dye asked if the fee is for a single letter and is there a separate fee for each nonconformity. (For example: Use, Setback, and Structure). Ms. McKibben envisioned the research for a site would include looking at all of those factors and all legal nonconformities would be identified at that time and listed in a single certification as bullet points.

Ms. Crossley had understood that for variances, each individual variance would be a different fee (front setback, side setback, etc.) Ms. Maclean clarified that yes, variances are charged on a per item basis.

Mr. Dye asked the scope of work difference between the Nonconforming Situation Review or Alternative Development Permit and the process for Certification of Legal Nonconforming Status and how the \$400 and \$150 fees relate to that. He asked if the \$400 maybe should be lower or the \$150 maybe should be higher given the amount of work that will be needed for each of them. Ms. Maclean said the Nonconforming Situation Review would be comparable to a conditional use permit timewise and workload wise. She said this is something they can look at over this next week.

Mr. Arndt said he agrees the nonconforming situation review involves the resident asking for something and they should pay for that. However, in the case of situations where zoning has changed and made a property nonconforming, he feels we should not make them pay.

Mr. Dye sees validity to Mr. Arndt's position but he believes it is not that simple because this came about as a result of changes in lending practices as well as zoning changes. If the fees are absurdly low then the costs are subsidized by everybody else. He struggles with the fees knowing that they have not kept up with inflation but also not wanting to raise them and unfairly burden applicants.

This concluded the Title 49 page by page review

Maclean thanked McKibben and Mores for their efforts and work on this Title rewrite.

Mr. Haight asked what time period would be needed to accommodate the changes requested and schedule Ad Hoc meeting(s). Ms. Maclean said they would need the week to discuss in house with staff, then schedule a meeting Tuesday. That way, they could have a packet for the

Commission by Friday afternoon. If that seems too compressed then they need to discuss the September 24 and October 8 meetings and possibly schedule a special meeting around those dates. The need for a special meeting is necessitated because several commissioners will be out on September 24 and October 8 is Yom Kippur. If those meetings are both cancelled, then maybe there could be a special meeting on October 1. Ms. Maclean and Ms. Mores will not be at the October 22 meeting and Ms. Mores will be leaving CBJ at the end of October. It is preferable to get the ordinance passed and put before the Assembly before Ms. Mores leaves. Mr. Haight and Mr. Voelckers will not be able to attend a meeting on October 1. Mr. Haight suggested meeting in October on the 15th and 29th. Mr. Dye suggested they table the issue and poll the commission tomorrow.

Mr. Dye, Ms. Crossley, Mr. Levine will be on the ad Hoc committee to meet Friday at lunch.

Ms. McKibben stated if the next meeting will be on September 17 staff may need a few extra days to get the packet out.

IX. BOARD OF ADJUSTMENT- None

X. OTHER BUSINESS – None

XI. STAFF REPORTS

- Ms. Maclean gave an update regarding the FEMA grant for the avalanche and land slide hazard maps and analysis.
- Wednesday, September 4th, Title 49 will be meeting
- Blueprint will be meeting Wednesday, August 28.
- FEMA will be holding a public meeting tomorrow at DZ Middle School.
- Mr. Hickok asked about schedule for Wetlands Committee. He did not see a notification for the last meeting. Ms. Maclean said there is an email that goes out and she will confirm he is on the list.

XII. COMMITTEE REPORTS

Mr. Voelckers reported on the Lands Committee. District heating needs to cross the Highway before repaving Egan can be completed. They want to cross through the Centennial hall parking lot area but the CBJ Lands department does not support this and it will end up going before the assembly.

XIII. LIAISON REPORTS- - None

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

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS- None

XVI. EXECUTIVE SESSION- None

XVII. ADJOURNMENT – 10:38 pm