

Meeting Agenda of the City and Borough of Juneau  
Title 49 Committee of the Planning Commission

July 1, 2021

Community Development Department  
Virtual & Telephonic Meeting, 12:00 pm

**Members Present:** Nathaniel Dye, Travis Arndt, Mandy Cole

**Members Absent:** Joshua Winchell, Erik Pedersen

**Commissioners Present:** None

**Staff Present:** Jill Maclean (CDD Director), Alexandra Pierce (CDD Planning Manager), Teri Camery (CDD Planner), Laurel Christian (CDD Planner)

**I. Call to Order**

The meeting was called to order at 12:05 P.M.

**II. Approval of Agenda**

**MOTION:** *by Mr. Arndt to approve the agenda as noted.*

**The motion passed with no objections.**

**III. Agenda Topics**

**A. AME2017 0001: Proposed Revisions to CBJ Code 49.70.310**

Ms. Camery explained the memo provided to the Committee in the packet. She explained that staff made changes to the ordinance based on comments from the last meeting and there were still some outstanding questions for the Committee. Ms. Camery clarified that in the proposed revisions, hazard trees can be cut in the inner or outer buffer. She also explained that the measurement of the buffer would refer to limbs overhanging the stream.

Mr. Arndt asked if the language could be changed to say, "Limbs shall be subject to the standards the trunk is subject to." He thought the language regarding the waterbody was unnecessary.

Mr. Dye thought the intent was not to extend the 0-25-foot buffer into the waterbody. He said that a tree could live within the stream and wondered if that was protected differently. He thought that anything within the waterbody should be included in the buffer.

Mr. Arndt clarified this would be a tree growing within the ordinary high water mark (OHWM).

Ms. Camery replied that if a tree were below the OHWM it would not be within CBJ jurisdiction, it would be within the Alaska Department of Fish and Game's (ADF&G) jurisdiction, so staff can only write for the OHWM or above. She said this is related to a specific situation where someone was cutting limbs that were overhanging the stream.

Mr. Arndt said he understood the intent, but thought that a tree at 24 feet would be treated differently than 26 feet. He said that the limbs should be part of the tree wherever they are growing. He asked if these would be treated differently under the intent.

Ms. Camery said she wanted time to think about that and would provide a response later.

Ms. Pierce asked Mr. Arndt to repeat his question.

Mr. Arndt said he wanted to define limbs as wherever the tree was growing. He said if it were growing in the 0-25-foot buffer, those regulations should apply. If it were growing at 25-50 feet, those regulations would apply. If a tree were growing outside of the 50-foot buffer, it should be treated as outside the buffer.

Ms. Pierce replied that staff could use the hazard tree exception and asked Ms. Camery to think on the question.

Ms. Cole said she understands CDD has had issues with trees overhanging, but she wanted to be sure that the revised language addressed this issue.

Mr. Arndt asked Ms. Camery to explain the situation.

Ms. Camery said that the airport was cutting limbs that overhung the stream and staff wanted to make it clear that those applied to the 0-25-foot buffer. They argued that the limbs were not within the 0-25-foot buffer, because they were below the OHWM.

Mr. Dye asked whose regulatory authority it was.

Ms. Camery said that the trees were overhanging the water. Anything within the OHWM would be ADF&G, but something overhanging, but that is anchored to the land above the OHWM, would be CBJ jurisdiction.

Mr. Arndt agreed that is where the tree is growing.

Mr. Dye replied that it seemed like splitting a fine hair and thought that staff and the Committee shouldn't write it in a way that there was a loophole. He asked for a better definition of the buffer.

Ms. Pierce said that the stream itself was ADF&G jurisdiction and she said if the Committee wanted control of the entire tree, it needed to be within the buffer. Staff wanted to avoid questions on whose jurisdiction it was.

Ms. Camery further explained the memo and discussed surveillance equipment and how language was changed to be consistent throughout. She added that there were questions on trees that were causing damage; if there were current damages that were visible, no letter would be needed from a licensed arborist. She said the next item was for mitigation, in which a letter from an arborist would be required. She also clarified that the CBJ Law Department would address what a licensed arborist is. Ms. Camery referred to page 2 item 5 of the memo, and said that section (e)(3)(G)(h), is what she was talking about.

Mr. Dye asked to clarify that if there was already a risk, the “or at risk” language in item G should be removed. This would make it clear that the risk must already exist.

Mr. Arndt recommended adding “potential damage” to item H.

Ms. Camery further explained the memo. Item 6 was completed. Item 7 was completed to allow everyone to use the exception.

Mr. Arndt questioned if an extra criteria was added to (I) that (G) and (H) weren’t subject to. He recommended being consistent.

Mr. Dye said that he did not agree. He said public safety could be difficult to define and that there should be a higher bar for (I).

Ms. Camery clarified that (G) and (H) were for damage to structures. On (I), she thought that should be defined differently than damage to structures. She said they were very different types of situations. (I) was intended for public safety issues.

Mr. Arndt said he had a different understanding, but understood the distinction.

Mr. Dye asked for a better definition of public safety.

Ms. Camery further explained items 8 and 9.

Ms. Pierce clarified that on item 9, staff strive to make ordinances more user friendly for staff and applicants. She said she didn’t want to cross reference in order to be as clear as possible.

Mr. Dye asked for clarification.

Ms. Pierce said that at the last meeting, staff was asked to move it because it was in Title 19. She wanted it in Title 49 to ensure planners were reviewing it as a criteria and it wouldn’t be left up to the building staff.

Ms. Camery said that on item 10, detailed plans would be required to be reviewed. She then moved forward to discussion items. On item 1, view shed enhancement, she said staff had received a lot of calls about removing vegetation to improve views. She said that staff wanted to include it in the ordinance, so that they would have an ability to regulate it and ensure removal complied with Best Management

Practices for riparian vegetation. She noted that the intent was to list as many uses as possible, because if they weren't listed, a Conditional Use Permit (CUP) would be required.

Referring to view shed enhancements, Mr. Arndt said that for stream channel alterations, a CUP was not required, and asked why that requirement was being added.

Ms. Camery replied that previously, the Committee asked for a CUP requirement, because moving the stream could impose a 50-foot buffer on neighboring property and the CUP process would inform them if a change were occurring.

Mr. Dye said that he wasn't sure a view shed enhancement should be allowed. He felt that standards shouldn't be lowered to make illegal things legal if the stream buffer is important.

Ms. Camery said that if it shouldn't be allowed, it could be listed under prohibited uses.

Mr. Arndt replied that he liked the inclusion. He thought as written it could be subjective and create more work for staff.

Ms. Cole thought the conversation was different. She said that it should be based on a specific use needing the tree to be reviewed for view shed or enhanced light or air. A garden outside of the 50-foot buffer for example, might benefit from removing vegetative cover within the buffer to provide more light.

Ms. Pierce added that in the Comprehensive Plan, protecting view sheds is discussed and view shed enhancement. She said it could be a tool for flexibility in stations where it made sense; it could be for a garden or a protected view.

Mr. Arndt said that some of the garden language needed to be worked and a person shouldn't have to get a CUP to create more light for a garden.

Mr. Dye said that a CUP would only be required if the garden was within the buffer. If the garden was outside the buffer, but vegetation was going to be cut within the buffer, that didn't need a CUP. He said that there needed to be language for additional light or air if a use was not happening within the buffer. He thought it should be clarified.

Ms. Pierce replied that staff would revise the language to be clearer.

On discussion item 2, nonconforming uses, Ms. Camery said that it was recommended to remove the language and refer to the nonconforming section of code. She said that in the Coastal Management Program, now void, there was a section of language for rehabilitation of streams that did not replace the nonconforming section of code. Staff proposes to keep that language with a few changes. She didn't want to lose the opportunity to restore the function of the buffer for major development.

Mr. Arndt said he liked the inclusion with the exception of the words “shall include”, he did not agree with mandating it.

Ms. Pierce replied that would be a change to the intent and asked for others thoughts.

Mr. Dye clarified that what staff is recommending be added in as a holdover from the Coastal Management Program. He asked if this was previously required for all developments.

Ms. Camery said that she has only seen it used a few times where there was a clear case of degradation of the buffer. She noted that there was a minimum degree of rehabilitation that was required. The intent was to relate it back to Best Management Practices and riparian vegetation standards. It wasn't meant to be a burden on the developer, but thought that larger developments should do a minimum level of rehabilitation on the stream.

Ms. Pierce added that something that is nonconforming doesn't mean that it should be grandfathered in. Where there is an opportunity for restoration, which should be done. She wanted to ensure that if restoration was possible, it should be happening.

Mr. Dye clarified that this was only for major development.

Mr. Arndt said he didn't see that it was tied to nonconforming. He suggested encouraging it and making it easy, but not mandating it.

Ms. Maclean agreed that it was not tied to nonconforming. She said that if a property is degraded and an owner was continuing to degrade it, restoration would be required. She said staff already have the authority to require compliance regardless of size of the development. She felt this language made it clearer how they could come into compliance and this was making it more user friendly because there were clear standards.

Mr. Arndt said that he was concerned with the language “degraded by previous activity.” He said that many creeks in the valley had gravel mining and those banks are now degraded and altered. He asked if we should now go back and restore it to the original, or what would staff like to see with that restoration.

Mr. Dye said he shared the concern with “degraded by previous activity,” feeling that it was subject to interpretation. He thought the language needed to be cleaned up.

Ms. Pierce replied that staff would take the guidance, clean up the language, and discuss this with the full Commission.

Ms. Cole added that she supported the intent of restoration, but felt that the language needed to be clarified, specifically the scope.

Ms. Camery moved forward to discussion item 3, Variances. Staff said if the development cannot comply with Best Management Practices and riparian standards, then a Variance was required. She asked if that was clear.

Mr. Arndt said that he was confused in relation to CUPs for uses not listed. He didn't understand where the overlap was for a Variance or a CUP, is it either or both.

Ms. Maclean stated that if you can apply for a CUP you probably wouldn't need a Variance, but this wasn't always the case. She said staff could clean up the language to make that more clear. In most cases, only a CUP or less would be required. She noted that typical activity wouldn't require a Variance and staff can make that more clear.

Referring to page 3 of the document, tier reviews, Mr. Arndt thought (b)(1) seemed like a CUP was required if using more than hand tools. He said the hand tool language should be added to a(8).

Mr. Dye said that if the intent was someone using hand tools, the damage would be less severe. He noted that a large crew using hand tools could be just as damaging as one person using an electric tool.

Ms. Camery said that language was the easiest to make the distinction and the language came from the stream working group. She said with hand tools, it wasn't likely you'd be substantially changing the bank.

Mr. Dye said that he manages property and has seen damage caused by hand tools because of the scope.

Ms. Pierce said that staff could insert language to clarify.

Ms. Maclean said that some organization and phrasing might be changed to improve flow. She asked if the ordinance was ready for a Planning Commission Committee of the Whole meeting, or if the Committee wanted to see it again.

Mr. Dye asked if Law could fill any gaps now.

Ms. Pierce said that her suggestion would be to check with law, work on clean up and organization, and then send it to a Committee of the Whole.

Mr. Arndt said he wanted Law to check on licensing requirements, arborists, and public safety.

Mr. Dye suggested removing the whole line of (d)(1)(c), on page 1 of the ordinance.

Ms. Pierce asked for clarification on how it wasn't relevant. She didn't want to prohibit the placement of surveillance if needed.

Mr. Dye said these uses didn't need a permit and they were all very different.

Ms. Camery said this came from the airport and the intent was to encourage use of lowest impact options to help with public safety issues. She said that if someone could install a camera to monitor crime, rather than remove trees to monitor crime, that should be encouraged.

Mr. Dye said he understood the intent, but thought that it should be a separate process for public safety items.

Ms. Maclean said she agreed it should be a separate section for public safety. She also thought it might need a permit for the installation of electricity to the camera, or also gear to install them within the trees.

Mr. Dye suggested that items not requiring a permit should be stand-alone items, not things connected to power.

Mr. Arndt said that the OHWM is a legal boundary and thought that should be determined by a surveyor. CDD lays out the OHWM in the ordinance, but he wasn't sure if staff should do that legally.

Ms. Maclean said that it should be someone with the expertise to do the work, this could be a wetlands or stream specialist.

Ms. Camery said that would also require a change to the Comprehensive Plan.

Mr. Arndt said that the Comprehensive Plan is not a law, but an overarching goal.

Ms. Pierce said that a Comprehensive Plan change would be good in this instance. She added that in other places, there is a riparian review and a qualified environmental professional does that and established the boundary. She thought an independent review may be better, but was not sure how it would apply here.

Mr. Dye wondered if a surveyor should be required to complete the work.

Ms. Camery said that may lead to inconsistency in applying the definition of the OHWM and that is why the change was made in the past.

Mr. Dye said he wanted the ordinance to come back to Title 49 with the changes discussed at the meeting. He added that he agreed with requiring a surveyor to stake the OHWM.

Mr. Arndt discussed cutting more trees for light, or view sheds, he asked if staff would revise what is here or add a new section.

Mr. Dye said he wanted a separate section for that. View sheds and public safety needed to be their own sections.

#### **IV. Committee Member Comments and Questions**

Ms. Maclean asked the Chair to get the minutes and recordings to other Committee members, so staff and the Committee wouldn't have to back track at the next meeting.

Mr. Arndt asked where those were available.

Ms. Maclean said that Title 49 has been recorded and that the Committee members could easily get the recording, if requested.

The next meeting date was not set to allow for checking schedules. The options were July 22 or 29.

Ms. Maclean added that the Planning Commission would return to chambers on the August 24, 2021 Planning Commission meeting.

#### **VI. Adjournment**

The meeting adjourned at 1:17 P.M.