MEETING NO. 2008-31: 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 p.m. by Mayor Bruce Botelho.

I. FLAG SALUTE was led by Mayor Bruce Botelho.

II. ROLL CALL

Assembly Present: Jonathan Anderson, Bruce Botelho, Jeff Bush (teleconference), Sara Chambers, Bob Doll, Johan Dybdahl, Merrill Sanford, David Stone and Randy Wanamaker.

Assembly Absent: None.

Staff Present: Rod Swope, City Manager; Kim Kiefer, Deputy City Manager; John Hartle, City Attorney; Laurie Sica, Municipal Clerk; Dale Pernula, Community Development Director; Mary Norcross, Controller; Marc Matsil, Parks & Recreation Director; Rorie Watt, Engineering Director; John Stone, Port Director; Mike Branum, Emergency Program Coordinator; Ben Lyman, Senior Planner; Eric Mohrmann, Fire Chief; Martin Beckner, Division Chief – Operations; Rich Etheridge, Fire Marshal; and several employees and volunteers from the Juneau Fire Department.

III. SPECIAL ORDER OF BUSINESS

Mayor Botelho issued Certificates of Election to Merrill Sanford, Jonathan Anderson and Bob Doll and congratulated them upon their re-election to office.

Mayor Botelho issued a proclamation declaring November 2 – 8, 2008 as Youth Voting Week, and presented the document to Marian Clough, Cheryl Jebe, Betsy Brenneman, and Mary Hakala, thanking them for their efforts.

Chief Mohrmann recognized Marilyn Vink for being an outstanding paramedic/firefighter for Capital City Fire and Rescue since 2004. He listed her numerous contributions to the department in training, in search and rescue, on the swift-water team, and in organizing the supplies and procedures for the Ambulances, and noted that much of this work was accomplished on her own time.

Chief Mohrmann recognized Sven Pearson, a long time volunteer who is currently serving as a Lieutenant at the Auke Bay Fire Department. In the last two months he has recruited 31 new volunteers and coordinated their training. He has assisted with fire investigations, fire prevention activities, attended training on his own, performed upgrades to the Auke Bay facility, and in 2008 received the State of Alaska Firefighter of the Year Award.

Chief Mohrmann thanked both Ms. Vink and Mr. Pearson for their excellent work and presented them with a certificate and gift card.
IV. APPROVAL OF MINUTES

A. September 29, 2008 – Regular Meeting 2008-30

Hearing no objection, the minutes of the September 29, 2008 Regular Meeting 2008-30 were approved.

V. MANAGER’S REQUEST FOR AGENDA CHANGES – None.

VI. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS.

*Chip Thoma*, Juneau, said there have been some encouraging developments regarding the seawalk and obtaining land for the seawalk near Taku Smokeries. He encouraged the Assembly to stay on top of this important project which affects the entire town.

*Sandy Williams*, Douglas, spoke about the Douglas 4th of July Committee’s project to construct a performing arts shelter at Savikko Park. The committee has ordered the logs, which will be delivered in April, and they hope to have the shelter constructed and ready to use for the 4th of July events in 2009. He requested assistance from CBJ to complete the components of the park plan that were under the responsibility of CBJ. He was concerned about parking and access to the shelter and the ice arena. He suggested the removal of some barrier rocks and converting “Field Two” to a driveway parking area, as this field had not been used for seven to eight years.

*Dixie Hood*, West Mendenhall valley, spoke about the lack of public process perpetuated by this assembly. She named several studies that had specific recommendations, which she said were placed “on the shelf.” She said the Planning Commission should be renamed the Variance Committee as its major work was to make exceptions to the Land Use code. CBJ created the Sustainability Commission and she listed its goals, which were all ignored in the determination to make a parking garage at Main and Egan. There was only one public meeting scheduled for the citizens to make comments and get answers to questions. 75 people attended that meeting and nearly all the input was critical of the project. Their input made no difference. Extensive public meetings should be required when significant violations of the Comprehensive Plan are intended. Transparency and accountability needs to be improved. Ms. Hood said that the Assembly had asked Trout Unlimited extensive questions about streamside setbacks for Montana Creek – the questions seemed more like attacks. She said such critical questions should have been asked about the location of the transit center and parking garage project. She said that “late-hour” resolutions at meetings, without notice to the public should not be a way to conduct Assembly business. She said “Juneau Access” was a code for the Lynn Canal Highway, and the Assembly continued to push for support for the highway in opposition to wishes of the public, as demonstrated by a vote. She was concerned about the reclassification of land at Fish Creek from Natural Park to Rural Residential development in the Comprehensive Plan without public notice or review. The League of Women Voters will be meeting to begin a ten-year review of the city charter. She said she planned to work for ways to address these issues.

VII. 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 Wanamaker, to adopt the consent agenda as presented. Hearing no objection, it was so ordered.

1. Ordinances for Introduction

a. Ordinance 2008-33

   Administrative Report: Attached. The manager recommended Ordinance 2008-33 be introduced and set for public hearing at the next regular Assembly meeting.

b. Ordinance 2008-34
   An Ordinance Amending The General Penalty Code On Ignition Interlock Devices And Amending The Traffic Code To Add Ignition Interlock Device Requirements To The Minimum Penalties For Driving While Under Influence And Refusal To Submit To Chemical Test.

   Administrative Report: Attached. The manager recommended Ordinance 2008-34 be introduced and set for public hearing at the next regular Assembly meeting.

c. Ordinance 2008-15(V)
   An Ordinance Appropriating To The Manager The Sum Of $17,481 As Partial Funding For The Purchase Of A Hi-Lift Air Bag Extrication Unit, Grant Funding Provided By The State Of Alaska, Department Of Military And Veterans Affairs.

   Administrative Report: Attached. The manager recommended Ordinance 2008-15(V) be introduced and set for public hearing at the next regular Assembly meeting.

d. Ordinance 2008-15(W)
   An Ordinance Appropriating To The Manager The Sum Of $7,000 As Partial Funding For The Juneau Teen Health Center, Grant Funding Provided By The State Of Alaska, Department Of Health And Social Services.

   Administrative Report: Attached. The manager recommended Ordinance 2008-15(W) be introduced and set for public hearing at the next regular Assembly meeting.

e. Ordinance 2008-15(Y)
   An Ordinance Appropriating To The Manager The Sum Of $5,781 As Partial Reimbursement Of Travel Costs For Staff And Historic Resource Advisory Committee Volunteer Attendance At The National Alliance Of Preservation Commission Annual Conference, Grant Funding Provided By The State Of Alaska, Department Of Natural Resources.

   Administrative Report: Attached. The manager recommended Ordinance 2008-15(Y) be introduced and set for public hearing at the next regular Assembly meeting.
2. Resolutions

   a. Resolution 2456
   
      A Resolution Authorizing The Manager To Apply For, And Enter Into, Loan Agreements
      With The Alaska Department Of Environmental Conservation, Alaska Clean Water
      Fund/State Revolving Fund, For Two Wastewater Utility Projects.

      Administrative Report: Attached. The manager recommended Resolution 2456 be adopted.

3. Transfer

   a. Transfer T-886
      
      Transferring $175,117 From The Capital Transit Facility Capital Improvement Project
      (CIP) To The Downtown Transportation Center CIP.

      Administrative Report: Attached. The manager recommended Transfer T-886 be approved.

4. Bid Award

   a. Bid Award E08-249
      
      Downtown Parking Garage and Transit Center Site work.

      Administrative Report: Attached. The manager recommended award of this project to
      Southeast Earthmovers, Inc. in the total amount bid for an award of $1,500,297.50.

VIII. PUBLIC HEARING

A. Ordinance 2008-25

   An Ordinance Authorizing The Port Director To Negotiate And Execute A Lease Of
   Alaska Tidelands Survey No. 1324, Commonly Known As Fisherman’s Bend, For The
   Purpose Of Waterfront Commercial Activities.

   Administrative Report: Attached. The manager made no recommendation as this was a policy
   issue for the Assembly.

Public Comment:

Chris Condor: Mendenhall Valley, said he runs a charter business which is docked at
Fisherman’s Bend. He had previously testified to the Harbor Board. He said the process was
unfair. The Harbor Board had an unrealistic estimate for shallow, unused tidelands. The
Board required the Andrews to obtain their own appraisal, and when the Andrews provided the
information to the Board it was dismissed and the Board spent money on another appraisal. He
said it seemed as if there were a few people on the Board at the time with what seemed like a
vendetta, and the rules were changed during the process. Gasoline prices have hurt everyone.
The stalls at Fisherman’s Bend are not all rented and the moorage prices have not changed.
Next season will be worse. If the higher rate was accepted, they will have to raise rates, or
they may go under. He said there were over 150 stalls at Fisherman’s Bend and Statter Harbor
could not make up for this if the marina were to close. If Delta Western moved out of
Fisherman’s Bend, there would no longer be any competition and gas prices could rise further. He said the Andrews had offered a compromise, which he urged the Assembly to accept.

**Ron Sommerville**, 4506 Robbie Road, he said the rate being proposed for the lease was too high. The Borough pays more than market value for DeHarts, which raised other property values in the area. He asked the Assembly to look at this from the standpoint of the people using the harbor. His moorage rates will most likely triple. The launch facilities in Auke Bay need lots of work and more people will use the launch ramps due to increasing moorage rates.

**Rick Wolfenberger**, General Manager of Fisherman’s Bend, said that all members of the Assembly had received an e-mail from him regarding specific issues and terms to which they would agree. He said he understood that the Harbor Board had recommended that the Andrews obtain an appraisal using the income approach. That direction was not in the minutes of the meeting, but the meeting minutes did reflect that Sharon Andrews stated they would use the income approach. The Board was aware of our intention to get an income approach. We were not aware that they were not obligated to use our appraisal. Everyone was surprised that the income approach recommended a much lower appraisal. He said he had received a fax from the Harbor Board, but he did not have a copy as it burned in the fire at Fisherman’s Bend. He said that the fax included information from the CBJ Assessor that there was a restriction in our lease which stated that we could only use this facility as a small boat harbor. We didn’t ask for this to be changed. We don’t object to this restriction being lifted, but we don’t have the intention to change the use of the property. He did not have the time, energy or money to investigate all the possible uses for the leased property. In August 2007 we raised our moorage costs 20 – 40%, and brought our rates within 20% of the average Seattle price, but still below Seattle. CBJ is 30-40% lower than our rate. They have 212 boat stalls; 91 of those are on the piece of property under discussion. Out of the 91 stalls, for the first time in ten years there were five vacancies. This year 79% are rented. CBJ proposes to increase the rent Fisherman’s Bend pays from $12,000 to $35,000. The Harbor Board is the landlord as well as a competitor. The Board did not consider that they don’t have to pay taxes or tidelands leases, and they have money beyond fees collected to do maintenance, including local taxes and grant money. Fisherman’s Bend customers have to help pay for all expenses. He said he felt like the Board was trying to run him out of business. Whether it was intentional or not, the effect was the same. He asked the Assembly to consider that CBJ was his competition.

Mayor Botelho said that the Harbor Board responded that they were not really Fisherman’s Bend’s competition, since with few exceptions, people take their chances at Statter Harbor as they can dock only three days and there was no guarantee of a slip. Mr. Wolfenberger said he included all the marinas in the community that affected private moorage, and DeHarts was operated very similarly to Fisherman’s Bend.

Mr. Anderson asked if this lease went through, how Fisherman’s Bend would compensate for the higher cost. Mr. Wolfenberger said if the market was right he would try to pass it on to his customers. He has not been able to fill the marina at his current rates, which were 30-40% higher than CBJ’s rates.

Mr. Doll said that in the Horan report sketch, the area used in the lease is 55% of the total area of the lease, and asked why they were seeking the entire area which included underwater area that could not be used. Mr. Wolfenberger said the original plan in 1984 was to build two more floats. That project was put on hold due to the economy. We have been negotiating the current lease, and we have discussed dropping the unused lands, but this does give us the
option to expand if the opportunity exists. Mr. Doll said that Fisherman’s Bend could request to buy or lease it in the future, and he was surprised by the interest to lease the entire area when it could not provide a return on investment. Mr. Wolfenberger said he understood that the owners were dealing with the current lease and investigating that issue.

Fred Yates, North Douglas, spoke as the Office Manager of Delta Western, and read a letter sent from Delta Western’s Senior Sales Manager to the Assembly. Delta Western owns and operates three tank farms in Juneau. In 2007, Delta Western leased the fuel dock from Troy and Sharon Andrew. We were excited about the growth potential. We were notified by the Andrews late in 2007 that the lease would expire, and that the lease payment would be increased. They would need to exit this parcel if the lease increased. Because the fuel dock is now in question, Delta Western has put on hold any funds intended for new improvement projects at the facility. Delta Western is also concerned that the increased costs to the Andrews would be passed on to Delta Western and the consumers through our lease agreement. This will affect the consumers in Auke Bay by making the fuel dock in Auke Bay less competitive. The assessments have shown there is a wide disparity on the valuation of the property. Delta Western encouraged CBJ to lease this parcel at a fair market rate to the current leaseholders, and urged the Assembly to accept the compromise offered by the Andrews family.

Kevin Burchfield, North Douglas, operates Lost Alaska Adventures charter from Fisherman’s Bend. He was the chair of the Juneau Charter Association and echoed the comments made previously. He distributed a letter with their concerns. He urged the Assembly to work with the Andrews family as the ramifications were big. He said if his rates went up he would not be able to employ one of his part time employees.

Sharon Andrew, Auke Bay, said she had been in business since 1974, and since 1986 has negotiated a lease with the State of Alaska on this particular parcel. Not overjoyed to be here but grateful. When we started this with the Harbor Board, we told them that the land was greatly overvalued, after two high price appraisals, we have been justified, and neither could come close to the original request from the Board. We feel a little misled. No one ever suggested to us that if we got an appraisal that it would be ignored. They threw out our appraisal. We are all tired of the issue. You have a lot of my comments from the past. We believe the action of the Board was at least improper in not accepting Mr. Wold’s appraisal. We will exhaust our administrative remedies. We would like to settle this here, as it gets more expensive as it goes on. Let’s split the difference between the two appraisers, both are licensed and qualified. At its best, it is a good educated guess of value. We are willing to split the difference. If there was some other means of appeal to an impartial adjudicatory person they would favor this compromise. Regarding Mr. Doll’s question regarding leasing the entire parcel, we intended in early 80’s to install two floats. The Corps would not issue permits until they had finished permitting the Auke Bay breakwater. That project went to the 9th Circuit Court of Appeals and took about five years. During that time there was a moratorium on anyone’s ability to expand in Auke Bay. The 9th Circuit Court required a complete Environmental Impact Statement, which added about another year, and then they moved forward, but by then the economy crashed, and it was not feasible to do the whole thing, so we put it off. As Mr. Wold points out in his appraisal, it is not feasible to do so now, either. The Board talked with us about the possibility of leasing less of that parcel. To do so, we must have it re-surveyed, at a cost, and then it goes to the Department of Natural Resources. I was told that DNR is taking up to five years to approve those reviews. The stopper was that Mr. Stone told us that the Board could accept the land back, but that they would not do it, if, after the resurvey, what they would get back was a worthless piece of land. Without an assurance
from the Docks and Harbors Board that they would allow us to divest part of that portion, we were not prepared to go forward with the survey. We don’t have any objection to removing the land that we are not using, but they do object to spending more money for something that might not be accepted. She had comments about the ordinance that she provided and was willing to go over with the Assembly.

Mr. Anderson asked if she thought the central difference between the appraisals was the income vs. the market approach. Ms. Andrews said she did not understand real estate appraising, and did not know if that was the central difference. They objected to Mr. Horan’s appraisal as he has no reason to be objective. She said he wouldn’t deliberately be non-objective, but if an appraiser had done a lot of work for an agency, and they look forward to continuing to do more work, then the appraiser knows the answer the client wants. There are no comparable sales in the borough or in Southeast Alaska. The only one was DeHarts, where the city paid more than $1 million over the appraised value as established by Charles Horan.

Mr. Anderson asked if Ms. Andrews instructed Mr. Wold to use the income approach or was it his own decision. Ms. Andrews said her memory of the meeting was different than Mr. Preston’s recollection and the minutes, but she recalled that Mr. Preston suggested that the Andrews obtain an income approach appraisal, and she said that she would do so.

Mr. Doll said the Assembly was concerned with treating waterfront leases equitably for everyone. If we were to accept the compromise figure, would that be fair to all the other waterfront lease holders. Ms. Andrews said that the law required market appraisals. She asked if it was fair to charge a property tax to them for their possessory interest in these tidelands leases when there is no charge of property tax for the possessory interest of the city’s own moorage customers in the downtown harbors. No money went to the general fund from those monies. The Docks and Harbors Board has approximately 850 slips leased out on an annual basis and it was common practice in the State of Washington to charge an additional fee on top of moorage to recover those lost property taxes. The DeHart’s property is no longer in the tax base, so that is an additional loss of general fund revenues. It is not fair to our customers that they are required to pay property taxes and the people who moor in the city harbors are not required to pay property taxes.

Ms. Chambers referred to a memo from Port Director Stone regarding a comment on the Wold appraisal, that the Board asked that certain deficiencies be addressed and when the applicant declined to address the deficiency, the Board rejected the appraisal for cause. Ms. Andrews said that Mr. Stone had a memo asking us for information in order to change the figures that Mr. Wold had given us. Some of the information they wanted was historic, what had we paid for the property, what had it cost us to develop the property. They wanted to have different figures to determine the capitalization. We consulted with our attorney and with our appraiser and Mr. Wold said the appraisal was void if it was tinkered with. We refused to give them the historic information. When Mr. Horan contacted us for information on income to verify the figures that Mr. Wold used, we provided it. We provided a copy of the income statement for two years prepared by our accountant. Some of the files they requested were lost in the fire. Ms. Chambers asked if Ms. Andrews was under the understanding that lifting the development parameters off the property influenced the appraisal price. Ms. Andrews said that when the Docks and Harbors Board received a copy of Mr. Wold’s appraisal, they sent it to Ken Miller, an appraiser with CBJ, and Mr. Miller concurred with the findings of the appraisal, but added a statement that if the restriction was changed, it might make the property more valuable. We can’t just lift a restriction on a lease. Mr. Wold responded that that was not the premise that
determined his valuation, but was one of many factors. It did give the Docks and Harbors Finance committee a hook to hang their hat on to say if they lift the restriction it would be good for us and for the Andrews. She said they didn’t care either way, there was nothing really feasible that could be done right now except for the present setup. If they did develop, permissions and approvals would be sought. I’m sure this influenced Mr. Horan. Mr. Horan paid no attention to the competitive nature of what we are dealing with the CBJ in moorage. He made a statement about lowering a rate to Gitkov due to the CBJ competing with him. There is a chilling effect with the Docks and Harbors competition.

_Troy Andrews_, said he agreed with Ms. Andrews. CBJ has used this appraiser exclusively for many years, it is like having only one airport.

_Cathie Johnson_, Auke Bay, said she docks her boat at Fisherman’s Bend. She referred to an e-mail she sent to the Assembly. She asked if this lease disappeared, how the property would be accessed. It would be by water or by eminent domain of Fisherman’s Bend in a city taking. She asked if this was the intent. When CBJ is the competitor and is asking to see the competition’s books, and they say no, then the Docks and Harbors says their appraisal is null and void. She read both appraisals and there is missing information in the appraisal done for the Docks and Harbors Board. The best solution to this problem is to simply take the middle number. Using the same appraiser on so many CBJ projects leads to circular thinking. CBJ does not have a bid process for doing appraisals. She asked the Assembly to reach a compromise before any more of her tax dollars were spent fighting this.

_Ricardo Worl_, Mendenhall Valley, said the people at Andrews Marina had done their part to show compromise. He urged acceptance of the compromise value. It was frustrating to see how this community has bent over backwards to improve waterfront facilities downtown benefiting private businesses, when this one is a small enterprise that benefits charter businesses locally, local boaters, and fishers. The benefits go beyond those that have slips in the harbor.

Mayor Botelho requested a recess at 8:10 p.m. and the meeting reconvened at 8:20 p.m.

Assembly Action:

*MOTION*, by Wanamaker, to discuss Ordinance 2008-25

Mr. Wanamaker asked to hear from the Docks and Harbors Board.

Mr. Stone said the lands the Docks and Harbors Board lease are still owned by the state. They are public tidelands and the city has been given administrative control over the tidelands. We lease the tidelands out at market rent, established by appraisers, using a variety of tools. In this specific case, the rent that was recommended by the Board was established by an appraiser after looking at similar parcels rents in Auke Bay and those rents ranged from a low of 10 cents to a high of $1.00 per square foot. The appraiser recommended 11 cents per square foot for this parcel. It is on the low end of the rent structure. The current rent is about 4.5 cents, established in 1986 by appraisal, based on tideland land sales in Southeast Alaska. Appraisers look at tideland land sales and they use a capitalization rate to come up with a fair market rent. Juneau uses a capitalization rate of 8%. In cases where we do have land sales, we try to use those for market rent, because it is an indication of what people will actually pay for land. The city has purchased a few tideland parcels in Auke Bay over the past few years, including...
DeHart’s Marina and a parcel at Auk Nu. It is true we paid more than appraisal for those lands and because of that the appraisers don’t use those in the analyses they give us. The DeHart’s purchase in no way influenced the rent on this particular parcel as it would unfairly bias the sale upwards. Fisherman’s Bend has two tidelands lease parcels that are leased from the city. The one we are discussing tonight and another known as ATS 33. That parcel’s rent was established in 1994 at 10 cents per square foot established by the state. With the recommendation to the Assembly, we are proposing 11 cents per square foot, thus suggesting that rent only increases by one cent over the last 14 years.

Mayor Botelho asked how the state rate of 10 cents per square foot was established. Mr. Stone said that state rates were always arrived at by appraisal, and typically they were done by third parties. Most of the rent structure in Juneau was established pursuant to the state establishing all these tideland parcels – CBJ is new in the game. It is fair to say most of the lease structures we have stem from the work the State of Alaska has done over the last 30 - 40 years. The exception would be some of the cruise ship related parcels we have downtown, where we are renting tidelands to businesses that adjoin the waterfront. The rates vary downtown – we are charging up to $10 per square foot for some of the leased tidelands downtown, which compares to the 11 cents discussed tonight.

Mayor Botelho asked about the discussion of using the same appraiser which subconsciously may tend to bias and the discussion of subdividing the property.

Mr. Stone said the Docks and Harbors Board manages approximately 40 leases and has used four appraisers, including Charles Horan of Sitka, Kim Wold of Alaska Appraisal Associates, Pier Bjorn Rolle, of Anchorage and the CBJ Assessor’s office staff. Several years back, we let a contract with a competitive proposal for those approved by DNR to do tidelands work, and we selected Charles Horan at that time. Mr. Horan does most of our work. There have been a few private tideland sales, non-city related, that have been factored in. One was Alaska Glacier Seafoods when they bought the lot for the seafood processing plant. That sale was used to establish market rent for their tidelands. There was also a sale in inner Auke Bay of Bill Dunn’s private tidelands, which was used to influence an adjoining lease there to Aniakchak Co. That rate was established at 40 cents per square foot.

Regarding subdividing the parcel, we have had this issue come up to reduce the cost of the leased parcels. The Board has a policy that allows for this. The things we review, we want to make sure that the subdivided parcel is marketable upon subdivision – we don’t want to have remnants that can’t be used. The second issue is that it needs to be properly surveyed, and in some cases that can be difficult because some of the leases passed to us have never been officially platted – they were just paper plats. The third thing is to not leave any contamination issues for CBJ to address.

Mayor Botelho asked if the first condition could be satisfied in this case. Mr. Stone said yes, they had discussed this.

Mr. Anderson asked to be clear that the unused piece could be cut off from the lease. Mr. Stone said yes, and the portion he was referring to was actually three, one-acre lots owned by Lindegard, between Spalding Beach Condos and Joe Thomas’ properties, in the corner triangular section of the ATS parcel discussed tonight; this would be the part that could be cut off. Mr. Anderson asked what percentage of that would be leased. Mr. Stone said he guessed 25 – 30%.
Mr. Doll asked if there was a question of treating all leaseholders equitably. Mr. Stone said yes. The rent system is based off appraisals, and every decision influenced every other, and there are ten renewals pending this year. Mr. Doll asked if this kind of issue was involved with the proposed marina south of the rock dump. Mr. Stone said yes. Mr. Doll asked, assuming the suggested compromised price were accepted, what would be the impact on that proposal. Jim Preston said that it was difficult to say as it was in a different part of town.

Mr. Doll asked if there was a necessity for consistency, predictability, and adherence to the rules on these leases. Mr. Stone said yes. The obligation under state law was to lease property for market rent, which was established by approved appraisals.

Mr. Wanamaker said testimony shows there is an opportunity for compromise. Has the Board had any opportunity to discuss this and would this be helpful to do. Mr. Stone said they did not discuss this compromise. That is not to say that another appraiser would not come up with a different market value. Looking at the market rents in Auke Bay, it is hard to say we would come up with anything much different.

Mr. Sanford asked Mr. Stone if he thought appraisers would adjust future appraisals based on the action on this lease. Mr. Stone said yes, the value will be used in the next rounds of appraisals that are done in the community.

Ms. Chambers is concerned that the minutes reflected the Andrews planned to get an income approach, and this was one of the major problems with the appraisal and its acceptance. Why did they believe this was okay, and if not, approved by state law.

Mr. Preston said that when they came back with the income approach, we assumed, and we were wrong, that the appraisal would be competitive or similar to the type of appraisals we were used to, and when we saw that 20 years later it was less than what the state came up with earlier, the full Board rejected it soundly. We tried a ramp-up model, which would increase the value over the years, but that offer was rejected. We asked to have questions clarified, and Mr. Horan came up with $51,000 for the income approach. That told us that the income approach was still valid, because it fit with what some of the other leases were in the surrounding area.

Mr. Stone said appraisals can be done by different methods. The applicant did their income approach and came up with $11,000 a year. They estimated the income from the slips that were on the leased tidelands and deducted a bunch of expenses on those from that income, and the remaining amount they told the city they could pay for rent. The Board was interested in verifying the income and the expenses. The Board was not satisfied on either account, and Mr. Horan reviewed an income approach. He assumed the same income, but he did a sensitivity analysis on the expenses and came up with $52,885 under one method and $62,700 under a different method. The Board had a range of three income approaches that ranged from $11,000 to $63,000 per year. Mr. Horan said there was plenty of market rent and recommended that approach, which the Board chose.

Ms. Chambers referred to a memo from Ken Miller, CBJ appraiser, which said the Wold appraisal appeared well reasoned and he agreed with the estimated annual market rent of $12,700. She was concerned with the wide disparity between a CBJ employee, a CBJ contractor, and a third appraiser, all of which are well qualified at their jobs, and she asked for an explanation.
Mr. Stone said it comes down to the factors used to do adjustments to income and expenses on the income approach.

Ms. Chambers asked if there is a continuum, then what was the objection to coming up with something in the middle. Mr. Stone said the median between $11,000 and $62,000, it might be about $35,800, which is what we are recommending.

Ms. Chambers asked if the restriction for use of the parcel only as a marina would have bearing on the value of the appraisal. Mr. Stone said he did not think it had a bearing on the market rent approach. In general, the Board looked at it more as helping Fisherman’s Bend in the long run than trying to influence the rent they are paying. Right now they are restricted to just marina use. Typically, when the Board does leases, they do it for marine-related development and they wanted to be consistent. There are several other permits they would have to obtain if they wanted to do something different, but the Board didn’t want to restrict them arbitrarily from making as much money as they possibly could off the tidelands.

Mr. Dybdahl asked, of the other 40 leases, have any ever used the income approach. Mr. Stone said he had not seen this since he was Port Director. Mr. Preston said he has not seen it used in the seven years he has been on the Board.

MOTION, by Doll, to amend Section 2, paragraph (C) of Ordinance 2008-25, to delete “$35,800 per year, plus sales tax,” and insert “$24,250 per year, plus sales tax.”

Mr. Dybdahl said as a policy matter for Docks and Harbors, regarding the process, it would benefit all for Docks and Harbors to specify the approach the applicants are to use when obtaining an appraisal. Mr. Stone said most appraisals have been market rent or market value, or both, which generates a list of comparables, comparables are rated, and a value is derived.

Mr. Wanamaker asked what this amendment did to Harbor staff regarding future leases. Mr. Stone said he thought it priced the rent at approximately 7 cents per square foot, their adjoining parcel is currently leased at 10 cents per square foot and that lease is up for renewal, and he suspects that will go down. There are also other parcels coming up for renewal in Auke Bay and there will probably be a downward movement to lease rentals in general, at least for the non-cruise ship related parcels. The money taken in from leases is used in the Harbors enterprise for capital improvements to the harbor facilities, which could affect rate increases.

Mr. Doll clarified that the amendment should include every mention of the amount of the lease in the ordinance.

Mayor Botelho asked if the ordinance or regulations adopted by the Board regarding resolving appraisal disputes had been played out appropriately.

Mr. Stone said the regulations required that when there were two conflicting appraisals a third appraisal must be obtained.
Mr. Wanamaker asked about the period of renewal of the lease rates. Mr. Hartle said the Lands Code, 53.20.050, required a review every five years.

Mr. Wanamaker asked Mr. Hartle if this was approved was there anything prohibiting the Assembly from requesting a review in three years. Mr. Hartle said Mr. Stone had referred to state law on this but Mr. Hartle had not reviewed that, but subject to that, CBJ 53.20.050 provides that land be leased at a rate determined to be market rate by an appraiser, but such minimum rental may be waived by the Assembly by resolution (ordinance), however, such waiver does not constitute a waiver to the requirement for a review and adjustment of rental rates every five years. Mr. Hartle said it should stay at five years.

Mr. Wanamaker said he is sympathetic to the lower rate and the amendment, there has been confusion and the amendment may be warranted, but we may be taking an action in which we don’t have enough determined information, and we need specific facts to make such a determination. Mr. Hartle said specific findings would be helpful if needed for defense in court.

Mr. Doll said a distinguishing factor for this parcel lease was that the customers were individual boat owners. He did not know of another circumstance where this exists in the community.

Mr. Anderson said that this is the only private marina, such that the market consists of other CBJ leases, so this makes this a different situation than some other cases might be.

Mayor Botelho asked for an at ease from 8:55 p.m. to 9:05 p.m. for the attorney to draft a “whereas” clause to be incorporated into the amendment to be voted on. There was no objection.

Mr. Hartle read a draft whereas statement for consideration by the Assembly for inclusion into Ordinance 2008-25, as follows: “Whereas, Fisherman’s Bend is the only year-round, private marina in Auke Bay subject to CBJ tidelands lease, and the Assembly, having weighed competing appraisals with widely-ranging lease values and having considered the testimony offered on this matter, (written and oral),”

Mr. Doll had no objection to incorporating this statement into his motion.

Mr. Dybdahl said he was concerned that this could result in a run for a lower lease rate for the next ten tidelands leases up for renewal this year, and in the following years, and unless those fears were taken out by the additional language, he would vote no.

Mr. Hartle said this is a market question. Mr. Stone said future appraisers would use this example.

Mr. Doll said none of the other leases will be identical circumstances. If we are judicious, we will only get one appraisal.

Ms. Chambers said we will see a return if we were to lose some kind of investment because of lower valuation elsewhere, that this could have the potential to be the economic stimulus
package from private enterprise. We have heard from people locally and nationally that this is a good investment into a strong, healthy economy.

Mr. Sanford asked if it was stipulated that the DeHart’s appraisal was not used as a comparable, why can’t it be stipulated that this lease is not used. Mr. Stone said his opinion was that this would be used.

Mr. Bush said he shared similar concerns with Mr. Dybdahl. I don’t think we have differentiated this lease enough in the language proposed. He is a strong supporter of market value in these circumstances and we should not be second guessing a reasonable market value approach. Even if the rent is passed on to the customers, the math results in a $100 per year customer increase. This is not insignificant, but not huge.

Mr. Dybdahl said the two appraisals that could be compared were the two that used the income approach, and not the market rent or market appraisal, so to that extent this problem could be solved going forward if the Docks and Harbors Board would outline a very specific policy with regard to specifying that the market value approach was required for an appraisal. We are considering two appraisals on an income approach, not using a market approach.

Hearing no objection, the amendment was so ordered.

Hearing no objection, Ordinance 2008-25 was adopted as amended.

B. Ordinance 2008-30

An Ordinance Adopting The 2008 Update To The Comprehensive Plan Of The City And Borough Of Juneau.


Public Comment: Mayor Botelho recommended that testimony be taken from two individuals who had not previously testified, as public testimony was closed on this item at the last meeting, even though it was noticed for Public Hearing. There was no objection to this approach.

Ron Berg, North Douglas, spoke regarding the changes to the Comprehensive Plan designation of the area currently designated as Natural Park adjacent to Fish Creek in North Douglas, bounded on the west by Fish Creek, bounded on the east by Sundown Drive, on the north by Horizon Drive and bounded on the south by North Douglas Highway. This is an undisturbed area, set aside to protect Fish Creek as a salmon stream, and is used by deer and bear as a natural corridor. He learned that the draft Comprehensive Plan reduces size of the natural park and creates an area of rural low density residential designation. He referred to page 176 in the draft Comprehensive Plan. Mr. Berg recommended that the Fish Creek Natural Park area be left as it is. He spoke about the natural attributes of the area. He understood that this change was made by the Assembly Committee of the Whole on September 11, and this process was not transparent enough to provide for public involvement. He only heard about this a week ago. He spoke with Parks and Recreation Advisory Committee members, who had not heard of this, nor had the Bayview neighbors with whom he had spoken.
**Dean Williams**, Downtown Juneau, spoke about the Lynn Canal Road. He has studied this project for 17 years and the whole project is a nightmare. Today the state will not be able to construct this road due to the costs. The terrain is the most dangerous for a road in the entire U.S. and North America. In 1991, he talked to DOT/PF about the lack of information regarding mass land slides in the project description—the department was more focused on avalanches. Golder Associates of Anchorage prepared a report for Phase I, which was discouraging for DOT/PF. Mr. Williams said he was not against a road, but he wanted it to be a safe road, for people and for wildlife. In 1952 he took two engineers from Austria to view both sides of the Lynn Canal for a possible road route. They were familiar with mountainous road construction and said the West side of Lynn Canal might be possible, but they wouldn’t consider a road on the east side. If you look at the stakes DOT/PF has put up for the right-of-way, it is unbelievable. Governor Murkowski said it would be done and he didn’t want to hear about the cost or the word “no.” Mr. Williams said he hoped to get Governor Palin to see the right-of-way stakes for herself. DOT/PF staff should go along and should state how the road will be constructed safely and to be safe to travel. Come next spring—let’s go up and look. He discussed the dangers of blasting and the alteration of the landscape unintentionally.

**Assembly Action:**

**MOTION**, by Sanford, to amend the Comprehensive Plan to add the following:

8.4.SOP2 Support development of a Lynn Canal Highway, as this facility is important to provide improved transportation to the Capital City for Alaska’s citizens, Alaska’s legislators, and for the economic well being of Juneau and the Southeast Region.

Mr. Doll said the Planning Commission put about 20 conditions on the project when it was before them for review, and DOT/PF agreed to enforce the conditions if they could. DOT/PF went to the Corps of Engineers, which approved seven of the conditions. Does anyone know how DOT/PF will enforce the conditions? Mr. Pernula said he would have to do some research on that and report back. Mr. Doll said he would provide Mr. Pernula with notes.

Mr. Sanford said the permit was issued with conditions, and the applicant has to meet the conditions. Mr. Pernula said it was a City/State Review, under the Alaska Statute which allows the local government to review DOT/PF projects, and was approved by the Assembly. He had no reason to believe the conditions would not still be attached to the project. It was not a typical Conditional Use Permit.

Mayor Botelho objected to the motion.

Roll Call on the amendment:

Aye: Anderson, Chambers, Dybdahl, Sanford, Stone, Wanamaker
Nay: Bush, Doll, Botelho

Motion carried, 6 ayes, 3 nays.

**MOTION**, by Wanamaker, to amend the Comprehensive Plan to add the following:

8.4.SOP3 Support the continued operation and improvement of the Alaska Marine Highway System as an important element of access to and from the CBJ and the rest of coastal Alaska that helps ensure access to the Capital City and coastal communities.
Hearing no objection, the amendment was adopted.

MOTION, by Doll, to amend the Comprehensive Plan to adopt the revised language describing the Watershed (WS) land use designation overlay, proposed by Community Development Director Dale Pernula, found in the Page 87 errata sheet (attached to these minutes).

Hearing no objections, the amendment was adopted.

MOTION, by Anderson, to reconsider the motion on the Montana Creek Streamside Setback buffers, to approve the 500’ setback on CBJ lands adjacent to Montana Creek. Hearing no objection, the motion was back before the Assembly.

Mr. Anderson spoke in favor of the recommended 500 foot buffer for stream setbacks on Montana Creek adjacent to CBJ lands. He asked the Assembly to consider the public process that has taken place, that this setback does not affect private lands, there are no existing mining claims on this land as well.

Mr. Doll supported the motion as an opportunity to protect a diverse watershed at no cost to anyone. It was an ideal opportunity and the need had been illustrated.

Mr. Wanamaker said the request is well meaning but not based on enough science and was made without consideration of all the other values. We need a hydrologic study for actual values to see what is happening on Montana Creek. We know the land is rebounding so we need to know what that is doing to the stream. The information the proposal is based upon is out of date. The biological information is current and good. The hydrology itself needs to be studied. When we know the characteristics and functions of the watershed, then we can prioritize what we really want and establish corridors based on the most important areas to protect. We have a broader responsibility to the future in the use of public resources. There is adequate protection with the 250’-foot corridor, but in some cases, 500’-feet might not be enough, and others, 100’-feet might be sufficient.

Mr. David Stone said he is sensitive to Mr. Wanamaker’s comments, however, he referred to page 5, 2, c. of the Comprehensive Plan, which stated “No rights created. The goals and policies set forth in the Comprehensive Plan are aspirational in nature and are not intended to commit the City and Borough to particular actions, schedule or methodology...” Basically, we have the opportunity to change it at any time. It is a guiding document, but it does not bind us. Mr. Dybdahl echoed Mr. Stone’s comments. The Assembly can not hurt anything in the short term with this action. We heard tonight that the Assembly was in violation of the Comprehensive Plan. It is looked at by many in the community as something that is written in stone, and any time we make a small change to an aspirational plan there must be extensive public process. We can do this. If a hydrological study is needed we should take this up and see if we want to fund such a thing. I could be that 1,100’-feet on one side is needed and maybe only 100’-feet in another part of the corridor. He supported the 500’-foot setback as it does not do damage at this point.

Mr. Doll supported the idea of the study and putting the 500’-foot corridor in place first.

Mr. Sanford asked why the move to the maximum end now, when all these lands are wetlands or very steep lands, and will not be able to be built on anyway – why put the bigger number on
it first, then justify going to a different number. The 200’-feet protects the waterbody and steeper slopes. He did not support the motion.

Mr. Bush agreed with Mr. Wanamaker in that the Assembly doesn’t know for sure, but when in doubt, we should err on the side of protection. There has been a lot of research and public process to support the 500’-foot buffer.

Roll call on the amendment:
Aye: Anderson, Bush, Chambers, Doll, Dybdahl, Stone, Botelho
Nay: Sanford, Wanamaker
Motion passed, 7 ayes, 2 nays.

Mr. Anderson referred to Mr. Berg’s testimony. He re-thought his position and said he would feel more comfortable with removing the buildable area from the Comprehensive Plan map and return the area to Natural Park designation. He said there had been no studies of this, and no public process regarding the change recommended by the Committee of the Whole. He would like this piece referred to the Planning Commission and the Parks and Recreation Advisory Committee for study and recommendation.

Mayor Botelho asked Mr. Hartle if a motion to rescind the previous action, to modify the map, would be in order at this time.

Mr. Hartle said to make it a motion to amend, and to make the change.

MOTION, by Anderson, to amend the Comprehensive Plan, by removing the piece of land along the west side of Sundown Road, adjacent to the Natural Park designated area, on Map I, from RRLD Designation back to the Natural Park Designation.

Mr. Anderson said the matter should be referred to the Planning Commission and the PRAC for review.

Mr. Sanford objected.

Mr. Dybdahl sought clarification of the motion and said that if it went to further public review, an amendment to the Comprehensive Plan would be required in the future to have the property designated rural residential.

Ms. Chambers said her interest was to provide as much residential housing opportunities be available to the community as possible.

Roll call:
Aye: Anderson, Doll, Wanamaker
Nay: Bush, Chambers, Dybdahl, Sanford, Stone, Botelho
Motion failed, 3 ayes, 6 nays.

Hearing no further amendments, Ordinance 2008-30 was before the Assembly as amended.

Mr. Wanamaker objected, saying that he understood the plan was aspirational in nature, but we see that plans become more than guiding document, they become like regulations after a certain point. He did not want to see the 500’-foot corridor that is applied to city land in the
Montana Creek Corridor to become a mandate for private lands. Private lands are a different category, and if they are not included in the designation, they should not be guided by the designation for city lands.

Roll call on the main motion passed unanimously, and Ordinance 2008-30 was adopted as amended.

C. Ordinance 2008-32
An Ordinance Amending The Real And Personal Property Tax Code To Increase The Business Personal Property Tax Exemption For Property Not Otherwise Exempt.


Public Comment: None.

Assembly Action:
MOTION, by Sanford, to adopt Ordinance 2008-32 and he asked for unanimous consent.

Mr. Doll said it appeared this ordinance would reduce the budget revenues in 2010 by $111,000, and every budget after that. Mr. Swope said that was correct. Mr. Doll asked if there was accommodation for this. Mr. Swope said no. Mr. Dybdahl said the case could be made that the assistance this would provide will help businesses grow, which stimulates the local economy.

Hearing no objection, it was so ordered.

D. Ordinance 2008-15(R)
An Ordinance Appropriating To The Manager The Sum Of $1,076,443 As Funding For The Downtown Transportation Center Capital Improvement Project, Grant Funding Provided By The Federal Transit Administration.


Public Comment: None.

Assembly Action:
MOTION, by Wanamaker, to adopt Ordinance 2008-15(R) and he asked for unanimous consent.

Hearing no objection, it was so ordered.

E. Ordinance 2008-15(T)
An Ordinance Appropriating To The Manager The Sum Of $125,000 As Partial Funding For The Fish Creek Park Capital Improvement Project, Grant Funding Provided By The Alaska Department Of Natural Resources.

Public Comment: None.

Assembly Action:

*MOTION, by Sanford, to adopt Ordinance 2008-15(T) and he asked for unanimous consent.* Hearing no objection, it was so ordered.

F. Ordinance 2008-15(U)

An Ordinance Appropriating To The Manager The Sum Of $55,000 As Partial Funding For An Avalanche Planning Response And Forecasting Program, Funding Provided By The Roaded Service Area Fund Balance.


Public Comment:

*Bob Janes, Sr.*, 5th St., Douglas, supported this program. He is on the Southeast Avalanche Center (SAC) Board. SAC fully endorses the proposal. The local avalanche center was founded in 1995 and has been going strong since. In 2006-07, the local center started a pilot forecasting program. It was not funded in 2007-2008, but the local center will be functioning on a low level for educational purposes. There will be no forecasting done; that will come from CBJ. He urged the CBJ to take action to approve hiring of the CBJ forecaster so they can immediately collect data as snow is building now – the person should be at work next week. SAC will support the overall effort to promote public safety, and with other support groups and CBJ, there will be a good program going.

Assembly Action:

*MOTION, by Chambers, to discuss Ordinance 2008-15(U).*

Ms. Chambers said this is a good program. She understood this would be implemented this year and it would be a one-year position, then reviewed, and it would not necessarily be perpetual.

Mr. Swope said this was for $55,000 for a permanent position, every year, and this individual would get the money to fund the remainder of the position.

Mr. Doll said it would be hard to find a competent person to do the job without being offered some permanency.

Hearing no objection, it was so ordered.

IX. UNFINISHED BUSINESS

X. NEW BUSINESS

XI. STAFF REPORTS
Mr. Swope said that there were 15 applicants for the Avalanche Forecaster, 9 were qualified, the field was narrowed to 3, reference checks were performed and staff is close to offering this job to an individual.

XII. ASSEMBLY REPORTS

A. Mayor’s Report

Following the tally of ballots, Mayor Botelho announced that Jeff Bush was elected to serve as Deputy Mayor for the 2008-2009 term.

B. Committee Reports

Committee of the Whole: Chair Wanamaker said the COW last met on October 13 to review the Comprehensive Plan.

Finance Committee: Chair Stone scheduled a meeting for Wednesday, November 19.

Human Resources Committee: Chair Chambers said the Mayor requested the HRC look into some direction for the PAC Commission. The HRC met with representatives of the Performing Arts Center Commission, including Susan Burke and Nancy DeCherney. Their recommendations were to not take immediate action. The Arts and Humanities council should be a major force in the next phase of the Arts Commission task, which is primarily fundraising. They are just getting used to their current success and trying to maintain it. They were united in the thought that there would not be immediate action, but the HRC would take up this issue again and return a formal recommendation to the Assembly.

The HRC reviewed potential dates for the full Assembly to meet as the Human Rights Commission to interview candidates for Boards. The following dates were set:

Monday, October 27, 6 p.m., to interview Airport Board applicants, and Tuesday, November 25, to interview the Hospital Board and Planning Commission applicants.

Public Works and Facilities: Chair Doll said the PWFC met on October 13, and reviewed appropriation requests that will be forwarded to the Assembly, regarding the airport terminal project, Casey Shattuck / Linda Ave. projects, and a re-allocation of funds for multi-purpose corridor at Eaglecrest to the chairlift.

C. Liaison Reports

Bartlett Regional Hospital: Liaison Sanford attended the recent re-opening of Phase II of the hospital remodel. Traffic has been re-routed, and there is a new entrance at the old front door. Emergency room traffic is still routed to the downstairs back emergency room entrance. This is part of the second phase, which should be complete by June, when Phase III will begin.

Affordable Housing Commission: Liaison Chambers said a successful Affordable Housing Summit was held in cooperation with United Way. There was a good cross section of people present.
Docks and Harbors Board: Liaison Dybdahl said the Docks and Harbors Board will meet Thursday, October 30, and he will discuss clarifying standards for appraisals.

XIII. ASSEMBLY COMMENTS AND QUESTIONS

Mr. Bush thanked the Assemblymembers for their support and Mr. Wanamaker for his efforts as Deputy Mayor and ideas to be carried forward to the next year. He asked Assemblymembers to forward comments to him.

Mr. Dybdahl thanked the Planning Commission for all their hard work on the Comprehensive Plan.

Ms. Chambers asked if a retreat was scheduled. Mayor Botelho said not at this time. He will announce committee assignments soon.

Mr. Doll said Mr. Wanamaker will be part of the decommissioning ceremony for the USS Juneau.

Mr. Sanford thanked staff for providing a copy of the Environmental Assessment from the Forest Service regarding the Kensington Mine in a prompt manner.

Mr. Sanford said he had spoken with some representatives of the Filipino Community who were under the impression that there is supposed to be a clock installed in Manila Square, and he asked staff to follow up on this.

MOTION, by Sanford, to fund from an assembly account, $6,968.66 for the 50th Celebration Committee to cover the cost to use Centennial Hall for the January 3, 2008 event.

Mr. Anderson was uncomfortable with this expense and other requests to ask for more money after the Assembly has approved funding at a lesser amount.

Mr. Dybdahl supported this due to the additional sales revenue that will be received due to the event.

Mr. Swope said there was no waiver process, so the Assembly needed to identify a source.

Mr. Sanford recommended the Better Capital account.

Roll call:
Aye: Bush, Dybdahl, Sanford, Stone, Wanamaker, Botelho
Nay: Anderson, Chambers, Doll
Motion passed: 6 ayes, 3 nays.

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

XV. EXECUTIVE SESSION – None.

XVI. ADJOURNMENT – 10:22 p.m.

Signed: ___________________________  Signed: ___________________________
Laurie Sica, Municipal Clerk      Bruce Botelho, Mayor