MEETING NO. 2010-05: The Regular meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 7:00 p.m. by Mayor Bruce Botelho.

I. ROLL CALL

Assembly Present: Jonathan Anderson, Bruce Botelho, Jeff Bush, Ruth Danner, Bob Doll, Johan Dybdahl, Merrill Sanford, and Randy Wanamaker.

Assembly Absent: David Stone.

Staff Present: Rod Swope, City Manager; Kim Kiefer, Deputy City Manager; John Hartle, City Attorney; Laurie Sica, Municipal Clerk; Craig Duncan, Finance Director; John Stone, Port Director; Eric Mohrmann, Fire Chief; Beth Weldon, Division Chief – Volunteers, JFD; Joe Buck, Public Works Director; Jim Penor, Solid Waste Coordinator; Rorie Watt, Engineering Director; Gary Gillette, Port Engineer; Cynthia Johnson, Deputy Land Manager; many Fire Fighters.

II. SPECIAL ORDER OF BUSINESS

A. CCFR Volunteer Recognition – Brad Waldron

Chief Mohrmann and Division Chief Weldon presented Brad Waldron with a plaque and thanked him for 21 years of service to the Fire Department. Mr. Waldron began his service in 1988 and moved up the ladder in the department. In 2004, he took on the task as station captain for the combined district of volunteers, and he gave many hours to assisting others and making improvements in the department. His growing family requires his presence. Chief Mohrmann presented flowers to Mrs. Waldron and said he hoped that Mr. Waldron could return to service in the future.

Mr. Swope thanked Mr. Waldron for his friendship, his work, and his dedication to the development of the fire department.

III. APPROVAL OF MINUTES

A. January 18, 2010 – Special Assembly Meeting 2010-02

Hearing no objection, the minutes of the January 18, 2010 - Regular Assembly Meeting 2010-02 were approved.

B. January 25, 2010 – Regular Assembly Meeting 2010-03

Hearing no objection, the minutes of the January 25, 2010 - Regular Assembly Meeting 2010-03 were approved.

C. February 3, 2010 – Special Assembly Meeting 2010-04
IV. MANAGER’S REQUEST FOR AGENDA CHANGES – None.

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS.

Laurie Sica, representing Litter Free, Inc., gave a Power Point presentation and salute to Bob Garrison, a long-term Litter Free Board member and citizen advocate for a cleaner Juneau. She said the annual community spring cleanup will be held on Saturday, May 8, and the group will dedicate this year’s event to Mr. Garrison to thank him for his ongoing efforts to make Juneau a nice place to live.

Pam Leary said she is part of a parent group that will be traveling with Team Alaska to the Arctic Winter Games in Grand Prairie, Alberta, Canada. Juneau is considering making a bid to host the Arctic Winter Games, and she asked the Assembly to recognize their group as an official delegation. She spoke about the benefits of participation in the games.

VI. CONSENT AGENDA

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

A citizen requested that Resolution 2516 be removed from the Consent Agenda.

B. Assembly Requests for Consent Agenda Changes

Ms. Danner requested that Docks and Harbors Bid Award DH09-420 be removed from the Consent Agenda.

C. Assembly Action

MOTION, by Anderson, to remove Resolution 2516 and Bid Award DH09-420, and adopt the remainder of the Consent Agenda as presented. Hearing no objection, it was so ordered.

1. Ordinances for Introduction

a. Ordinance 2010-04

An Ordinance Authorizing The Manager To Execute A Lease Of The Cornerstone Shelter Building And A Fraction Of U.S. Survey 381, On Hurlock Avenue, Containing 36,122 Square Feet, To Juneau Youth Services, Inc.

Administrative Report: Attached. The manager recommended Ordinance 2010-04 be introduced and set for public hearing at the next regular meeting.

b. Ordinance 2010-05

Administrative Report: Attached. The manager recommended Ordinance 2010-05 be introduced and set for public hearing at the next regular meeting.

c. Ordinance 2009-08(AB)
An Ordinance Appropriating To The Manager The Sum Of $111,990 As Partial Funding Of The Planning, Study, and Design For Auke Bay Elementary School Capital Improvement Project, Funding Provided By General Obligation Bond Interest Income.

Administrative Report: Attached. The manager recommended Ordinance 2009-08(AB) be introduced and set for public hearing at the next regular meeting.

d. Ordinance 2009-08(AC)
An Ordinance Appropriating To The Manager The Sum Of $2,000 As Partial Funding for the Purchase of Artworks for the Juneau-Douglas City Museum, Grant Funding Provided by Rasmuson Foundation and Museums Alaska, Incorporated.

Administrative Report: Attached. The manager recommended Ordinance 2009-08(AC) be introduced and set for public hearing at the next regular meeting.

2. Resolutions

a. Resolution 2517
A Resolution Designating A Recovery Zone For Purposes Of Sections 1400U-1, 1400U-2, And 1400U-3 Of The Internal Revenue Code Of 1986, As Amended, And The American Recovery And Reinvestment Act Of 2009.

Administrative Report: Attached. The manager recommended Resolution 2513 be adopted.

b. Resolution 2518
A Resolution Supporting The Southeast Alaska Solid Waste Authority’s FY 2011 Legislative Appropriation Request For Organizational Funds.

Administrative Report: Attached. The manager recommended Resolution 2518 be adopted.

3. Transfers

a. Transfer T-903
Transferring $100,000 From Berners Avenue Sewer Capital Improvement Project (CIP) To Wood Duck Avenue Improvements CIP.

Administrative Report: Attached. The manager recommended this transfer be approved.

Removed from the Consent Agenda:

Resolution 2516
A Resolution Authorizing The Manager To Apply For, And Enter Into, A Loan Agreement With The Alaska Department Of Environmental Conservation, State Revolving Loan Fund, For The Wastewater Utility Juneau-Douglas Treatment Plant Incinerator Rehabilitation Project.
Administrative Report: Attached. The manager recommended Resolution 2516 be adopted.

Public Comment:

Dave Hanna, said he was not necessarily against the resolution, however, the Assembly needed to give some consideration, before spending the money, to the future and efforts to design a new incinerator. He said he is not an expert on solid waste, but he works around the industry. The cost of an incinerator pencils out to about one million dollars a year for the life of the incinerator. It appears that it would cost $350 – 400,000 to operate the incinerator. This does not include maintenance. Sewage sludge can be disposed of in a landfill. Juneau could landfill this material in town in a lined landfill, or ship it out of town for $600,000 or landfill and treat it for $300,000 a year. If these numbers are correct, that is a huge disparity. We may need to bandage the system we have, and not use it when we cannot use it anymore, but keep it as a backup. He did not want to see any new incinerator without significant research. He referred to a plasma burner in Oregon, and said this is a possible solution for sewage and other solid waste. The city would not need both types of incinerators.

Assembly Action:

MOTION, by Bush, to adopt Resolution 2516.

Mr. Bush asked the current life expectancy of the incinerator. Mr. Swope said the one at the JD Treatment Plant was estimated to last for one more year. Mr. Bush said that this project proposes a band-aid on the current incinerator and was not a new project. Mr. Swope said that is correct.

Mr. Wanamaker asked the life expectancy of a refurbished incinerator and Mr. Swope said it was estimated to be 10 – 15 years.

Mr. Swope said he spoke with Dave Hanna prior to the meeting and Mr. Swope will follow up with city staff regarding operational costs of the incinerator.

Mr. Sanford said that the Public Works and Finance Committee (PWFC) reviewed the consultants’ reports, and the most recent news indicated that $3 million is needed to refurbish the current incinerator. The Assembly hopes to make decisions on waste management in the community within the next six months. The decisions made will require implementation time, and any new permitted projects could take at least three to five years to set up, so the committee determined that it would be appropriate to do this repair work on the incinerator.

Mr. Doll said the PWFC gave this matter serious consideration and there is a timing consideration that does not leave many options.

Mr. Anderson said the PWFC investigations showed that the new solutions are far out and these repairs are needed now.

Ms. Danner said she appreciates Mr. Hanna’s comments and she believes the cost of shipping sludge is much more than he indicated. The material could not be “parked” for long.

Hearing no objection, Resolution 2516 was adopted.
Docks and Harbors Bid # DH09-420

Douglas, Harris, Aurora, and Statter Harbor Uplands Improvements.

Administrative Report: Attached. The Docks and Harbor Board recommended award of this project as the Base Bid, plus Additive Alternates A, B, and C, in the total amount of $353,390, to the apparent low bidder, Admiralty Construction, Inc.

MOTION, by Danner, to approve award of Bid DH09-420, for purposes of discussion.

Ms. Danner asked Mr. John Stone the procedures followed in this situation. There are four additive alternatives and she asked if the total bids exceeded the expectation and that is why alternative D was taken out. Mr. Stone said the reason there was a base bid and four additive alternates is that from the outset they did not know if they had enough money to do the project as one. That is a typical approach used when there is work they would like to do but they are not sure there is enough funds, it’s put into an additive alternate. In this case, they broke the project into four additive alternates on top of the base bid. In the instructions to bidders, the bidders are told that Docks and Harbors (D&H) will award the bids in a certain priority, based on available funding. When the bids came in, we brought them to the D&H Board, went over the project funding, and based on that, the Board awarded as much as they could based on available funding. That happened to be priority two, which is the base bid plus additive alternates A, B, and C. Ms. Danner said Alternate D is the most expensive piece, was it also the lowest priority. Mr. Stone said yes, it is also a big chunk of work. They would like to do the job someday. Ms. Danner said that the highest bidder for all five pieces is actually the lowest bidder if Alternate D is dropped off. The second bidder, if going with base plus A, B, and C, is only $606 difference. She appreciates that low bid is selected, which is a good thing. She asked what happens if the work is begun and the D&H Board finds additional funds. Mr. Stone said that according to the contract documents the additional work could be awarded, however he does not see any possibility of having an additional $350,000. In this case, the Board would be hesitant to make an award like that, as it would have changed the original bid award. Ms. Danner asked if the Board knew whom the bidders were when making the selection of alternatives. Mr. Stone said yes, the bid opening is open to the public. Ms. Danner said that she would be uncomfortable with a change order on this project as the bids are so close.

Mayor Botelho said that unlike other projects coming before us, there was not an engineer’s estimate given as part of the report. He understands there was a range of $550,000 to $650,000. Mr. Stone said that was correct. Mayor Botelho asked if it was normal practice to put out a bid for which there are not adequate funds to cover the project. It appears there is one bidder who would have met the engineer’s estimate. Mr. Stone said that the bid documents included an estimate for all the work. We did not provide estimates for each alternative. We knew we had enough money for the base. The base was around $200,000 and we felt comfortable we could award that, but from the outset, we did not know how far we could go with the additive alternates.

Mr. Sanford said that the engineer estimated that $550,000 to $650,000 was what they had, and you would think the contractors looking at this would think the same. One came in under $650,000, which was the second bidder. It seems that this was a mistake to put the bid packet out that way if the money was not there. Mr. Stone said they did not try to give the impression that they had that much money, and they made it clear that we award based on available funding.
Roll call:
Aye: Bush, Doll, Dybdahl, Sanford, Botelho
Nay: Anderson, Danner, Wanamaker
Motion passed, 5 ayes, 3 nays.

VII. PUBLIC HEARING

A. Ordinance 2010-01(b)  
An Ordinance Amending The Official Zoning Map Of The City And Borough Land Use Code To Change The Zoning Of U.S. Survey 752, Lot 2A, On Glacier Avenue, From D-18 To Light Commercial.

Administrative Report: Attached. The manager recommended Ordinance 2010-01(b) be adopted.

Public Comment:

Bob Sam said he was present to speak for the dead. He has worked to restore the Russian Orthodox cemetery located within Evergreen Cemetery. He said it barely exists; there is little information there for people to find. For other cemeteries, it is easy to find information. This cemetery has been neglected for many generations, and is used by young people for drinking, smoking and mischievous behavior. It has been an eyesore. The area has been cleaned up, the headstones have been restored, and now it is one of the most beautiful places in Juneau. He is bringing this subject up, because cemeteries are ignored in this community. They are historical places with treasures for the community. The people who died here deserve to be protected and cared for. Why is a cemetery zoned residential at all? What is so difficult about zoning a cemetery a cemetery? Tourists will come here just to see that place and he has information on the cemetery that will put the place on the map.

Patricia Berryhill said she has expressed concern by phone and mail about this rezoning ordinance. She called this capricious light commercial zoning and spot zoning. The site is 1.2 acres short of the required two acres to qualify for a rezone. This ordinance does not comply with the code.

Nicholas Orr said this issue is spot zoning. The previous ordinance that included the cemetery, which was included to total two acres, was not under consideration. The proposed use of the Light Commercial District zoning is to allow the proposed shop to sell food, but this type of retail use can change to other uses. We have lots of retail space in the area and downtown, and the proposed shop would be better located there.

Susan Woods said this is spot zoning and incompatible with the neighborhood. The parked cars have to back out into the street.

Kathy Ellis said she has sent email, letters, and made phone calls on this issue, and she was speaking for herself and the condominium association (adjacent to the proposed zone change). They are strongly opposed to this ordinance. The original ordinance included the cemetery, as the property was too small by itself to rezone according to law. CDD and the city manager are recommending this be adopted, and this seems a violation of due process. She reviewed the history of the property and the area. She said a professional office is suitable to the use of the property, but the zone change allowing commercial uses would create no guarantees that the
business would remain quiet and unobtrusive. This is a zone change and not a review of the business that can go into the property, but the proposed use has been advertised in the newspaper as dedicated to the “Southeast adrenaline junky.” The applicant and CDD used the Comprehensive Plan to justify this use, due to its location within a transit corridor, but how is this justified. This is a violation of CBJ zoning laws and substantive due process.

Assembly Action:

MOTION, by Doll, to adopt Ordinance 2010-01(b), for purposes of discussion.

He said the ideal for most communities is to have local shopping close to residential area as this saves driving and keeps businesses local. However, he could not support this ordinance because it asks us to ignore the law requiring two acres for a zone change. This draft began life as an attempt to get around the law by including the cemetery, which was never intended to be used as a commercial use. There is no pressing demand for another retail location in this area, as there are retail establishments nearby. If investors cannot depend on CBJ zoning laws, they will be less likely to invest. This is not a genuine effort to expand mixed use, but to confer a benefit on one owner as spot zoning.

Mr. Wanamaker asked Mr. Swope how the original ordinance was revised into this version and how it may comply with our rules and ordinances. He also asked about the effect of Planning Commission recommendations for any future uses if this was approved.

Mr. Hartle said when the ordinance was introduced; there were people opposed to rezoning the cemetery with the designation of commercial use. It was never the intent to change any use of the cemetery. It was only swept up in the zone change to make that zone change attach to the zone designation for neighboring properties on the other side of the cemetery. No one intended to change anything with the cemetery, so he drafted the second version, which exempts this ordinance from the requirements of 49.75.120, which requires contiguity with another zone. It does follow the Comprehensive Plan, stating that the area is considered Mixed Commercial as it is on a transportation corridor. The fact that it follows the Comprehensive Plan is the main defense to a challenge based on spot zoning. He read all the cases in Alaska on spot zoning and the Supreme Court goes straight to the question of whether the zone change follows the Comprehensive Plan. So far, it has never found a rezone illegal if it followed the Comprehensive Plan. This it not to say there is 100% certainty on this ordinance that it would be upheld. He tried to follow the Comprehensive Plan as well as follow the recommendation of the Planning Commission.

Mr. Wanamaker said the Planning Commission recommended that there be no variances granted to this rezone, and how would that work. Mr. Hartle said the zoning code allows a zone change can be approved with conditions, and with the computer system in use, the condition that no variances can be allowed, would be tagged on that parcel. If a future owner sought a variance, a red flag would be noted about the imposed condition.

Mr. Sanford asked why spot zoning is addressed in Title 49. The Comprehensive Plan is a broad-based statement and Title 49 gets into the nitty gritty. How can we look the other way regarding Title 49?

Mr. Hartle said that was correct. Spot zoning is a limitation on the power of the Assembly. Title 29, which is the State Statute governing municipalities; says that those municipalities that
take zoning power must do so by using a Comprehensive Plan. The CBJ Comprehensive Plan shows that area as Commercial. Because the cemetery was only put in as a technicality to make it contiguous, it is contiguous with the other businesses, only with the intervention of the cemetery, and this ordinance exempts itself from those restrictions in 49.75.120.

Mr. Sanford asked the justification regarding the size of the lot being rezoned being too small. Mr. Hartle said the ordinance was written the same way with the same exemption from code.

Mr. Anderson asked if the Planning Commission had approved version (b) and how version (b) was before the Assembly. Mr. Hartle said version (b) was submitted by staff as a response to the concerns about inclusion of the cemetery in the zone change.

Mr. Anderson asked when a decision is significantly changed, when is it open for change by the Assembly or when does it need review again by the Planning Commission. Mr. Hartle said it was difficult to determine the outside limits. He said that the cemetery was never intended to be rezoned to change the use; it was just a technicality to avoid the charge of spot zoning. Mr. Anderson said he is uncomfortable with the Assembly exempting itself from its own laws. Mr. Anderson said the Planning Commission was going to be reviewing the Table of Permissible Uses. He was in favor of mixed uses and reviewing types of uses in residential areas, and this should be done in the Table of Permissible Uses, not piece by piece per project.

Mr. Dybdahl said however this is painted, the perception is that this is gaming the system and we should be careful when supporting things based on policy statements in the Comprehensive Plan. You can find almost anything in the Comprehensive Plan – it is voluminous, general, and broad. Making general statements of support for mixed use in transportation corridors could be taken to the limit. There are very few things in which the public has certainty, and one is zoning. We should vote this down and preserve the public trust.

Mr. Doll said it probably would hold up in court as legal spot zoning, and the Planning Commission approved it on this basis, but this means that if it is legal, it is O.K. He did not think a future Assembly or Planning Commission would see the issues in this same way.

Mr. Bush said that this essentially says that if spot zoning comes up to some statement in the Comprehensive Plan, we can ignore the spot zoning rules in our own code. Mr. Hartle said that is what this basically says, that our defense to spot zoning is what the Comprehensive Plan sets out for that area.

Mr. Wanamaker thought this ordinance should be referred back to the Planning Commission to have them determine compliance with Title 49, on the revised ordinance. The staff has tried very hard to meet the intent of the Planning Commission and the Comprehensive Plan.

Ms. Danner said she did not support the ordinance.

Mr. Sanford said that no one is trying to get one up on anyone, it is legal to do what is in the ordinance right now, and it is up to us to decide if this is right and fair. He will vote no, but no one from staff has tried to pull anything over on another.

Mr. Doll urged the Assembly to make the decision.
Mr. Bush said it is spot zoning, however, he believes the proposed use is an appropriate use of the property and if done in a way that was consistent with law, he would be supportive. He did not support the ordinance in its current form.

Roll call:
Aye:
Nay: Anderson, Bush, Danner, Doll, Dybdahl, Sanford, Wanamaker, Botelho.
Motion failed, 0 ayes, 8 nays.

B. Ordinance 2010-02
An Ordinance Authorizing The Port Director To Negotiate And Execute A Lease To Alaska Glacier Seafoods Of A Portion Of Alaska Tidelands Survey No. 357, Located Near The Auke Bay Loading Facility, And To Accept Conveyance From Alaska Glacier Seafoods Of A Perpetual Easement Located Adjacent To The Lease Premises.

Administrative Report: Attached. The manager recommended Ordinance 2010-02 be adopted.

Public Comment:

Greg Fisk represented Alaska Glacier Seafoods (AGS) as the property owners were not available to attend the meeting. The owners feel this lease is very important to their business and they appreciate the work on this so far. This is a big step in planning the major increased capacity of the plant by three fold, hopefully for the summer of 2011. This will be good for the company and the community as a whole with increased fisheries business tax and increased jobs at the plant. He encouraged the Assembly to approve this ordinance.

Assembly Action:

MOTION, by Danner, to adopt Ordinance 2010-02, for purposes of discussion.

MOTION, by Danner, to refer this ordinance to the Docks and Harbors Board.

Ms. Danner said she is in favor of the lease agreement and is impressed with AGS’s efforts to establish a foothold in Juneau. It is important to support businesses in our community. She has some problems with the terms of the easement that are a part of the ordinance. She prepared an analysis of the easement, which she distributed.

She said according to the Horan appraisal, the Auke Bay Landing Facility (ABLF) gained 5,204 square feet (sf) by filling up against the AGS retaining wall. The appraisal states that level land at that location is worth $45 per sf. Therefore, a reasonable person would not pay more than $45 per sf or $234,180 to buy level land at that location. The appraisal used $10 per sf as the value of the unimproved tidelands at this location. She deducted this $10 value from $45 to get a value of what a reasonable person would not pay more than to improve the land they already owned, and said that the Assembly could assume that D&H had already spent at least $35 to fill in the Auke Bay Landing Facility, or $182,140. The difference from what we have already spent on improving the land and the value of the land is $52,040, and she said the Assembly would not have approved this project at the outset if the easement exceeded that amount. Ms. Danner said that according to the appraisal, AGS would need to budget annually for maintenance to the retaining wall in the amount of $12,885 without the fill in place. The appraiser amortized that over the 40-year expected life of the wall to say the net present value
of those payments would be $117,126. In real life, repairs to the AGS wall in the first five years have already reached $137,378. This suggests that the actual cost of maintenance saved by AGS due to the ABLF fill is well in excess of the appraiser’s estimate. AGS received the benefit of 377 sf of level land adjacent to their wall at no cost as they had built their wall two feet in of their property line, and the ABLF filled in the 377 sf that belonged to AGS. At $45 per sf, this is a value of level land of $16,965. Ms. Danner said it was her opinion that D&H could and should have negotiated an agreement in advance to pay up to 50% of the depreciated value of the existing wall, $340,000, not to exceed the value of the uplands created net of costs to build, $52,040. The ordinance recommends that the city pay $340,000 for the easement. If we were going to pay this amount for the easement for 5,000 sf worth $45 per sf, we would never have agreed to do this in the first place. She urged referral back to the D&H Board and said that if one party could negotiate compensation for an easement and did not, one could assume they are willing to go forward without compensation because it is a good deal. She could not believe that the fill project could have moved forward without an agreement in place.

Mr. John Stone said that his instruction to the appraiser, Mr. Horan, was to provide a market value for the easement, and that is what he did. The agreement with Mr. Erickson was that the city would fill and use a market value for the value of the easement. Mr. Horan had a lower bound and upper bound for the market value using two valuation techniques and the Board and Mr. Erickson negotiated in between those two bounds. Mr. Stone said he can see Ms. Danner’s logic, but essentially what happened was the parties shared the cost of the wall, as CBJ gained benefit from the investment AGS made when the wall was installed to hold up their fill. We are agreeing on a cost sharing agreement that AGS made, and this is typical how retaining wall easements are looked at in the market. The value is certainly more than $250,000, and Mr. Erickson provided data that he spent approximately $775,000 for the wall. Mr. Horan calculated what we would have paid if we built our own wall and arrived at the $340,000 figure. He said the market would bear this for a shared cost of the wall. He also looked at it in a different way and asked what the benefit was to CBJ of the additional fill – and this was the $234,180, and which is a lower number. The Board and Mr. Erickson agreed to value the easement in the middle, and it came up to $280,000 as the value of the easement.

The ordinance allows the Port Director to enter into a lease with AGS to essentially pay off the agreed upon value of the easement over time with a lease rental credit. The value of land we are using for the leased area is the $45 per sf. Once the lease rental credit expires, AGS would pay whatever the market value is of the land at that point in time. The long-term value to the Board is that eventually the land will produce income from lease rental on an annual basis once the lease rental credit expires and the fisheries business tax will increase. We have averaged $350,000 – 400,000 to the D&H budget, and AGS testified they are shooting for an increase of $50,000 - $100,000 per year due to the plant expansion, which dwarfs the value shown of the uplands. In valuing land transactions, there is a presumption made that it is easy to find commercial tidelands in Juneau, but this is not the case, it is a scarce commodity, and it would be difficult to build more in Auke Bay. This is an extremely valuable commodity and will become more valuable over time.

Mr. Bush said that in Ms. Danner’s analysis, a critical point is an assumption that the cost that D&H incurred to fill the land and improve it to make it flat was $182,000, and what was the cost? This analysis says that D&H is paying whatever the agreed value, $280,000, plus what it cost to improve it, that had already been paid. Mr. Stone said the actual site costs were close to $45 per sf. D&H is also charging lease rental credit based on that value as well. The payback from the lease is based on $45 per sf, so it works both ways in the negotiation.
Mr. Dybdahl asked about the timing issue regarding the fill. Mr. Stone said that in permitting, there are many uncertainties and this was a difficult project to permit because it was in essential fish habitat and the project morphed as the regulatory agencies provided feedback and direction as to what they would permit. It became clear in December 2006 that we would be in a position to submit an application to the regulatory agencies for a fill against the wall, and at that time Mr. Simpson, Board Chair, and I, spoke with Mr. Erickson about doing that. We had an agreement with Mr. Erickson to fill against the wall and to use a market-based value performed by a professional appraiser as the value of the wall. Mr. Erickson said that instead of having a direct payment he would be amenable to having a lease if that could be worked out. We were not comfortable with the lease, as we did not know how much uplands would result from the project at the time, because the regulatory agencies were trying to shrink the fill to the minimum possible. We decided to hold off on the final agreement until we were sure we could do a lease, and we knew this about a year and a half ago, and at that time we started in detail on the actual appraisals.

Mr. Dybdahl asked if there was a contractor already filling on site at that time. Mr. Stone said the contractor began filling in Spring or Summer of 2008.

Mr. Sanford asked what a referral to the D&H Board would ask of the Board.

Ms. Danner said the Assembly would ask the D&H Board to reconsider the amount of the easement, the value. Mr. Sanford asked how the D&H Board was to make that determination. Ms. Danner said the problem with the appraisal is the assumption that we would build a wall, as if we were not allowed to fill up to our neighbor’s wall. This is a little like having a neighbor with a fence and you want to attach to their fence, but you need to negotiate the cost of the fence. She said if my neighbor thinks his fence is solid gold, then I couldn’t afford it. The appraiser could re-appraise. The Erickson’s may feel they have received sufficient benefit already by avoiding future maintenance costs and getting the additional land free. This unspent money only assumes CBJ got the tidelands for free, because the $10 per sf value of the tidelands was likely also a cost.

Mr. Sanford said the slope of the rock wall went to the edge of their property, so there were no tidelands involved. Ms. Danner said the unimproved tidelands, in advance, before built, were worth $10 per sf. Mr. Sanford asked if Ms. Danner thought there could be $52,000 saved. Ms. Danner said that $52,000 was the amount a reasonable person would pay for the easement, if it were negotiated in advance. The city is in a difficult situation in that now we are backed into a corner. There is no written agreement. Mr. Stone said the lease would be the written agreement. The appraisal is based on the assumption that CBJ pays half of the neighbor’s wall, but we knew that was well before construction began, that was a known number.

Mr. Doll asked if referring the matter to D&H is the right step. Mr. Stone may have a process to which he feels bound. Mr. Stone asked if Mr. Stone could use Ms. Danner’s process. Mr. Stone said he referred this information to the appraiser and he said that Ms. Danner’s figures did not reflect a fair market analysis, and they have never operated outside the parameters of a fair market analysis. Mr. Stone said it would be possible for the Assembly to provide different instructions to an appraiser than going with fair market value.

Mr. Sanford said that the Assembly has instructed D&H to create leases at fair market value. Mr. Stone said the city code so instructs.
Mr. Anderson asked why the project was done before the agreements were made. This puts the Assembly in an awkward position and what is the legal recourse if the Assembly says no. Mr. Stone said he understood, and in that case, the project would be dug up. Mr. Stone said they needed actual construction costs in the appraisal to be used to determine the value of the land to establish lease rental credit, and it also helped to establish the value of the retaining wall so we could determine the shared cost of the retaining wall. Those two things were provided at bid time. Mr. Erickson wanted a lease, as a lease rental credit, rather than a direct payment. We were not comfortable with going with a lease until we could see the lay out of the actual site to know we could operate our facility adequately, giving him a lease on part of that facility. We did not know this until the fill was in place.

Mr. Anderson asked if there was any written memorandum of understanding that this was the process we established with AGS. Mr. Stone said no, but this was discussed at several Board and CIP meetings over several years, publicly discussed and reflected in the minutes.

Mr. Bush said he did not think the Assembly gained anything by sending it back. He was concerned with the process used to get to this point. We have spent a lot of money, beyond the value of the land, for the lease. The market value, at this time, is the only way we can value the lease. We put a lot of money into improving property up front and we are paying for half of the wall, a lot of expense to get a fairly small amount of property for the value. This has already happened, so we do not have a choice but to pay fair market value for the project.

Ms. Danner said the problem is the concept of fair market value. In the appraisal, the cost to build the AGS site, the site prep, not the building, in 2004, had to be indexed up by 30% to today’s market value, then our cost to fill, our market value of our property $47 per sf. Their market value, including the cost of the wall, is $42 per sf in today’s dollars, so the market value assumption falls apart. Ms. Danner said that Mr. Stone said AGS paid $700,000 to build the wall, but they actually paid $445,000, and that AGS would not allow us to fill next to it for free. AGS made a decision to build the wall even before they knew there would be neighbors - that was their informed decision. When the city decided to build this facility, the city must have done a cost benefit analysis and determined it was not to our benefit to gain that extra wedge of level ground on the other two sides of our property. The city would not have built the wall if we had not been granted the easement.

Mr. Dybdahl said one of the things that drives this is the loading facility located next to a possible expansion. He said he looks at this as we may waste some time, perhaps a full season, from the increased property tax, fish tax and sales tax that an expanded facility will generate. It was not long ago that fisheries in Juneau had gone down so much that fishermen were not coming back to Juneau. CBJ has made a concerted effort, through a 400-foot drop down, and ice machine, cooperation with the industry to try to build back up. We should look at this as an investment, and we have made many other investments as an Assembly without guarantee of return, but we did get return and the growth in the economy we sought. He asked the Assembly to vote no on the referral and vote yes on the ordinance.

Roll call on referral of the ordinance to the D&H Board:

Aye: Anderson, Danner, Doll, Wanamaker
Nay: Bush, Dybdahl, Sanford, Botelho
Motion to refer failed, 4 ayes, 4 nays.
Hearing no further objection, the motion to adopt Ordinance 2010-02 was adopted.

C. Ordinance 2010-03(b)

An Ordinance Adopting The Refuse Collection System Code To Provide For A System Of Mandatory Refuse Collection And Disposal, And Providing For A Penalty.

Administrative Report: Attached. The manager said version (b) changes the effective date of this ordinance to 60 days after the Certificate of Public Convenience and Necessity is transferred by the Regulatory Commission of Alaska (RCA) to CBJ. This ordinance is one of five top priorities identified by the Assembly for 2010. Staff continues to work with Arrow Refuse on the details of the agreement. There are approximately 1,200 households currently not paying for refuse collection. This ordinance allows for an exemption if waste services cannot be provided on account of the terrain or locale of a person’s property. The exemption language is broad and lends itself to discretion and interpretation. To work, we need to allow more time to hear from the public, to understand their concerns, circumstances, and the problems, and identify specific conditions and criteria under which exemptions would apply. This can be done either by making additional changes to this ordinance over time, or by establishing regulations. The manager recommended giving this ordinance more time for public hearing, and to make changes to this ordinance or adopt regulations identifying specific exemptions.

Public Comment:

Tom Waldrip said he is not against mandatory trash pickup, but there are a few things that upset him, and one is being told what to do. In theory it is a great idea, but we are being told we have to take care of our trash in a certain way. He recycles and is one of the 5% who do not have trash pickup. He is one of the 5% who recycle. He lives on Cohen Drive on the water in Tee Harbor and it is a hassle to get up to where the trash pickup is located. Animals access that area, as well. If trash pickup is mandatory, recycling should also be mandatory. He never has more than half a trash can a month so he should not have to pay as much as others who do not recycle. There are a lot of people who have trash pickup that do not recycle. This is the wrong approach to managing waste. He will support it but he does not like the mandate.

Janet Thrower said this ordinance approaches a problem by punishing all for the sins of a few. There is an assumption that people who do not sign up for garbage service are not appropriately taking care of their garbage and that is not true. She mentioned her elderly parents who do not generate a lot of waste, who cannot get up early in the morning to set the cans out. People share services to save costs. She recycles. Her family of seven has less than one can per week, which leads us to fair and equitable. People who work to reduce and produce less garbage will be forced to participate just like families that throw everything in the trash and this does not seem fair and equitable. It does not seem to be fair to be forced to support a private enterprise. She suggested that dog poop is a problem and perhaps she can start a business that will charge every dog owner to pay for poop collection, whether they take care of their dogs mess or not. Recycling can reduce a lot of what goes into our landfill. This is the wrong approach, and sets us on a path of ever-increasing costs.

Thom Buzard said the city should be reducing services to reduce costs. This appears to be another scheme to increase government costs and fill a budget shortfall. He asked the Assembly to not grow the employee pool and take away choices of how citizens handle trash. More taxes for more service is not acceptable. Look to the private sector and privatize those
things where there is competition. Curb all spending and slow down all city expenditures. He suggested a 15% cut in all city spending across the board. The city should never spend more than the tax revenues collected. We all have to live like this. He does not subscribe to garbage service; it is expensive for the quality of service. Every four to six weeks he makes a trip to the landfill, many folks throw in with him and at $6 – 10 a visit the price cannot be beat. His son runs his own garbage collection service and is enterprising. He said this is the camel’s nose in the tent, as soon as this is in place, people will be forced to do something else. The illegal dumping out the road is the cost of freedom. We have volunteer groups that clean up and we can take care of this project. Please rethink this and drop this ordinance.

Dennis Harris said this ordinance needs re-thinking. It is a punitive ordinance that punishes those of us who do the right thing. He has recycled for years. His garbage cans are now recycling bins. He takes this effort on his own behalf, and gets enough punches on his card to get a free dump. He bought his own bear proof container. He stopped garbage service and asked his tenants to recycle and has never filled it up more than once a month. He is one of young Mr. Buzard’s customers. He would be happy if the ordinance could provide an exemption for people who do the right things. There should be an exemption for people who share garbage service. All of us would like mandatory, curbside recycling, and if he got credit for it instead of being punished for this, he could support this. He only saw this in the newspaper this morning.

George Fisher said he is against the ordinance the way it is written. He agreed with previous comments that mandate and pass a law to require every household to have garbage service. There should be exceptions and exemptions to the mandatory requirement. He owns an apartment building and he pays $3200 a year for the garbage disposal there, and at his home he recycles and hauls the garbage he does generate to his dumpster. He also owns a few other small houses and those tenants haul their garbage to his dumpster. It is not a huge increase in costs to him if the ordinance passes, it would cost about $600 more a year, at minimum. One can pickup costs about $200 a year. If he was not paying $3200 a year for a dumpster, $200 would be reasonable. He urged the Assembly not to pass the ordinance, but if so, have a way to provide for exemptions.

Margo Knuth, President of Friends of Recycling (FOR), said the group has been active for decades with recycling and favors this ordinance. We understand it is the city’s first step toward curbside recycling, as we need to maximize the base to deal with the totality of our garbage problem, which will include recycling. She would like to see an assurance that those who do recycle will pay less than full rate. Existing consumers will not see a rate change initially, in the ordinance, but we need to reward those who are recycling. These are the people who are extending the life of the landfill, at their own expense, and they are being conscientious. We understand this is part of the city plan to get us to the goal and we are pleased. FOR will work with you, and she believed that the word has not gotten out about the overall plan. If FOR can help disseminate more information they are willing.

Mr. Sanford said if we went to curbside recycling now, there would not be a decrease in costs, it would be an increase for everyone, according to the consultant’s report. Ms. Knuth said she was familiar with the report, which was done when commodities were at rock bottom value, so she was optimistic that there would not be an increase.

Assembly Action:
MOTION, by Wanamaker, to refer Ordinance 2010-03(b) to the Assembly Committee of the Whole meeting, March, at 6pm.

Mr. Wanamaker said that public comment could be taken at 6 p.m., and the Assembly could conduct a work session on the ordinance at 7 p.m.

Hearing no objection, it was so ordered.

D. Ordinance 2009-08(Y)
An Ordinance Appropriating To The Manager The Sum Of $2,000,000 As Partial Funding For The Consolidated Public Works Facility, Statter Harbor Renovation, And The Juneau International Airport Terminal Capital Improvement Projects, Such Funds Provided By The Sales Tax Fund.

Administrative Report: Attached. The manager recommended Ordinance 2009-08(Y) be adopted.

Public Comment: None.

Assembly Action:
MOTION, by Sanford, to adopt Ordinance 2009-08(Y). Hearing no objection, it was so ordered.

E. Ordinance 2009-08(Z)
An Ordinance Appropriating To The Manager The Sum Of $1,752,000 As Partial Funding For North Douglas Sewer Expansion, Phase IV, Grant Funding Provided By The State of Alaska, Department of Environmental Conservation.

Administrative Report: Attached. The manager recommended Ordinance 2009-08(Z) be adopted.

Public Comment: None.

Assembly Action:
MOTION, by Doll, to adopt Ordinance 2009-08(Z). Hearing no objection, it was so ordered.

F. Ordinance 2009-08(AA)
An Ordinance Appropriating To The Manager The Sum Of $100,000 As Funding For The Lower Highland Drive Sewer And Water Repair, Partial Funding Provided By The Wastewater Utility Operating Budget


Public Comment: None.

Assembly Action:
MOTION, by Sanford, to adopt Ordinance 2009-08(AA). Hearing no objection, it was so ordered.
VIII. UNFINISHED BUSINESS – None.

IX. NEW BUSINESS

A. Liquor Licenses 2010-2011 Renewals:

**MOTION, by Doll, to accept the recommendation of the Human Resources Committee and waive the Assembly’s right to protest the following liquor license renewals:**

- Club License #3313: Fraternal Order of the Eagles Aerie #4200 (premises location 2055 Jordan Ave. #1, Juneau)
- Beverage Dispensary License #3695 Henry's Food & Spirits LLC d/b/a Henry's Food & Spirits (premises location 9109 Mendenhall Road #4B)
- Beverage Dispensary License #728: JD Entertainment d/b/a The Island Pub (premises location 1102 2nd Street, Douglas)
- Beverage Dispensary License #772: NYT Inc d/b/a Rendezvous (premises location 184 S. Franklin St.)
- Beverage Dispensary License #673: Peterson Pacific Holding Inc. d/b/a Louie's Douglas Inn (premises location 915 3rd Street, Douglas)
- Beverage Dispensary/Tourism License #1378 Alaskan Hotel & Bar Inc. d/b/a Alaskan Bar (premises location 167 S. Franklin St.)
- Package Store License #271 Alaska Cache Liquor Inc. d/b/a Alaska Cache Liquor (premises location 156 S. Franklin St.)
- Package Store License #2066 Fred Meyer Stores Inc. d/b/a Fred Meyer #158 (premises location 8181 Glacier Hwy.)
- Restaurant/Eating Place License #851 Rodfather's LLC d/b/a The Broiler (premises location Nugget Mall)
- Restaurant/Eating Place License #1416: Taku Glacier Lodge Inc. d/b/a Taku Glacier Flightseeing/Salmon Bake (premises location Taku River)

Hearing no objection, it was so ordered.

**MOTION, by Doll, to accept the Human Resources Committee recommendation to protest the following license. The protest will be withdrawn upon the business coming into compliance with the Fire and Building codes:**

- Beverage Dispensary License #4349: Senate Partnership Inc. d/b/a The Penthouse (premises location The Bergman Hotel 434 3rd Street, Juneau)

Hearing no objection, it was so ordered.
X. STAFF REPORTS

XI. ASSEMBLY REPORTS

A. Committee Reports

Committee of the Whole: Chair Wanamaker said the next meeting will be Monday, March 1, in the Chambers, to discuss Ordinance 2010-03(b) - Mandatory Refuse Collection, with a public comment period at 6 p.m., followed by a work session of the Assembly.

Human Resources Committee:

MOTION, by Doll, to accept the HRC recommendation to appoint Genoveva "Geny" DelRosario to the Human Rights Commission, for a term expiring May 31, 2012. Hearing no objection, it was so ordered.

Mr. Doll said the HRC reviewed a program budget request from the Human Rights Commission and forwarded the request for review by the Finance Committee.

Mr. Doll said the full Assembly met as the Human Rights Commission immediately before the Assembly meeting for an interview of Docks and Harbors Board candidate Tom Donek.

MOTION, by Doll, to appoint Tom Donek to the Docks and Harbors Board for a term beginning immediately and expiring June 30, 212. Hearing no objection, it was so ordered.

Public Works and Facilities: Chair Sanford said the committee met and discussed the JD Treatment Plant incinerator and closed out several Parks and Recreation jobs and approved transfer of the funds to other Parks and Recreation areas. PWFC reviewed a request for $2 million for basic design work at Gastineau Elementary School, to get improvements done over the next three summers. The Draft Capital Improvement Project program is out and available for public comment. Staff is working diligently on snow storage issues.

Lands and Resources: Chair Anderson said the committee met and discussed a proposal by Ray Howard and a snowmobile group for a riding area around Blackerby Ridge, using access behind Costco. The committee supported this in principle and authorized staff to continue investigation. The Lands Manager continues to be involved with the Alaska Mental Health Trust regarding development of the subport area and potential placement of a parking garage associated with the AMHT office building. The Lands Manager is continuing work regarding the Memorandum of Understanding (MOU) with Goldbelt, Inc. on the North Douglas Highway extension. The Goldbelt Board has approved entering into negotiations with the city for a renewed MOU. Mr. Swope added that the city and Goldbelt marked up the MOU previously in place, both parties are in agreement, and he anticipated within a month the city will hear back from the Goldbelt Board and will have a recommendation to the PWFC.

B. Liaison Reports

Parks and Recreation Advisory Committee: Liaison Wanamaker said the PRAC met and discussed the idea of an advisory committee for the new pool, and recommends that such a
committee is not needed at this time. The PRAC did not see the need for an advisory board or enterprise board, but they welcome citizen input.

**Planning Commission:** Liaison Doll said the Planning Commission reviewed a draft wireless communication ordinance, which will be forwarded to the Assembly. The next meeting is Tuesday, February 23, and the Planning Commission will review potential modifications to the Table of Permissible Uses, which determines what development types and activities come to the Planning Commission for permits and what is subject to staff review.

Mr. Anderson asked the status of noise ordinance. Mr. Doll said it is on the department's work list and may have taken a back seat to parking issues.

**Airport Board:** Liaison Sanford said the dike trail is shut down during construction times, except for on Sundays. There was too much conflict with people, dogs, the construction workers, and machinery. In a month or two there will be the new dike trail open, located outside of the construction zone.

**Docks and Harbors Board:** Liaison Dybdahl said the next meeting would be Thursday, February 25, at 7 p.m. in the Assembly Chambers.

### XII. ASSEMBLY COMMENTS AND QUESTIONS

Mr. Bush said he served as a pre-hearing officer for an appeal regarding the IUOE-302 vs CBJ appeal of the Personnel Board's decision regarding formation of a separate bargaining unit for the airport field maintenance workers. That hearing was scheduled for Monday, April 19, 6 p.m. in Chambers.

*MOTION, by Bush, to allow Mayor Botelho to designate volunteer ambassadors to the Arctic Winter Games in Grand Prairie, Alberta, next month, to explore Juneau submitting a bid to host the Arctic Winter Games.* Hearing no objection, it was so ordered.

Ms. Danner encouraged people to recycle. Many feel it has very little value, however, recently aluminum was valued at $680 a ton, and clear plastic at $290 a ton, so there is great value.

Mr. Dybdahl, echoed support for Juneau submitting a bid to host the Arctic Winter Games. He said he was a participant in 1978 and it is a tremendous experience and would add great economic value to Juneau.

Mr. Dybdahl said, regarding the issue of the Docks and Harbors bid tonight, if there is not a fix in place there will be. He did not think the language shown to the Assembly should be allowed, and it should be restricted to the amount of money the bid was put out for, the engineer's estimate on the high side, and if they do not have the funds they should not be putting out the project for bid.

Mr. Sanford reported a complaint from people living past the Lena bypass. There is a lot of activity in the park there and there are lots of cars on both sides of the road. There is a lot of clear space on the road going up, but if we can move the gate up 50 – 80 feet and let them keep that clear for them to park off the road, that may be safer.
Mr. Doll complimented Ms. Danner on her persuasive and thorough review of the Docks and Harbors Lease and Easement ordinance.

Mr. Doll asked how to handle a request for Assembly recognition of Filipino History Month. Mayor Botelho suggested a proclamation, and there was no objection.

Mr. Wanamaker expressed his appreciation to the airport manager and staff for working with the school district to accommodate students for Sea Week, to continue education without putting the students in danger at the airport wetlands locations.

Mayor Botelho referred a letter from Brad Fluetsch regarding wireless coverage of Assembly meetings and the issue of making the Chambers wi-fi accessible per an analysis from MIS to the Finance Committee.

Mayor Botelho asked the manager to explore the idea of a prescription drug "round-up," to allow households to bring medicines to a central location, so people do not flush them into the sewage system, they are taken out of children’s reach, and there will be reduced access to illegal substances.

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

XIV. EXECUTIVE SESSION – None.

XV. ADJOURNMENT – 10:15 p.m.

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