MEETING NO. 2010-10: The Special meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 6:15 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, 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; Greg Chaney, Planning Manager; Ben Lyman, Senior Planner; Eric Feldt, Planner I; Rorie Watt, Engineering Director.

Planning Commission Members Present: Maria Gladziszewski, Chair; Michael Satre, Frank Rue, Dennis Watson, Marsha Bennett, Nicole Grewe, Karen Taug, Ben Haight.

II. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS – None.

III. SPECIAL ORDER OF BUSINESS

A. Joint Meeting With Planning Commission

Mayor Botelho welcomed the members of the Planning Commission and thanked them for the opportunity to receive an updated status report on some of the issues before the Planning Commission.

1. Wireless Communication Facility Ordinance

Eric Feldt said following the proposal and appeal of a permit to construct a wireless tower last year, the Assembly gave a directive to the Planning Commission:

“The Assembly requests that the Commission consider and provide the Assembly with its recommendations on whether the CBJ should undertake to develop an ordinance to specifically regulate telecommunication towers, including matters such as height restrictions in the various zoning districts, lighting, mitigation measures such as screening and placement options and other related issues. The Assembly is seeking the Commission’s recommendations on the advisability of such an undertaking, as well as the Commission’s general views on recommended content and process, including time frame and stakeholders. If the outcome is that the Commission and the Assembly concur that it would be in the best interests of the CBJ to develop such an ordinance, the Assembly will provide the necessary resources to help facilitate the process.”
Mr. Feldt said that CDD staff has reviewed similar ordinances nationwide, various types of installations and their uses and prepared a rough draft of an ordinance, which was distributed to builders and various telecommunication companies locally, regionally and nationwide. Mr. Feldt distributed the latest draft of the ordinance, which was reviewed by the Planning Commission. The major changes from what exist in the current code are:

1. The establishment of a new section within the Land Use Code, which creates a hierarchical permitting process based upon project design and location.

2. An installation would be subject to review at the administrative level with a building permit, or at the Planning Commission level with a building permit and a conditional use permit.

3. Illustrations would be added to the code to aid in categorizing proposals.

4. New definitions for clarification and ranking.

5. Amend the Table of Permissible Uses to include more than just towers, including several types of facilities.

Mayor Botelho asked if there was any one ordinance from another jurisdiction that was the focus of the draft. Mr. Feldt said no, he took parts from many ordinances, due to Juneau’s climate and geographical location.

Mr. Rue said the hope is to make things very easy for simple, non-controversial towers and facilities and to give incentives for co-location of facilities. For the types of facilities in areas that create more controversy, such as residential areas, they would require a conditional use permit, unless the design was inconsequential and innocuous.

Mr. Watson said the Planning Commission did not want to discourage additional development or technology coming in to the community or a create a monopoly for those companies which already have towers. Technology changes quickly and we want to keep the process simple.

Mr. Anderson asked if the telecommunication industry had shared its opinions on this ordinance. Mr. Feldt said the ordinance was sent to regional and nationwide companies such as ATT/Alascom, ASC and GCI. There were mixed reviews. None said it was unacceptable, but none were highly in favor. One specific regulation that was dropped based on the comments was the requirement to conceal residential towers or monopoles (such as the appearance as a fake tree), as they cannot be adequately camouflaged, and due to building code safety requirements it might not be practical.

Mr. Rue said this draft has not been out for public review. One company was negative saying it was not needed, and another thought the ordinance was on the right track.

Mr. Doll said one of the most difficult issues to evaluate is “neighborhood harmony.” In the draft ordinance regarding installations taller than 100 feet in height, Page 4, (9) (A) refers to an analysis of the impact on property values of surrounding properties shall be performed and submitted…” Mr. Doll asked what an “analysis” meant.
Mr. Feldt said it would be a close examination of the properties near an existing tower and find similarities of similar dwellings, and see if there has been any impact or changes on sales or prices of the properties near an existing tower. He referred to the appraisal submitted in the record in the appeal case.

Mr. Doll said he thought the Planning Commission was not happy with the appraisal that was done for the last case, and questioned the value of the appraisal and asked for the Planning Commissioner’s thoughts on the matter.

Ms. Gladziszewski said the Planning Commission consistently heard in many planning permit cases that neighbors cite that property values will decrease and it is one consideration among many in a permit review.

Mr. Sanford said it is hard to measure accurately the effect on property values until a project is installed. Mr. Feldt said that the analysis would be of the effects on property values surrounding existing towers for a comparison. Mr. Sanford asked if any towers in the CBJ had caused property values to decrease. Mr. Feldt said not that he was aware.

Mr. Wanamaker asked if the draft ordinance has elements in it that are suitable for our terrain and topography in terms of our physical and technical requirements of the industry that would like to place a tower or a pole. Mr. Feldt said the building code had specific requirements and the geography that he referred to in the draft ordinance is climactic – the wind, snow, and ice. Mr. Wanamaker asked if the mountainous terrain is not incorporated into this draft ordinance but the climate is incorporated. Mr. Feldt said that is correct.

Mr. Doll said the community has a high tolerance for visual obstructions and does not think these towers will have a negative impact on property values.

Ms. Danner said she agreed that there is no evidence that property value has been impacted by towers one way or the other. Her concern about this ordinance is the imperative on the Planning Commission to see the maximum benefit with the minimum impact now and in the future. She acknowledged the time and effort to accomplish this with the draft. With the input from outside sources, she still is concerned that there is not enough professional expertise in this review, and asked if there are professional consultants in this area.

Mr. Feldt said there are consultants that specialize in this field, which will create an ordinance, do the research and make recommendations. This type of ordinance is controversial nationwide. He referred to the 1996 telecommunications act. Ms. Danner asked if there is an estimate of cost for this type of service. Mr. Feldt said he had not but could look into it if so directed.

Mr. Rue said topography is taken into account in the ordinance in the rural reserve districts – it is easier to get a higher tower on the hillsides, and there are fewer restrictions.

Mr. Watson spoke about a white tower on the waterfront of Douglas surrounded uphill by mostly new homes, and also on the water side new and older homes – the tower has not seemed to prevent homes from being built in this area. He referred to a situation in British Columbia where lots next to power lines sold for much more than the utility company, which bought them for the right of way, paid for them.
Mr. Dybdahl agreed that it would be best to avoid language to have to analyze property values with competing appraisers in the ordinance. People have long alleged property values will go down for a number of reasons, and the only incident he can remember that actually had a problem were lots next to the sewage treatment plant when it was having problems, but this issue has been resolved.

Mr. Rue said there were trade-offs for having this type of language in the ordinance, the Planning Commission would consider the comments.

Ms. Danner said regarding maximizing benefits and minimizing negative impacts, she is concerned with safety regarding aging towers, snow and ice conditions, and abandonment issues. The city has property and she hoped there might be a preference to situate towers in municipal land as a financial benefit to the community and asked if this was considered.

Mr. Feldt said restriction to location on municipal land had not been considered.

Mr. Sanford asked if city, state and Federal government, Ham radio operators and AM/FM radio towers would be required to comply with the proposed ordinance.

Mr. Feldt said that installations on Federal land were exempt from the land use code. Ham radio use regulations are not changing and the draft ordinance refers to towers with antennae area that would be cellular, TV, wireless internet.

Mr. Rue said the ordinance makes the process very simple for projects, which want to co-locate on an existing power line or poll.

Mr. Watson said erecting a tower on property was considered an improvement and there should be a process for the assessors and appraisers to determine the value of that improvement, similar to downtown rental property or any other income generating improvement.

Mr. Sanford asked if towers were truly not accessed for property value or business personal property.

Mayor Botelho noted the subject for further review.

2. Title 49 Updates

Mr. Pernula said there are a number of updates to Title 49 going on simultaneously, and he referred specifically to those regarding minor and major subdivisions and improvements. Currently the subdivision regulations are a portion of the permit section of Title 49, very brief, with provisions scattered throughout Title 49. A Preliminary Plat requires a Conditional Use Permit. The standards for a CUP are a little odd for a subdivision, which is really a “use of right” as long as the land is being divided, the permitted uses are ok, and the other criteria are met. A whole new chapter, Title 49, Chapter 17 will be created for subdivisions and improvements. He spoke about remnant parcels created during right-of-way takings by DOT when doing road construction, and they are trying to draft code to address whether this land becomes suitable for building. The Subdivision section is still with the Title 49 review committee, the Improvements section is complete and can be reviewed by the Public Works and Facilities Committee when it fits the agenda.
Mr. Doll asked about the criteria for approval of a conditional use regarding “neighborhood harmony” on page 5 of Mr. Pernula’s February 5 memo. Mr. Pernula said that this criteria is being removed for subdivision approval as subdivisions are a “right of use” of land. Mr. Doll said there are times when things are legal but not wise and the Commission has to have discretion. He would like the Commission to retain this criteria for discussion. Mr. Pernula said that removal of the criteria would not preclude the Commission from placing conditions on the plat approval, such as buffers and easements.

Mr. Sanford asked about the threshold of why a minor subdivision would be a division of a parcel into 1 – 4 lots. Mr. Pernula said currently there are only two divisions, four lots or fewer for a minor subdivision and anything larger is a major subdivision. There were a lot of public comments to make a minor subdivision 10-12. There are code provisions that deal with on-site waste water systems when there are more than five lots, so that is not a minor subdivision review, and the same goes for water utilities. We have created an additional category of review considered a major in-house subdivision for 5 – 10 lots. It will be processed similar to a minor subdivision with the exception of the code provisions regarding sewer and water.

3. Table of Permissible Uses & Snow Storage Issue

Mr. Chaney said the Planning Commission or Board of Adjustment has the ability to vary many areas of the code, but they do not have the ability to vary the use of property. He explained the Table of Permissible Uses. Possible uses of property are defined in rows of a table, and compared in columns defining the zoning district designations. At the axis is a number referring to the type of use allowed on the parcel of property. The numbers represent either a minor development (a “1” reviewed by staff), a major development (a “2” for an allowable use permit or “3” for a conditional use permit reviewed by the Planning Commission), or if there is no number, it means the use is not allowed on the parcel. There is no variance, or exception or exemption in code for the use of property.

Mr. Chaney explained that a primary goal of amending the Table of Permissible Uses (TPU) is to reduce the number of “2’s” or allowable use permits. The permit is cumbersome, costly and the Planning Commission’s action is only to review and set conditions on a use, but cannot deny an allowable use of property. Therefore, the public testifying on an allowable use permit may feel very frustrated that they have little influence on the outcome of a permit, and applicants are frustrated with the process. Allowable use permits now are generally placed on the consent agenda. The definitions of major and minor development have been reconsidered to reduce the number of Allowable Use Permits while maintaining the Planning Commission’s involvement in major projects.

Other changes to the TPU are defining Boarding House/Bed and Breakfast by the number of bedrooms instead of the number of guests. Group Homes are allowed with fewer than nine guests and thus considered “non-institutional,” and were separated from the definition of Halfway Houses, which are considered a more controversial use. Manufacturing and Utilities will be defined and regulated by their impacts off-site. Subdivisions have been removed from the TPU. Snow Storage basins is a new use and three categories of storage are proposed, “neighborhood,” “regional,” and “area-wide,” defined by size and only on areas with appropriate drainage. The Engineering Department has proposed an alternative to allow any type of snow storage to be in any zoning district with a conditional use permit that is renewable every five years to allow more flexibility. “Home offices” is a new category requiring a
conditional use permit to have a home office with employees in a residential zone. A last minute addition, not reviewed by the Planning Commission yet, is allowing chickens in residential zones “Commercial Use – Hens – maximum of three (no roosters)” to be allowed.

Ms. Gladziszewski said the TPU subcommittee of the Planning Commission has spent a year going over the TPU line by line meticulously and brought the review to the full Planning Commission for its approval. She recommended approval of chickens, though she understood animal issues always caused controversy.

Mr. Anderson asked about the promotion of mixed use and what types of mixed uses were allowed in the higher density residential zones. He specifically noted small restaurants are proposed to be allowed; and inquired about retail uses, similar to the issue that arose in the recent MRV proposal for a retail shop in a residential zone. Mr. Chaney said that was a legitimate point, but it was not addressed by the Planning Commission.

Mr. Doll asked about former Assemblymember Marc Wheeler’s request to have chickens in his yard. Mr. Chaney said the code currently requires that to locate one or more chickens closer than 100’ to a neighboring home would require a $300 application fee and a public hearing through the conditional use process. Mr. Doll said the theory is there are several violations of this requirement currently in the community. Mr. Pernula said the Comprehensive Plan in the Sustainability element encourages sustainable local agricultural productions. The Planning Commission would like to address this comprehensively. Mr. Doll said the Sustainability Commission supports Juneau’s food independence, including green houses, which may be another consideration.

Mr. Sanford spoke about convenience store regulations that are in a separate area of the code, and may address Mr. Anderson’s questions. Mr. Chaney said those regulations are very detailed and are separate from the TPU, and would allow for small convenience stores in residential areas.

4. Downtown Parking Management

Ben Lyman said this is a familiar topic to all. With the construction of the new parking garage and the institution of the fee-in-lieu of parking ordinance, the issue now is how to manage the parking that exists. He is meeting with many representative groups and taking a comprehensive view of parking management in the downtown area, including a full analysis of what parking is available downtown, where spaces are located, and which are accessible. He is looking at a proposal to put multi-space parking meters on the streets to provide a management tool that does not exist now. He discussed the problems of one-hour on-street parking spaces. The white box with the bill stuffer will not work for the new garage. If we continue to charge only for off-street parking and continue to have one-hour free on-street parking, the parking problem will be the same. CBJ Code Chapter 72 will need amendment. The Planning Commission, the Downtown Business Association and the Alaska Committee have all endorsed the use of parking meters for managing on-street parking. He said it appears to be the right technology for the job and is seeking the political will of the Assembly to move forward.

Ms. Gladziszewski said the Planning Commission endorses Mr. Lyman’s recommendations.

Mr. Rue asked about the management of the parking garages. Mr. Lyman said the location of parking spaces is the key and people are willing to pay more for convenience and timesavings.
If the most convenient parking is also the free parking, it will be in most demand. Between 20-80% of vehicles on the road in any central business district are looking for parking. The idea now is to allow two hours free on street, and after that on-street rates go up significantly. The garages will provide economical spaces for longer-term parking.

Ms. Gladziszewski asked for the reasoning behind charging for parking space in the parking garages. Mr. Lyman said there is the cost to build the garage. The cost of parking is also based on location. If all state employees parked in the new garage because it was closer than the currently designated parking spaces farther away, the garage would be full of state employees and not provide any new, needed parking for the downtown area. The designated state parking lots are not available for public use. Anyone, including state employees, can use the garage, but they will have to pay a fee.

Mr. Bush said he concurred with Mr. Lyman’s comments and said many issues of public concern were addressed. The one concern he has is that two free hours on the street may be too long and may need to be adjusted.

Mr. Lyman said the Assembly currently manages parking through CBJ Code Chapter 72, by setting the rates and time limits allowed for parking and gives discretion to the manager to sell monthly passes. He said it is a rather uncommon way of managing parking as it tends to be a political hot button subject better handled by the market than politics. He requested that the ordinance allow latitude on how parking is managed.

Mr. Anderson asked if Marine Parking Garage would be integrated into the scenario and Mr. Lyman said yes.

Mr. Sanford asked how seasonal changes in parking availability would be taken into consideration. Mr. Lyman said there needs to be a more dynamic management system that could accommodate seasonal shifts in use and not require an amendment of Title 72 every time a change is needed.

Mr. Sanford asked about the cost of installing meters. Mr. Lyman said he is looking at all types now and in order to get a good coverage with limited funds, the meters may need to be leased. They cost on average $13,000 each, and about 30 meters would need to be purchased initially. Annual maintenance agreement costs are additional.

Mayor Botelho asked when he sees this coming before the Assembly. Mr. Lyman said final changes to Title 72 need to be reviewed by the Planning Commission. It is a large policy change for the city and before more staff time is invested, he wanted to get a sense that they are moving in the right direction.

Mayor Botelho asked the Assembly if there were any “red-light” views from members.

Mr. Wanamaker said his “red-light” issue might be too much free parking time considered.

Mayor Botelho said it appears there is general support from the Assembly for Mr. Lyman’s work and the direction being taken regarding parking management in the downtown area.
5. Capital Improvement Program (CIP) Review

Mr. Pernula said the Planning Commission reviewed the CIP in a special meeting on March 16. The Commission’s comments were forwarded to the Public Works and Facility Committee (PWFC). Some comments were to include the Marine Parking Garage enhancements as well as the Seawalk as a project in the CIP. Both projects were included in the last CIP as future projects and should be included in future years as well. For near-term projects, the Commission recommended making safe routes to schools a top priority, and repaving of Industrial Blvd and Centennial Hall paving moved forward. Bicycle rack funding in FY11 may need to be included in future years as well. The EIS for the North Douglas Crossing should be included as a CIP project. Off-Highway Vehicle Park Study funding should be included as a project. The Sustainability Fund should received steady, annual funding. Long-term projects should include establishing the West Douglas Road in the CIP, a study of the North Douglas Bench Road, and a CIP project for the Juneau Access Road.

Mr. Watson said that the Centennial Hall parking lot repaving is scheduled for improvement in two years, but he thought a portion of the lot closest to Centennial Hall should be done sooner.

Mr. Sanford said the PWFC will review the Planning Commission’s recommendations line by line with Mr. Watt.

Mayor Botelho asked about issues in general. Mr. Watson said that once the new parking structure is up, he wondered what could be done to make the old one more attractive for use, such as cleaning. Mr. Sanford said the inside was completely redone last year with improvements to the sprinkler lines. The outside work will be done within the parking fund budget.

Mr. Rue said it is good to hear about potential improvements on the vacant lot at Front and Seward. He asked about the grim sidewalk in front of Merchant’s Wharf with puddles and inadequate crossing. The Assembly acknowledged that the State Department of Transportation must be involved with those improvements.

Mr. Satre referred to decisions made at the Planning Commission, which were changed or overturned at Assembly level. He said it is good to see there are checks and balances. He asked if the Assembly was comfortable with the decisions and backup the Planning Commission provided and if there is anything it can do to improve.

Mayor Botelho said that where the Assembly felt there was less than adequate information provided or if it had a different view, the Assembly attempted to make its comments informative and not as a chastisement. When the Assembly acts in its quasi-judicial role it is not legislative, but tries to be explicit in its comments. There are very few appeals to begin with which speaks highly of the work of the Planning Commission. When we look at an appeal, we are confined to the record. It is not the Assembly’s job to second-guess the Planning Commission, and the bias in the law is to uphold the Planning Commission, but if the Assembly concludes that the decision is not supported, the Assembly will call it differently.

Mr. Sanford said that when conditions are placed upon permits, reasons for the conditions must be articulated so we understand why the condition is needed.
Mr. Dybdahl said the Assembly will always accept every appeal. It is a common practice to accept them. He supported Mr. Sanford in saying that the Planning Commission needs to make sure that all findings are carefully drafted and supportive of the decision. He thanked the Planning Commission for its work.

Ms. Grewe said that there are fewer appeals because most permits are approved. We are making applicants support their application well, especially if there is a close interpretation of the code.

Ms. Bennett said that she is delighted with the forward movement on parking changes and hopes over time it will revitalize the downtown area to make it livable and attractive.

Ms. Gladziszewski said the Planning Commission members were willing to speak on rezoning ordinances if requested by the Assembly.

Mayor Botelho expressed his gratitude to the Planning Commission’s work on behalf of the community and the Assembly understands the time and dedication this requires.

Mr. Anderson asked about the noise ordinance. Mr. Pernula said there are two parts – there are land uses that generate noises and there are nuisance generators, such as loud stereos and parties. The Planning Commission has given good guidance on the land use issues, but was presented with the entire issue, and is less willing to address the nuisance issues.

Mr. Hartle said he and Mr. Lyman met on this issue last Thursday. It is a very hard problem, which was slightly set back by hiring a consultant. There are two issues – land use and nuisance. We could deal with it all on a nuisance level and generate tickets, but the land use side has a number of issues in a matrix, with industrial and residential issues included. Noise is difficult to contain by law, with many factors.

Mr. Anderson was concerned the issue may just languish, he would like to know if it is workable or not. Ms. Gladziszewski said the Planning Commission can address the land use issues, but enforcement of nuisance issues with loud stereos, etc., are issues for the Assembly to decide. It is currently under review by Mr. Hartle and Mr. Lyman.

Ms. Danner thanked the Planning Commission for its hard work and willingness to serve the community. Ms. Danner said that she is excited for Govern to be implemented standardized processing of applications and asked if it will help improve the record. Mr. Pernula said it eventually will, the old program was good and powerful, but only one item was entered at a time. Govern is based on a workflow process with steps that must be entered in a process, so we will have more consistency. Staff understands the new program and processing, and it will be better than in the past.

IV. ASSEMBLY COMMENTS AND QUESTIONS

Ms. Danner said the Juneau School District is applying for a grant for a program to encourage the reduction of alcohol abuse in the secondary schools, and asked for a letter of support from the Assembly.

Hearing no objection, the Assembly approved sending a letter of support on behalf of the JSD grant application.
MOTION, by Danner, that the Assembly encourage the Planning Commission to hire a consultant to address the wireless communications facilities issues.

Roll call:
Aye: Danner.
Nay: Anderson, Bush, Doll, Dybdahl, Sanford, Stone, Wanamaker, Botelho
Motion failed: 1 aye, 8 nays.

Mr. Doll said Juneau has received 63% participation in the census to date, which is compared to 66% nationally, 56% statewide and 64% in Anchorage. One third of the people who have received questionnaires have not responded. The census is based upon a person’s residence location as of April 1, and post office boxes do not meet that standard. Those persons with post office box addresses will be counted face to face. Post office box holders can pick up a form at various locations announced on the city’s website, or sit tight and wait to be counted.

Ms. Danner asked to reconsider her motion on wireless communications at the next meeting. Mayor Botelho noted her request.

V. ADJOURNMENT - 8:14 p.m.

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