MEETING NO. 2012-02: 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: Mary Becker, Bruce Botelho, Karen Crane, Ruth Danner, Johan Dybdahl, Jesse Kiehl, Carlton Smith, David Stone, and Randy Wanamaker.

Assembly Absent: None.

Staff Present: Rod Swope, City Manager; John Hartle, City Attorney; Laurie Sica, Municipal Clerk; Craig Duncan, Finance Director; Kirk Duncan, Public Works Director; Rorie Watt, Engineering Director; Barbara Berg, Library Director; Dale Pernula, Community Development Director; Heather Marlow, Lands and Resources Manager; Mila Cosgrove, HRRM Director; Greg Chaney; Planning Manager; Eric Feldt, Planner II; Matt Lillard, Eaglecrest Ski Area Manager.

II. SPECIAL ORDER OF BUSINESS

Mayor Botelho read from a Proclamation honoring Beatriz (Trixie) Aquino Abella, a 2008 graduate of Juneau Douglas High School and a mezzo-soprano attending Southern Oregon University. In April 2011, she was the only vocalist ever to receive the Grand Winner prize for the National Young Musicians Showcase Competition and performed in the winners’ recital at Carnegie Hall. In December of 2011, she again performed at Carnegie Hall, this time as a first prize winner of the American Protégé International Music Talent Competition. She and her duet partner were awarded the Best Performance Award in that competition. Mayor Botelho presented the proclamation to Ms. Abella’s parents, Reynaldo and Teresa Abella, and encouraged the community to acknowledge her amazing accomplishments.

III. APPROVAL OF MINUTES

A. January 9, 2012 – Regular Assembly Meeting 2012-01

Hearing no objection, the minutes of the January 9, 2012, Regular Assembly Meeting 2012-01 were approved.

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

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS.

Geny Del Rosario, a member of Juneau Lions Club encouraged the Assembly and community to join the Lions Club in supporting the Gold Medal Tournament, held March 18 – 24, 2012. She asked for support in continuing the tradition of holding a Spring Break in the Juneau
School District, which is when the tournament is held, so the games and events do not conflict with the school schedule.

VI. 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 Stone, to adopt the Consent Agenda as presented. Hearing no objection, it was so ordered.

1. Ordinances for Introduction

   a. Ordinance 2012-03
   **An Ordinance Amending The Commercial Passenger Vehicle Code, And Providing For A Penalty.**

   **Administrative Report:** Attached. The manager recommended Ordinance 2012-03 be introduced and set for public hearing at the next regular meeting.

   b. Ordinance 2012-05
   **An Ordinance Amending The Building Code Relating To Temporary Structures And Uses.**

   **Administrative Report:** Attached. The manager recommended Ordinance 2012-05 be introduced and set for public hearing at the next regular meeting.

   c. Ordinance 2012-06
   **An Ordinance Of The City And Borough Of Juneau, Alaska, Repealing Ordinance Serial No. 2011-31, Authorizing The Issuance Of A Nonrecourse Revenue And Refunding Bond (Wildflower Court, Inc. Project), Of The City And Borough In An Aggregate Principal Amount Not To Exceed $14,200,000; Authorizing The Execution And Delivery Of The Necessary Financing Documents In Connection Therewith; And Providing The Form And Terms Of The Bond.**

   **Administrative Report:** Attached. The manager recommended Ordinance 2012-06 be introduced and set for public hearing at the next regular meeting.

   d. Ordinance 2012-07
   **An Ordinance Of The City And Borough Of Juneau, Alaska, Reenacting And Authorizing The Issuance Of A Nonrecourse Revenue And Refunding Bond (Wildflower Court, Inc. Project), Of The City And Borough In An Aggregate Principal Amount Not To Exceed $14,200,000; Authorizing The Execution And Delivery Of The Necessary Financing Documents In Connection Therewith; And Providing The Form And Terms Of The Bond.**
Administrative Report: Attached. The manager recommended Ordinance 2012-07 be introduced and set for public hearing at the next regular meeting.

e. Ordinance 2011-11(AA)

An Ordinance Appropriating To The Manager The Sum Of $41,156.26 As Additional Grant Funding To The Juneau Police Department For Upgrades To The Radio Dispatch Consoles. Grant Funding Provided By The Alaska Department Of Military Affairs, Division Of Homeland Security.

Administrative Report: Attached. The manager recommended Ordinance 2011-11(AA) be introduced and set for public hearing at the next regular meeting.

2. Resolutions

a. Resolution 2598


Administrative Report: Attached. The manager recommended Resolution 2598 be adopted.

b. Resolution 2599


Administrative Report: Attached. The manager recommended Resolution 2599 be adopted.

c. Resolution 2600

A Resolution Expressing Assembly Support for Full Funding for the State of Alaska Municipal Harbor Facility Grant Program in the FY 2013 State Capital Budget.

Administrative Report: Attached. The manager recommended Resolution 2600 be adopted.

3. Transfers

a. Transfer T-932

Transferring $75,000 From Pavement Management Capital Improvement Project To The Hughes Way Improvements Fund.

Administrative Report: Attached. The manager recommended Transfer T-932 be approved.

4. Liquor Licenses

A. Liquor License Renewals

Administrative Report: Attached. The manager recommended the Assembly waive its right to protest the following liquor license renewal actions:


3. Package Store License #521: **Thibodeau’s Market Inc. d/b/a Home Liquor**, location: 241 Front Street


5. Package Store License #4422: **Thibodeau’s Market Inc. d/b/a Thibodeau’s Valley Liquor**, location: 9106 Mendenhall Mall Road

6. Restaurant/Eating Place License #3049: **Valley Restaurant LLC d/b/a The Valley Restaurant**, location: 9320 Glacier Hwy.

7. Restaurant/Eating Place License #848: **Olivia Castaneda d/b/a Olivia’s De Mexico**, location: 222 Seward Street

8. Restaurant/Eating Place – Public Convenience License #3643: **Clay Kent & Cisco Ramos d/b/a Douglas Café**, location: 916 3rd Street, Douglas

VII. PUBLIC HEARING

A. Ordinance 2012-01

**An Ordinance Amending The Land Use Code Relating To Development Near Eagle Nests.**

**Administrative Report:** Attached. The manager recommended Ordinance 2012-01 be adopted.

**Public Comment:**

*Jeff Sauer*, Vice President of the Juneau Audubon Society, referred to letters submitted to the Planning Commission and the Assembly. He said he was concerned with the process for this ordinance appearing before the Assembly at this time. The Planning Commission voted unanimously to not eliminate the bald eagle ordinance, questioning that this ordinance had not been reviewed by the Title 49 Committee or submitted for Comprehensive Plan Review. He did not believe there was sufficient information before the Assembly to make a decision. He discussed the experience of staff in the Community Development Department in addressing bald eagle issues for over ten years, and their coordination with the U.S. Fish and Wildlife staff on permitting. He said that conditions placed on variances over the years had formed a record similar to standards for reviewing individual projects. He said not one person had testified in favor of the ordinance or provided comments supporting elimination of the ordinance. This issue was initiated by city staff stating that the code was too restrictive. He said Juneau Audubon suggested that the code be modified, rather than eliminated, if it were found to be true that the code was too restrictive. He said there are many instances in which the borough ordinance is the only control over development around eagle nests. The federal law says you are not allowed to “take” (kill) eagles. There is a Fish and Wildlife permit issued for
disturbing an eagle’s nest. It is a $500 permit and it is not mandatory. The permit gives a
certain level of immunity if they follow conditions and still take an eagle. For small projects,
citizens would not apply for the federal permit, as it is too costly. If a citizen cuts a lot, and
takes an eagle’s nest, there is no control. CBJ has provided reasonable controls around small
development, and that is why maintaining this ordinance is important.

Mary Lou King spoke in favor of keeping the ordinance in law. She voted for Statehood so
Alaskans would have more control over issues of statewide concern. The federal government
addresses how we deal with eagles and we should give the eagles some protection. Eagles can
learn to deal with human beings’ usual noises, but eagles on a nest cannot deal with blasting.
Any permit issued to the Alaska Department of Transportation to blast ought to be given more
consideration. Residents and visitors alike enjoy seeing the eagles.

Tina Brown, represented the Alaska Wildlife Alliance and herself, and said eagles should
continue to be protected. Eagles were recently removed from the endangered species list, but
eliminating this ordinance did not make good biological sense. Nesting eagles are territorial,
and good sites are rare. Eagles protect nesting sites year round, do not like to relocate, and
could be driven away by other territorial eagles. Elimination of this ordinance effects
generations of eagles. This repeal relinquishes CBJ’s authority to others and is not in the best
interest of our community. Variances can still be issued as they have been for years. No
standards have been set for eagle monitors. The type of blasting used in projects is not known
and CBJ would not have any control over the type of equipment. She said the testimony from
other conservation organizations, with many members, represents a large portion of the
community. She asked the Assembly to allow the Planning Commission to do its job to review
situations on a case-by-case basis and vote against this ordinance.

Greg Brown spoke on behalf of his wildlife viewing business, “Weather Permitting Alaska,”
and said he has had National Geographic and PBS crews on their boat. Their trips can range
from a minimum of $900 to $20,000. He spoke about the economic value of wildlife, and said
that it was easy to take wildlife viewing for granted when living in Juneau. He said the life of
one whale to CBJ is worth $32 million, and the amount is accepted by UAS, NOAA, and the
JEDC. Bears at Pack Creek are worth $132,000 per bear each season. The number for eagles
is not refined but it appears to be $20 – $25,000. He asks all of his customers which wildlife
they come to see and 78% will say the following order: whales, bears, eagles, and wolves. He
urged the Assembly to keep the ordinance in place and not lose control of this revenue stream.

Karla Hart said Juneau has a wealth of eagles for people who view eagles, respect the wildlife
and consider seeing eagles a core value of the community. She asked the Assembly to listen to
the Planning Commission and the Comprehensive Plan, and to listen to the citizens’ comments.
Removing eagle protection for expediency of development of roads and other projects is
contrary to the community values expressed in the Comprehensive Plan. She asked the
Assembly to vote no on this ordinance and task the administration with crafting solutions that
protect eagles and address concerns about the lack of expertise.

Julie Koehler asked the Assembly to keep the ordinance in place as it has contributed to Juneau
having a large population of eagles. She spoke about the uniqueness of seeing Eagles on a
daily basis and said Juneau’s ordinance and the listing of bald eagles on the Endangered
Species list was a wonderful success story. Eliminating the ordinance will have a detrimental
effect.
Bart Koehler said the Planning Commission was unanimous in opposition to this ordinance and that was telling. Variances for projects near eagle nests have been granted and will be granted in the future. He said “if it is not broke, don’t fix it.” He said the land in public forests belongs to all citizens and eagles have a place there. He spoke about Juneau being unique because he has been distracted in a softball game due to eagles flying overhead.

Assembly Action:

MOTION, by Wanamaker to adopt Ordinance 2012-01.

Mr. Wanamaker thanked everyone for his or her comments. He said change is difficult. The federal agency that regulated endangered species has determined that eagles are no longer endangered. They are the experts and they still have oversight, and if this becomes a problem again, there will be safeguards put into place. He said Alaska is a vast state and the eagles are virtually everywhere. There is federal policy and guidelines and the city should be consistent with federal guidelines. They are the experts and they will advise the city and state. Eliminating this ordinance is a reasonable.

Mr. Kiehl said he is glad that the bald eagle is no longer considered endangered, but his understanding was that the bald eagle in Alaska was never endangered. He said he was interested to know why the change from “not endangered” to “not endangered” was prompting this ordinance. He asked when the ordinance was adopted or why they were adopted. Mr. Pernula said the ordinance had been in code since 1987 and in the 1996 Comprehensive Plan there is a section addressing bald eagles. Mr. Kiehl said that it was remarkable that there was nothing in the Comprehensive Plan about the pending extinction of bald eagles or its elimination from Juneau. There has been some conversation about the expertise of CBJ staff regarding these matters. CBJ has no habitat biologists on staff regarding wetlands issues or fish biologists to address stream setbacks. Mr. Pernula said the Wetland Review Board does have expertise on wetlands matters and experts in wetlands prepared the Wetland Management Plan. We have people trained on implementing those portions of the plan and some of the streamside setback measurements. Mr. Kiehl said we do not have streamside setbacks because we are worried about extinction of salmon, but for another community purpose. This argument is not about biology, but about community values. CBJ is looking at community values generally, and he would like to keep the ordinances, and make them be more flexible if that is a need.

Mr. Smith asked if Planning Commission Chair Mike Satre was in the room and could comment if it was appropriate. Mayor Botelho asked Mr. Satre to comment. Mr. Satre said it was a unanimous decision of the Planning Commission to fail to recommend the adoption of the ordinance, but there were nine different opinions on the matter. Mayor Botelho said all members of the public received the minutes for that portion of the meeting. Chair Satre said that as they have dealt with variances, the Planning Commission has completely relied on the recommendations of the U.S. Fish and Wildlife Service (USFW). Even in an item as contentious as the Juneau Access Road Phase I, which the Planning Commission at the time denied as it was not in compliance with the CBJ Comprehensive Plan, the Planning Commission approved the variances to the eagles nests regarding that project based on USFW recommendations. We have been told that input from USFW may not be as easy to obtain as it has been in the past, and this came to light in the latest variances issued for the DOT road expansion project, which may be the reason this ordinance was introduced. Some questions from the Planning Commission regarded process and the reason for needing to move so
quickly. Some Planning Commissioners felt this should have been reviewed by the Title 49 Committee, with recommendations back to the Planning Commission and ultimately the Assembly. Opinions within the Planning Commission included some who wanted to support the ordinance as written, and some who would like to amend the ordinance with a tiered structure for CBJ, state, federal, and private lands. There were some who wanted to follow the advice of the Comprehensive Plan and amend the code to rationalize the eagle nest variance criteria, as in the recommendation in the Notice of Decision, and there were some who did not want any changes. He said the Planning Commission was ready to have this matter remanded back to the Planning Commission, and it would try to make this a priority.

Mr. Dybdahl asked how many variances were issued in the past five years and what types of conditions were placed, on private or public lands, and was there any cost to the conditions. Mr. Pernula said their database dated back to 1995 and since then 37 applications were filed. One application went nowhere, three were withdrawn, 33 others were issued variances – none were denied. There are a variety of different conditions and variances, many are on public land, which has the 330-foot setback, others are on private land with a 50-foot setback, except for when there are nesting eagles at which time it goes up to 330 feet. Some conditions can be fairly costly, such as requiring an eagle nest monitor to watch what types of activities interfere with nesting activities. The most onerous conditions to date were with respect to blasting at Stabler’s Point, limiting blasting to certain times of the year. Those were some of the conditions carried forward to the latest DOT project north of town, but as we got further into it, we withdrew the blasting condition, which conflicted with what the USFW had on their permit granted to DOT. Mr. Dybdahl asked the outcome of the issues at Stabler’s Point and if the eagles had abandoned their nests. Mr. Pernula did not have that information.

Mr. Satre said that the Planning Commission had addressed all pending matters on eagle nests and had approved the variance for the DOT project. Mr. Pernula said the Planning Commission approved the variance without any conditions.

Ms. Danner asked about Stabler’s Point and the timing of blasting in relation to nesting. Ms. Marlow said that both she and Mr. Watt have worked on the Stabler’s Point project. Ms. Marlow was the monitor for the Stabler’s quarry and there were three active eagles nest at the quarry that are still there. She said the eagles do not use them every year, but there is usually activity in at least one if not three. It was required to have a monitor on site proximate to the nests and the monitor cost between $60 – 80 per hour. Drilling, blasting, crushing, loading, and hauling activities took place and in five to six years, there were no problems or concerns noted by the monitor.

Ms. Crane said due to the varying opinions of the members of the Planning Commission she thought it would be a good idea to remand this to the Planning Commission for a more comprehensive report.

Mr. Dybdahl said the Planning Commission could also recommend another ordinance. There was reference to amending the Comprehensive Plan, but this takes significant time.

Mr. Smith asked Mr. Swope for clarification about what was referred to as a lack of capability on staff regarding expertise in this area. Mr. Swope said that we are frequently faced with fisheries issues, streamside setbacks, impacts to whales, impacts to eagles and we always defer to others. Our boards contain experts, we have no expertise on staff to make statements on such issues – we have no biologists. He said he is a biologist and has a great concern for the
environment but upon looking at this topic the CBJ was suggesting more stringent requirements than the USF&W suggested. He referred to potential appeals of CBJ permits and the lack of standing CBJ may have in those matters. We have old conditions that have been inherited from other agencies, but we have not generated them from expertise we have within the CBJ.

Mayor Botelho asked Mr. Satre if this were referred to the Planning Commission, how this would be addressed and about timing. Mr. Satre said the Planning Commission would refer the matter to the Title 49 Committee to facilitate discussion on how to amend the ordinance. That would be forwarded to the Planning Commission and ultimately to the Assembly. He discussed the current projects before the Planning Commission.

Ms. Danner said the Assembly should decide what the policy and intention for eagles should be ultimately, and the Assembly should tell the Title 49 Committee and the Planning Commission what its intentions are – status quo or change regarding eagle protection. She asked about the Assembly assignment regarding rezoning to the Title 49 Committee and said she did not want to stall that work.

Mr. Kiehl asked about the concern about defending an applicant’s appeal. There are cases in which we have variance criteria and if someone comes in with experts that say that these conditions are not required, the CBJ will consider that expert testimony. To what extent do we defer to that type of information? Mr. Pernula said this was the crux of the matter for this ordinance. Most of our code allows for conditions. In the eagles nest ordinance it says, “no development is allowed within 330 feet of an eagle’s nest, period.” The criteria for issuing granting a variance is tough and not meant to address habitat issues. He suggested it may be better to say, within 330 feet of an eagle’s nest, if there is to be development, you must follow these listed precautions, and if those were not possible, then a variance would be required. There is a total prohibition of any development within 330 feet of an eagles nest. Mr. Kiehl said this seems like a strong case for an amendment to the code and he preferred to defer to the Planning Commission.

Mr. Wanamaker asked if remanded to Planning Commission, he would like to see an analysis of what it takes to make CBJ code consistent with current federal law and policy. We need to be specific about what we want, not just remand the issue. He would like to know if an ordinance is even needed to be consistent with federal intent. He asked, in the history of CDD, has the Planning Commission ever rejected or overruled federal conditions for eagles, recommended more stringent conditions or denied, or recommended something different altogether. He asked how this stayed in the Comprehensive Plan update if eagles were de-listed in 2007.

Mr. Pernula said to his knowledge no permits were ever been denied, 33 were approved with conditions, and most had recommendations from the USF&W Service. CDD stopped getting recommendations from the USF&W Service in about 2008, since then, three of the projects reviewed were DOT projects where they also had a USF&W Service permit and we used the permit for consideration of the other permits. Mr. Wanamaker said it appeared CBJ had never denied or imposed stricter conditions than USF&W. Mr. Pernula said he could not recall any time a condition was more restrictive.

Mr. Satre said the de-listing was recognized in the last review of the Comprehensive Plan and it was acknowledged that CBJ was issuing the variances according to USF&W services
recommendations and CBJ had not denied any applications. We recognized that a code adjustment was necessary and this was called out in the last revision of the Comprehensive Plan.

Mr. Dybdahl said that at some time pre-statehood, there was a bounty on eagles. The banning of PCBs had a great effect on the eagle population as PCBs interfered with the hatching of eggs. Mr. Dybdahl said that voting on this tonight would not change anything now. He could vote on this tonight and do with direction to the Planning Commission.

Mayor Botelho called a recess from 8:20 – 8:30 p.m.

Mayor Botelho suggested the matter be remanded to the Planning Commission with instructions that the matter be assigned to its Title 49 Committee and a request that it bring forward its recommendations to the Assembly on Ordinance 2012-01 independent of the Planning Commission’s ongoing review of the Comprehensive Plan so this issue does not trail the Comprehensive Plan review. Also, direction to the Planning Commission to confer with the USFW Service in the development of its recommendations.

Mr. Wanamaker said he could support the referral but it is important that the committee recommend something consistent with Federal law and policy regarding eagles.

Mr. Smith asked for a time estimate of the work. Mr. Satre estimated it could tentatively be back to the Assembly, following public meetings, by the end of the summer.

Hearing no objection, Ordinance 2012-01 was remanded to the Planning Commission.

B. Ordinance 2012-02(d)

**An Ordinance Authorizing Hughes Way To Be Replatted And Developed In A Manner That Does Not Meet The Current Minimum Subdivision Standards Required By The Land Use Code And Authorizing Settlement Of The Keikkala Living Trust Appeal.**

Administrative Report: Attached. The manager recommended Ordinance 2012-02(d) be adopted.

Public Comment: None.

Assembly Action:

*MOTION*, by Danner, to adopt Ordinance 2012-02(d), for purposes of discussion.

Ms. Danner said she spoke with two members of that community today and found that this is a much more contentious issue than she realized. She needed to understand the proposed plan before she could support the ordinance. It seems that the two people who stand to gain the most are actually not the ones whose property is being taken to expand the right-of-way. She is concerned about Ms. Belcher’s property and how much of that was going to be taken and the trees that would be removed – she heard 30 feet of her front yard. Ms. Danner said she was also concerned about a driveway that cuts down off what will be a cul-de-sac that has a steep embankment that could create a safety issue.
Mr. Pernula said that with respect to the Belcher property, there is currently an easement for a cul-de-sac that would cut down a large portion of the trees in front of her property. The new alignment of the street would remove fewer trees. Mr. Watt said that regarding the Belcher property, there is an existing right-of-way in what appears to be her front yard. The CBJ position is that a cul-de-sac is desirable but the CBJ does not have an opinion on its location. Mr. Watt said no one in the neighborhood supported construction of the cul-de-sac in the current location of the right-of-way. With the new location, Ms. Belcher would not get a cul-de-sac in her front yard and she would get that right-of-way conveyed to her, but she would give up a different piece of property for the location of the new cul-de-sac. The new cul-de-sac is put in a location that the whole neighborhood supports. Ms. Danner asked if that is the piece of property in front of her kitchen window. Mr. Watt was not sure. Mr. Watt said the road would continue a bit further and the cul-de-sac would be at her more westerly property. Ms. Danner said she thought that was the preferred of the two in that discussion. She asked Mr. Watt about a road to the beach and a steep embankment. Mr. Watt said Mr. Kibby was in the audience and he had the only driveway that fit those criteria. In the new alignment, the road moves away from Mr. Kibby’s property and would not make that situation any worse. The driveway is going to come off either the existing or the new road and cul-de-sac, but the new road and cul-de-sac moves away from Mr. Kibby’s property.

Mayor Botelho asked Mr. Watt if there was any reason to believe that any of the property owners involved do not support the settlement at this stage. Mr. Watt said he has not heard any reason that they do not support it. Mayor Botelho said the record reflects that all the property owners have signed the settlement.

Ms. Danner said, in the absence of anyone here to testify otherwise, she would accept the documentation; it was all the Assembly had before it. Ms. Danner said she reached out to Dixie Belcher because Ms. Danner knew her, and said she just wanted to make sure that everything was agreed. Ms. Belcher told Ms. Danner that she was upset and ready to move from Juneau, because her front yard and all of her trees were going to be taken away. Ms. Belcher said that Jeff, another neighbor, was particularly concerned about the safety issues and the urgency with which he had to sign the agreement. Ms. Danner discussed Mr. Kibby’s representation of the matter. Mayor Botelho asked Ms. Danner if she would like to examine Mr. Kibby and she said yes.

Mr. Kibby responded to Ms. Danner’s discussion of his representation and said the neighborhood had been in turmoil with this issue long before he and his wife moved to the neighborhood. Right now, with the snow, there is one lane of vehicle traffic in the area on Anne Coleman and on Hughes Way, there is no way to turn around. Snow cleared is pushed to the end of the road, there is no cul-de-sac, and a berm is left. The people from Ms. Belcher’s house could not get their car up and out. There is a platted cul-de-sac, which would be seen out of her window and across the front of her house. That is the alternative that the city has, and it still leaves a traffic nightmare in that small community of Hughes Way. It has been hard for everyone and we came to the decision that this was the best alternative to come up with some standardization of road, some ability to have a cul-de-sac for emergency vehicles, which does not exist now. Mr. Kibby said that he and his wife anticipated having their parents live with them, but right now, this is not possible. One of the neighbors had a party the other day and had six cars lined up and with the snow, he could not get out of his garage or up the driveway. This will take care of life safety issues, traffic, and add to the value of properties. Ms. Belcher would vacate the existing right-of-way on her property. Fifteen feet of the 45-foot width proposed for the non-code ordinance is going to be coming out of her and Jeff’s property.
and in exchange, the next door property that adjoins hers, they are going to get a 230-foot
buffer, 40-feet wide, adjoining their whole property line, that is in perpetuity, a greenbelt never
to be built on. This is over 9,000 square feet of property being added and they are probably
letting go of 1,000 square feet. The adjoining neighbors are putting up $25,000 each, but
neither one of those folks are contributing monetarily. There is a give and take and everyone
has worked with each other to come up with a compromise, and yes, begrudgingly we have all
signed a settlement agreement. We also started this agreement in 2007 because we recognized
before we were into this issue with the appeal of the Planning Commission decision that
something had to be done. I can understand Dixie, Jeff, Ginny, myself, the Keikkalas, none of
us are happy. However, the current situation is worse - we have safety and traffic issues,
difficulty with snow removal, and the garbage truck has trouble even in the summertime. An
emergency vehicle a year ago went down and tried to make the turn onto Hughes Way and
ended up sliding off to the side and had to call for someone to pull them out.

Ms. Danner asked Mr. Kibby if he could describe the road to the beach and in his opinion did it
pose safety issues for cars turning around once this new cul-de-sac is in place? Mr. Kibby said
that was a misstep or oversight in the information Ms. Danner had. He has access to his garage
on Hughes Way and he also has a steep driveway that accesses the beach and a lower shop area
for his own use, it is not for public use.

Mayor Botelho said the findings in this non-code ordinance state the settlement is a result of
mediation, in turn triggered by a scheduling conference for a hearing, and all parties entered
into the settlement agreement. It is the Assembly’s prerogative to defer or decline to act, but if
action is not taken by February 15, the settlement agreement, by its own terms, is null and void
and an appeal hearing would be scheduled in April. He said if there is a party that wished to
withdraw from the agreement he would have expected to be notified as the Presiding Officer of
their intent to withdraw.

Mr. Kiehl asked if there was a total cost estimate for the CIP. Mr. Watt said it would be
approximately $100,000.

Hearing no objection, Ordinance 2012-02(d) was adopted.

C. Ordinance 2011-11(Y)
An Ordinance Appropriating To The Manager The Sum Of $10,300 As Additional
Funding To The Juneau Public Libraries For The Public Library Assistance, Regional
Mail Services, And Continuing Education Grants. Grant Funding Provided By The
Alaska Department Of Education.

Administrative Report: Attached. The manager recommended Ordinance 2011-11(Y) be
adopted.

Public Comment: None.

Assembly Action:

MOTION, by Crane, to adopt Ordinance 2011-11(Y).

Mr. Kiehl said he worked as a legislative staff member on the State of Alaska Department of
Education budget and would that constitute a conflict. Mayor Botelho determined Mr. Kiehl
did not have a conflict and hearing no objection, Mr. Kiehl was allowed to participate in this matter.

Hearing no objection, it was so ordered.

D. Ordinance 2011-11(Z)
An Ordinance Appropriating To The Manager The Sum Of $50,000 As Grant Funding For Lighting Upgrades At The Juneau Arts And Culture Center. Grant Funding Provided By The Alaska Department Of Commerce, Community And Economic Development.


Public Comment: None.

Assembly Action:

MOTION, by Danner, to adopt Ordinance 2011-11(Z).

Ms. Danner said there was not an economic impact note in the packet and if there were any requirements for matching funds from the CBJ. Mr. Swope said no.

Hearing no objection, it was so ordered.

VIII. UNFINISHED BUSINESS

IX. NEW BUSINESS

A. Marine Passenger Fee Reappropriation Request

Hearing no objection, Mr. Stone stepped away from the meeting due to a conflict of interest because of his economic partnership with the Franklin Dock.

Administrative Report:

Mr. Swope said when use of the Marine Passenger Fees for the Franklin Dock was approved by the Assembly in the last budget cycle; there were a number of projects listed and funding sources for those. As projects incur expenses, they send us an invoice, and we pay against the invoice, until the project is finished and closed. The Finance staff confirmed that the list of projects was invoiced, paid, and closed out. This is a request from the Franklin Dock owners to take the remaining funds and redirect them to a new project, which they submitted this year for Marine Passenger Fees – it is a covered passenger walkway area, at the cost of $170,000. They would like to take the remaining funds and spend it this year and get the project done for this season. Mr. Swope said it would take approval by the Assembly.

Mr. Hartle said this action should take the form of a motion. The Assembly would be amending the project description that was in last year’s capital project budget for Marine Passenger Fees.
Mr. Swope said he recommended making this re-designation of the use of the funds.

**Public Comment:** None.

**Assembly Action:**

Mr. Kiehl asked the timing on the public comment period of the FY13 requests. Mr. Swope said the Marine Passenger Fee budget was open for public comment now. The covered area is on that list, originally identified as $170,000, but the new estimate is $185,000. This list is part of the Assembly’s budget and is adopted at the time the budget is adopted – no later than June 15 and effective July 1, 2012. Mr. Kiehl said he appreciated wanting to get the project done in a timely manner, but it seemed to be jumping the public comment process on the rest of the list.

Ms. Danner said that she has not had enough time to review the information due to the nature of the information coming in the red folder.

Mayor Botelho called a short recess at 8:56 p.m. – 9 p.m.

Mr. Hartle said upon further consultation with the City Manager and Finance Director, he explained that the Marine Passenger Fee appropriation was approved by the Assembly in a “lump,” and not by individual project. Only the Finance Committee had reviewed the individual projects. The funds were appropriated and if the Assembly chose, it could re-designate a part of the money already approved, either by motion, or at the next meeting or a future meeting.

Mr. Swope said these funds would reduce their FY13 request by $142,000. They are not asking for this in addition to what they have already.

**MOTION,** by Danner, to table the matter to the next regular meeting.

Mr. Dybdahl asked in what form the matter would return to the Assembly on the next agenda. Mayor Botelho said it would be a pending motion, not an ordinance.

Mr. Kiehl asked about the public comment period on the Marine Passenger Fee program and if public comment would be closed by then. Mr. Swope said no.

Mr. Dybdahl said the funds in question were for FY12 and public comment was heard then.

Roll call to table:

  Aye: Danner, Kiehl
  Nay: Becker, Crane, Dybdahl, Smith, Wanamaker, Botelho

Motion failed, 2 ayes, 6 nays.

Mayor Botelho asked if there was any objection to a motion to reallocate $142,000 of FY12 Marine Passenger Fees designated for use by the Franklin Dock from closed out projects to a new project, an addition to the approach dock awning to connect the secure area to the public access area, total project cost estimated at $185,000, reducing the FY13 request for that project down to $43,000.
Roll call:
    Aye: Becker, Crane, Dybdahl, Smith, Wanamaker, Botelho
    Nay: Danner, Kiehl
Motion passed, 6 ayes, 2 nays.

Mr. Stone rejoined the meeting.

B. Annexation Funding Request

Mayor Botelho said Mr. Wanamaker provided notice of a conflict of interest in this topic due to his position as an officer of Goldbelt, Inc., which is a major landholder in the area proposed for annexation. Mayor Botelho ruled that Mr. Wanamaker be recused, and hearing no objection, Mr. Wanamaker stepped away from the meeting.

Administrative Report:

Mr. Swope said that the Juneau Economic Development Council was retained to assist with the Annexation Petition project. CBJ Assistant Attorney indicated there is additional work to be done in preparation for hearings and research and asked to retain Sheinberg and Associates based on their qualified staff and previous experience and availability. Ms. Sheinberg proposed billing rates for staff and an amount not to exceed $6,000, billed on an hourly basis. Mr. Swope identified the Better Capital account as a source of funding.

Public Comment: None.

Assembly Action:

Mayor Botelho asked about the timing issues. Mr. Hartle said the Local Boundary Commission said the timeframe has shortened for the hearing and the extra staffing would help.

Mr. Kiehl said he was not in support of the Annexation due to near and long term costs without significant long-term benefits. He does not believe this expenditure is consistent with the Better Capital City account with an adversarial procedure.

Roll Call to approve the expenditure of (not to exceed) $6000 from the Better Capital account to retain Sheinberg and Associates for work on the Annexation Petition project:

    Aye: Becker, Crane, Dybdahl, Smith, Stone, Botelho
    Nay: Danner, Kiehl
Motion passed, 6 ayes, 2 nays.

Mr. Wanamaker rejoined the meeting.

C. Liquor License Protest Recommendation

1. Beverage Dispensary License #2844: Sandbar Inc. d/b/a The Sandbar location: 2525 Industrial Boulevard, Juneau
   Administrative Report: Attached. The manager recommended the Assembly protest the continued operation of this liquor license until the outstanding sales tax delinquencies are
brought current and associated interest, and penalties are brought current. Mr. Swope noted that the business had recently submitted unfilled sales tax return forms but still owed the money.

Public Comment: None.

Assembly Action:

**MOTION, by Danner, to protest the continued operation of Beverage Dispensary License #2844: Sandbar Inc. d/b/a The Sandbar location: 2525 Industrial Boulevard, Juneau, until the outstanding sales tax delinquencies, interest, and penalties are brought current.**

Mr. Dybdahl asked what happens at the time the sales tax is paid. Mr. Hartle said, as in past experience, CBJ would withdraw the protest when accounts are paid.

Hearing no objection, it was so ordered.

**X. STAFF REPORTS** – None.

**XI. ASSEMBLY REPORTS**

A. Committee Reports

**Committee of the Whole:** Mayor Botelho said the COW met January 23 and received an update on the State Library, Archives and Museums Project, and update on the Willoughby District and heard information and provided instructions to staff regarding waste management and ongoing negotiations.

**Human Resources Committee:** Chair Danner said the HRC met prior to the Assembly meeting and recommended the following appointments to CBJ Boards and Commissions, which were approved without objection by the Assembly:

- **Jensen-Olson Arboretum Advisory Board**
  Reappointment of Patricia Harris to the SEAL Trust seat and Edward Buyarski to the horticultural seat for terms expiring January 31, 2015.

- **Juneau Affordable Housing Commission**
  Reappointment of Rosemary Hagevig and Tamara Rowcroft for terms expiring January 31, 2015.

- **Juneau Commission on Aging**
  Appointment of Elizabeth Terry to a seat for a member 55 years or older, for the current term expiring June 30, 2012 and the full three-year subsequent term expiring June 30, 2015.

- **Personnel Board**
  Appointment of Judith Porter to a public seat for a term expiring January 31, 2015.
Social Services Advisory Board  
Appointment of Michael Christianson for a term expiring September 30, 2013.

Wetland Review Board  
Reappointment of Brenda Wright for a term expiring December 31, 2014.

Chair Danner referred the public to www.juneau.org to see the current vacancy listing on CBJ Boards and encouraged applications. She asked to discuss the composition of membership on the HRC with respect to the Open Meetings Act at a future Committee of the Whole meeting, and hearing no objection, the topic was added to a future agenda.

Lands and Resources Committee: Chair Becker said the committee met on January 23.

MOTION, by Becker, that CBJ renew the contract with ADF&G for the pathology lab at Twin Lakes. Hearing no objection, it was so ordered.

MOTION, by Becker to direct the Law Department to prepare a resolution in support the content and intent of House Bill 264 introduced by Representative Munoz, with the understanding that there would be changes to it through the committee process. Hearing no objection a resolution of support will be prepared for consideration.

MOTION by Becker, to authorize the City Manager to negotiate for the disposal of CBJ property adjacent to the Public Works facility in Lemon Creek to the Alaskan Brewery. Hearing no objection, it was so ordered.

MOTION, by Becker, to direct the Law Department to prepare an ordinance for the vacation of CBJ property to the State of Alaska for right of way and the installation of a right hand turn lane from Haloff Way onto Mendenhall Loop Road. Hearing no objection, it was so ordered.

Public Works and Facilities Committee: Chair Wanamaker said the PWFC met on January 23. At the meeting the committee heard informational presentations from Bartlett Regional Hospital regarding a proposed Child/Adolescent Mental Health Center, from Capital Transit on facility maintenance and upgrade and from Parks and Recreation regarding its proposed project list. All projects were seeking support from the 1% sales tax source. The next meeting is set for February 6.

B. Liaison Reports

Chamber of Commerce: Liaison Wanamaker said the next meeting was cancelled so people could attend the memorial services for Romer Derr.

Eaglecrest Ski Area Board: Liaison Crane said that while the snow may be causing problems for some, it is a delight for Eaglecrest.

Docks and Harbors Board: Liaison Becker said the Docks and Harbors Board is leaning towards establishing the 1% for Art Panel when the project is at 65% design. There is a meeting scheduled for March 29 to discuss the renaming of the Douglas Harbor. The Planning Commission continued discussion regarding the Conditional Use Permit for Dock Project 16b to February 28. The two main concerns are the Fishermen’s Memorial and Taku Smokeries. Docks and Harbors will put up buoys and run a navigational test for the fishing boats.
Liaison Becker forwarded requests from the Board for resolution drafting for Assembly consideration: Trucano/Nowell Ave./CBJ Tideland Lease, the Juneau Alaska Communication Tideland Lease, and Engineering/Design Phase I Aurora Harbor.

Liaison Becker said the Port Director and Harbormaster are in Seattle at the Boat Show representing Juneau and offering incentives to boaters to visit Juneau.

**Alaska Committee:** Liaison Becker said the committee met and received an update about the Gavel to Gavel program. The Legislative Welcome Reception was a successful event. The Alaska Committee met with representatives from Alaska Airlines. The committee held its annual meeting on Saturday, January 21. Snow removal on downtown streets and sidewalks is a concern of the committee.

**Juneau Commission on Sustainability:** Liaison Becker said the JCOS had its annual retreat, discussed sustainability indicators, the climate action plan implementation, the green team efforts, web page redesign, and possible cruise ship awards.

Ms. Becker said the Juneau After School Coalition received recognition by the National League of Cities for its activities. The United Way will hold its Diversity Workshop on February 2-3 at the UAS Armory. Leadership Juneau begins in February and there are two scholarships available for the program.

**Local Emergency Planning Committee:** Liaison Danner said the next meeting would be February 8, Noon, at the Bartlett Regional Hospital Boardroom.

**Airport Board:** Liaison Danner said the next meeting would be February 8, 6 pm in the Alaska Room at the Airport.

**XII. ASSEMBLY COMMENTS AND QUESTIONS**

Mayor Botelho expressed condolences to the Romer Derr family on behalf of the Assembly upon his loss. He dedicated his life to making Juneau a better place and generations yet to come will benefit from things Romer had done.

Ms. Danner asked about the issue of spring break at school and the Gold Medal Basketball Tournament. She asked what the Assembly’s role was and how it could help with the matter.

Mayor Botelho asked if there were any objection to the Assembly expressing its concern about the scheduling at its importance placed on the Gold Medal Tournament in Juneau.

Ms. Becker said she did not know that the tournament would be cancelled if school were in session, but it would be more difficult logistically.

Mr. Dybdahl said this was a serious issue. Most of the school districts in Southeast take a break at the same time so people can travel here for the tournament. They spend a lot of money to be here and they have made adjustments throughout the region. It would be planning in a vacuum if other school districts were not consulted. The Gold Medal Tournament will be inducted into the Alaska Sports Hall of Fame on February 28 in Anchorage and they have
made accommodations as they can. He supported keeping it during spring break time and moving into April would affect fishing, participation, and many would suffer.

Mr. Wanamaker said the School Board is charged with setting policies and priorities and the Assembly should hear from them first before we comment. They are struggling with budget shortfalls the same as the Assembly. Ms. Becker agreed.

Mayor Botelho asked if there was any objection to Mayor Botelho speaking with Board President Saddler to discuss and share concerns. Hearing no objection, Mayor Botelho would meet do so.

Ms. Becker asked for an executive session at the next Assembly meeting to discuss land acquisition. Hearing no objection, it was so ordered.

Mr. Kiehl said the Juneau Welcome Reception was very well run and attended and thanked everyone involved. The positive feedback was resounding in the legislature.

Mr. Kiehl questioned why some topics in the minutes had more thorough treatment than others and referred to the discussion on bond authorization. He does not expect a transcript, but said he would like a more thorough treatment of major issues.

Mr. Kiehl asked to review the publication of comments submitted to the Assembly on the website as part of the record / packet.

Mayor Botelho suggested a staff report at the next meeting. Mayor Botelho said the minutes are usually quite detailed in the discussion points and feels the particular example is an anomaly that could be dealt with without further action. The second point merits more discussion and one question is if we notify the public that when they send an email to the Assembly that it is broadly available to the public for review and does this or would this have a chilling effect on testimony – just as another member makes a telephone call to an individual member, he had no doubt that the communications were a matter of public record, but the dissemination is a separate issue. Mr. Kiehl welcomed the recommendation of the clerk and manager on the issue.

Mr. Kiehl referred to the resolution adopted regarding fish taxes requiring a finding of “suffering” the impacts of commercial fishing. He thought that was odd but found it was a requirement of statute, and that if there are impacts, we welcome them. Mr. Hartle said he and Mr. Swope made the same observation but suffering is required by state statutes.

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

XIV. EXECUTIVE SESSION

MOTION, by Stone, to enter into executive session in City Hall Conference Room 224 for a continuation of the deliberation on the city manager selection.

Public Comment: None.

Assembly Action:
Hearing no objection, the Assembly entered executive session at 9:40 p.m., and returned to regular session at 10:06 p.m.

Upon returning to regular session, Mayor Botelho said that during the executive session, the Assembly concluded its deliberations regarding the selection of a new city manager.

**MOTION**, by Stone, to appoint Kimberly Kiefer as the successor to Mr. Swope as City Manager.

Mr. Wanamaker said given the economic challenges the city faces, the compressed selection process, and the lack of a plan to deal with the budget deficit; he could not support the nomination.

Roll Call:
- Aye: Becker, Crane, Dybdahl, Kiehl, Smith, Stone, Botelho
- Nay: Wanamaker

Motion passed, 8 ayes, 1 nay.

Mayor Botelho said the Assembly determined to set Ms. Kiefer’s compensation initially at $145,000 annually.

**XV. ADJOURNMENT** – 10:10 p.m.

Signed: __________________________  Signed: __________________________

Laurie Sica, Municipal Clerk  Bruce Botelho, Mayor