MEETING NO. 2012-11: 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: Kim Kiefer, City Manager; John Hartle, City Attorney; Rob Steedle, Deputy City Manager; Beth McEwen, Deputy City Clerk; Craig Duncan, Finance Director; Bonnie Chaney, Budget Analyst; Carl Uchytil, Port Director; Jeannie Johnson, Airport Manager; Greg Chaney, Community Development Planning Manager; Glenn Gelbrich, Superintendent of Schools; David Means; School District Director of Admin. Services

II. SPECIAL ORDER OF BUSINESS - None.

III. APPROVAL OF MINUTES

A. April 2, 2012 – Regular Assembly Meeting 2012-07

Hearing no objection, the minutes of the April 2, 2012 Regular Assembly Meeting 2012-07 were approved.

B. April 4, 2012 – Special Assembly Meeting 2012-08

Hearing no objection, the minutes of the April 4, 2012 Special Assembly Meeting 2012-08 were approved.

C. April 11, 2012 – Special Assembly Meeting 2012-09

Hearing no objection, the minutes of the April 11, 2012 Special Assembly Meeting 2012-09 were approved.

IV. MANAGER’S REQUEST FOR AGENDA CHANGES

City Manager Kim Kiefer reported that Executive Session item should be removed from the agenda as there are no updates at this time for the Waterfront Acquisition discussion.

V. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS.

Peggy Mattson stated that she was part of a group of West Valley Neighbors and they requested that the Assembly ask the City Attorney for clarification on the legal interpretation
that the Planning Commission used in its decision of April 10, 2012 granting Coogan Construction, LLC a ten-year permit to operate a rock crusher in an area zoned D-3. She said the Planning Commission used Section 49.65.200 which required a use permit but it did not specify restrictions on use of a rock crusher in granting Coogan Construction a permit to operate a rock crusher.

Mayor Botelho told Ms. Mattson that he needed to interrupt because the matter was subject to appeal. He said that this was the repeat of an issue, which they dealt with in part last week. Mayor Botelho asked the City Manager if a final Notice of Decision had been issued by the Planning Commission. Ms. Kiefer said the decision had been issued. Mayor Botelho explained to Ms. Mattson that one of two things would happen: 1) if an appeal were filed, the Assembly would deal with it in due course, or 2) if no appeal was filed, her testimony would be appropriate to come back to the Assembly after the appeal filing period closed.

Kirby Day spoke about the Tourism Best Management Practices (TBMP) program going into the 16th year, with the visitors beginning to arrive for the summer in a couple of weeks. He distributed a copy of the 2012 Packet to each of the members just prior to the meeting and it included a cover sheet highlighting some of the changes from the previous year. The guidelines were available on the website at www.TBMP.info, the CBJ website, and the Libraries. In 2011, they had 90 member businesses in town with approximately 1,700 employees signing off on the guidelines.

Dennis Watson said that as a resident and as a businessman he has had to come before the Planning Commission and now as a member of the Planning Commission, he wished to thank outgoing Community Development Director Dale Pernula for all his hard work over the years. He said they had come a long way as a commission under Dale’s guidance and he looked forward to working with the incoming director.

VI. CONSENT AGENDA

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

Sharon Pusich Gill requested that Resolution 2611 be removed from the consent agenda.

B. Assembly Requests for Consent Agenda Changes – None.

C. Assembly Action

MOTION, by Stone, to remove Resolution 2611 from the consent agenda and that the remainder of the consent agenda be adopted by unanimous consent. Hearing no objection, it was so ordered.

1. Ordinances for Introduction

a. Ordinance 2012-23

An Ordinance Providing For The Issuance And Sale Of A Hospital Revenue Refunding Bond In The Aggregate Principal Amount Of Not To Exceed $28,200,000; Providing For The Form And Terms Of The Bond; Providing A Method Of Payment Therefore; And Reserving The Right To Issue Revenue Bonds On A Parity With The Bond Upon Compliance With Certain Conditions.
Administrative Report: Attached. The manager recommended Ordinance 2012-23 be introduced and set for public hearing at the next regular meeting.

b. Ordinance 2012-24
An Ordinance Amending The Land Use Code Regarding Zoning Districts.

Administrative Report: Attached. The manager recommended Ordinance 2012-24 be introduced and set for public hearing at the next regular meeting.

c. Ordinance 2011-10(A)(b)
An Ordinance Appropriating And De-Appropriating Funds For FY12 School District Operations.

Administrative Report: Attached. The manager recommended Ordinance 2011-10(A)(b) be introduced and set for public hearing at the next regular meeting.

2. Resolutions

a. Resolution 2608
A Resolution Authorizing the Manager to Convey Lot 8, Block A, Glacierview Subdivision, to the Juneau Housing Trust, Inc., At Less Than Market Value, In Support of the Juneau-Douglas High School Home Building Program.

Administrative Report: Attached. The manager recommended adoption of Resolution 2608.

b. Resolution 2609
A Resolution Authorizing the Manager to Grant an Easement to the State of Alaska, Department of Transportation and Public Facilities, at Stephen Richards Memorial Drive.

Administrative Report: Attached. The manager recommended adoption of Resolution 2609.

c. Resolution 2610
A Resolution Adopting The City And Borough Capital Improvement Program For Fiscal Years 2013 Through 2018, And Establishing The Capital Improvement Project Priorities For Fiscal Year 2013.

Administrative Report: Attached. The manager recommended Resolution 2610 be referred to the Assembly Finance Committee for further review.

d. Resolution 2612
A Resolution De-Appropriating $11,225 From The Juneau Police Department’s Operating Budget.
Administrative Report: Attached. The manager recommended adoption of Resolution 2612.

3. Liquor License Renewal

a. Restaurant/Eating Place License #4405: Tides Complex Inc. d/b/a Dragon Inn location: 5000 Glacier Hwy.
Administrative Report: Attached. The manager recommended the Assembly waive its right to protest the renewal of this liquor license.

Removed from Consent Agenda:

Resolution 2611
A Resolution Renaming The Douglas Boat Harbor To The “Mike Pusich Douglas Harbor.”


Sharon Pusich Gill, granddaughter of Mike Pusich, gave testimony. Ms. Pusich Gill cited historical references from the Douglas City Minutes in which she recounted some of the work and dedication to the City of Douglas and its citizens by Douglas Pioneer Mike Pusich. Mike Pusich immigrated to Douglas in 1909 and started his first business in Douglas in 1914. He and his wife Anna raised their seven children in Douglas. In addition to his businesses, he served in many volunteer positions for nearly 40 years including serving on the Douglas Fire Department, the City Assembly (1945), and was voted in as the Mayor in 1947, serving in that capacity until 1953. Ms. Gill recounted his trips to Seattle, Atlanta, and Washington DC, at his own expense, to lobby Congress and the Bureau of Mines to build their offices on what would become known as Mayflower Island. In doing so, the causeway to the island would be a natural breakwater and allow safe boat moorage, and also bring much-needed jobs to the Douglas economy. Ms. Gill shared other stories of the generosity and community service in which Mike Pusich supported his community of Douglas and encouraged the Assembly to honor him by adopting this resolution.

MOTION, by Ms. Becker, to adopt Resolution 2611 and asked for unanimous consent. Hearing no objection, it was so ordered.

VII. PUBLIC HEARING

A. Ordinance 2012-18
An Ordinance Authorizing The Port Director To Negotiate And Execute A Lease Of Alaska Tidelands Survey No. 893, Located At Approximately 3890 North Douglas Highway, To Juneau Alaska Communications, LLC.


Public Comment: None.

Assembly Action:

MOTION, by Dybdahl, to adopt Ordinance 2012-18. Hearing no objection, it was so ordered.

B. Ordinance 2012-19

Public Comment: None.

Assembly Action:

**MOTION, by Wanamaker, to adopt Ordinance 2012-19.** Hearing no objection, it was so ordered.

C. Ordinance 2012-20

**An Ordinance Appropriating Funds From The Treasury For FY13 City And Borough Operations.**

**Administrative Report:** Attached. The manager recommended Ordinance 2012-20 be referred back to the Assembly Finance Committee for further review.

Public Comment: None.

Assembly Action:

**MOTION, by Crane, to refer Ordinance 2012-20 back to the Assembly Finance Committee.** Hearing no objection, it was so ordered.

D. Ordinance 2012-21

**An Ordinance Appropriating Funds From The Treasury For FY13 School District Operations.**

**Administrative Report:** Attached. The manager recommended that the Assembly state, by motion, the amount of local funding to be provided to the School District be set at $23,676,500, the maximum allowed under the State’s Education Foundation Funding Formula and that Ordinance 2012-21 be referred back to the Assembly Finance Committee for further review.

Public Comment: None.

Assembly Action:

**MOTION, by Crane, that the Assembly set the amount of local funding to be provided to the School District be at $23,676,500, the maximum allowed under the State’s Education Foundation Funding Formula, and that Ordinance 2012-21 be referred back to the Assembly Finance Committee for further review.** Hearing no objection, it was so ordered.

E. Ordinance 2012-22 (b)

**An Ordinance Establishing The Rate Of Levy For Property Taxes For Calendar Year 2012 For The Budget For Fiscal Year 2013.**

**Administrative Report:** Attached. The manager recommended Ordinance 2012-22(b) be referred back to the Assembly Finance Committee for further review.

Public Comment: None.

Assembly Action:
MOTION, by Dybdahl, to refer Ordinance 2012-22(b) back to the Assembly Finance Committee. Hearing no objection, it was so ordered.

F. Ordinance 2011-11(AG)
An Ordinance Transferring Of $21,877 To The Open Space Waterfront Land Acquisition Capital Improvement Project, From Unexpended FY 11 Marine Passenger Fees Budgeted To The General, Visitor Services, And Roaded Service Area Funds.


Public Comment: None.

Assembly Action:

MOTION, by Danner, to refer Ordinance 2011-11(AG) back to the Assembly Finance Committee for review at the same time as the other Marine Passenger Fees are discussed.

Ms. Danner stated that this ordinance was consistent with our past practices, but said the timing was inconvenient. She said there were two particular issues on the current Marine Passenger appropriation list right now - weather stations for the two separate private docks. She felt that if they did some additional review of this ordinance in light of those, they might be able to combine all three resources and include current monitoring.

Hearing no objection, it was so ordered.

G. Ordinance 2011-11(AH)
An Ordinance Appropriating To The Manager The Sum Of $5,000,000 As Funding For Statter Harbor Improvements, Grant Funding Provided By The Alaska Department Of Transportation And Public Facilities.

Administrative Report: Attached. The manager did state that the Assembly Public Works and Facilities Committee did not hear this ordinance prior to it coming before the Assembly as previously indicated in her manager’s report. The manager recommended Ordinance 2011-11(AH) be adopted.

Public Comment: None.

Assembly Action:

MOTION, by Becker, to adopt Ordinance 2012-11(AH). Hearing no objection, it was so ordered.

H. Ordinance 2011-11(AI)
An Ordinance Appropriating To The Manager The Sum Of $280,000 As Funding For The State Homeland Security Program, Grant Funding Provided By The State Of Alaska Department Of Military And Veterans Affairs.

Public Comment: None.

Assembly Action:

MOTION, by Smith, to adopt Ordinance 2012-11(AI). Hearing no objection, it was so ordered.

VIII. UNFINISHED BUSINESS – None.

IX. NEW BUSINESS

A. Export Manufactures Exemptions.

Mayor Botelho polled the members to see if they would be willing to hear and take action on the Export Manufacturing Exemptions en masse. There being no objection, he asked for the City Manager to give a summary report of all three requests.

1. Alaska Glacier Seafoods, Inc.
2. Taku Smokeries
3. Alaskan Brewing Company, LLC

Administrative Report: Attached. The manager stated that the Assessor’s office has reviewed the export manufacturing exemptions being requested and determined that the properties meet the code requirements for the exemptions and she recommended approval of these exemptions as requested.

Public Comment: None.

Assembly Action:

Mayor Botelho asked for any objection to the manager’s recommendation; hearing none, it was so ordered.

B. Docks and Harbors Bid Award

Statter Harbor Moorage Improvements Bid #DH11-177

Administrative Report: Attached. The manager recommended award of this project to Pacific Pile and Marine, LP in the total bid amount for a total award of $8,258,600.

Public Comment: None.

Assembly Action:

MOTION, by Dybdahl, to award the Docks and Harbors Bid #DH11-177 to Pacific Pile and Marine, LP for the award amount of $8,258,600. Hearing no objection, it was so ordered.

C. Airport Rates and Fees Regulation Title 7, Chapter 10

Administrative Report: Attached. The manager had no recommendation.
Public Comment: None.

Assembly Action:

MOTION, by Dybdahl, to request orders of the day. Hearing no objection, the regulations were allowed to become effective. [Clerk’s Note: In accordance with the date set by the Airport Board, the effective date of the regulations would be July 1, 2012.]

X. STAFF REPORTS – None.

XI. ASSEMBLY REPORTS

A. Committee Reports

Committee of the Whole: Chair Stone reported that Mayor Botelho chaired the last COW meeting that dealt with the water study and the A.J. Mine. He said the next COW meeting would be held on April 30.

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:

Juneau Affordable Housing Commission - Wayne Coogan to a term expiring 1/31/2015.
Juneau Commission on Aging - Loretta Bevegni to the 55+ seat for a term expiring 6/30/15.
Youth Activities Board - Tom Rutecki was appointed to the PRAC Representative Seat to a one-year term until the next PRAC nomination is made in 2013, Jeff Sloss was appointed to the Public Seat for a term expiring 8/31/13. Evan Gross will be vacating the Youth Representative Seat as of May 27, 2012 and Colton Womack will be filling that seat upon Evan's departure.

Ms. Danner also reported that the HRC heard from representatives from the Alaska Community Services, Inc. Senior Volunteer program. This program was formerly sponsored by the National Seniors Service Corps, which sponsored the Foster Grandparenting Program, a Senior Companions Program, and an RSVP program. The Juneau office of the program lost its funding as of March 30, 2012. The HRC referred this matter to the Assembly Finance Committee for consideration under the pending items list.

The HRC recommended the Assembly set the date of the Full Assembly sitting as the Human Resources Committee to interview applicants for the Airport, Docks and Harbors, and Eaglecrest Boards for Wednesday, June 27 at 5:30 p.m. in City Hall Conference Room 224 immediately followed by a Special Assembly Meeting.

Lands and Resources Committee: Chair Becker said the Committee met Monday, April 9. They passed a motion of support for Ordinance 2012-24, that was introduced tonight, concerning the land use zoning districts. They also passed a motion of support for Ordinance 2012-18, the tidelands lease to Juneau Alaska Communications.

MOTION by Becker, from the Lands Committee, that the Assembly authorize the sale of approximately 6,000 tons of gravel from a CBJ material source to Coogan Construction for use in
site preparation of the current phase of the Island Hills Apartment project at the public project rate of $1.97/ton, subject to a commitment from the developer to rent at least 50% of the 24-unit project phase at or below $1,200/month for 2 years or more.

Mayor Botelho asked if the Lands Committee intended on the Assembly acting on this motion tonight or if the committee wished to have a resolution drafted up for consideration at the next meeting. Ms. Becker said they wished to take action on the motion at this meeting. Mayor Botelho asked Mr. Hartle to provide a recommendation on how they should proceed. Mr. Hartle recommended that a resolution be drafted and be brought forward at the next meeting so that the Assembly and the public all have a chance to review it prior to the Assembly taking action.

Mayor Botelho asked Ms. Marlow to come forward to speak on any problems in the timing on this. Ms. Marlow said that in similar situations like this in the past, they had addressed this by motion and that the action of the Lands Committee was to forward a recommendation for a motion to the Assembly. She said that this had been done through resolutions before but those had been for larger material sales over multiple years rather than for a single project for a short duration. Ms. Marlow explained that the developer was under construction right now and had ceased the gravel extraction pending this action.

Mayor Botelho asked if any member of the public wished to comment on this proposed disposition of city gravel. There being none, public comment was closed. He then called for any member of the Assembly who wished to comment or object to the motion by the committee.

Hearing no objections, the motion passed.

Ms. Becker continued to report that the Lands Committee held a joint meeting with the Assembly Public Works and Facilities Committee on April 18. They received background information on the Housing Needs Assessment report, the CBJ Buildable Lands report, as well as information on the completed and proposed CIP projects to support affordable housing development. She said the next joint meeting was scheduled for May 16 at noon and they would focus on several proposed projects and developments to support affordable housing.

Finance Committee: Chair Crane reminded members that there would not be an Assembly Finance Committee on April 25.

Public Works and Facilities Committee: Chair Wanamaker reported that they met with the Lands Committee in a joint meeting as mentioned by Ms. Becker. The next meeting of the Public Works and Facilities Committee was set for Monday, May 7, at noon.

B. Liaison Reports

Parks and Recreation Advisory Committee: Liaison Kiehl said the PRAC met a couple of weeks ago. They made recommendations on the issue of lands surrounding the current Cornerstone Youth Facility run by Juneau Youth Services (JYS) and recommendations regarding JYS plans to rebuild and replace that facility. They also heard a proposal from a community group to continue to raise private funds toward building a warming hut at Twin Lakes, as a shelter for ice skaters in wintertime. He said they had a good plan and the PRAC
supported that plan and the ongoing private fundraising. The PRAC would hold a retreat in approximately two weeks to focus on its goals for the coming year.

**Affordable Housing Commission:** Liaison Kiehl reported that the commission met last week. They continued to make recommendations to the Lands Committee and the Public Works and Facilities Committee on city lands to be developed for affordable housing and where the Commission might recommend the Assembly and its committees focus their work. He said they continued to develop the Affordable Housing Loan Fund and how best to leverage those dollars and put them to work in the community. He said the next step was outreach to builders and developers to work more closely with them to get the funds into action. He said that the other issue discussed briefly at the last meeting was that the Legislature did pass a property tax deferral bill that gave municipalities the option to defer tax increases on the increased value of parcels that get subdivided for up to five years. He said the commission was looking for ordinances that were adopted in other states in response to comparable laws and hoped to make recommendations to the Assembly for a model that CBJ might consider.

**Eaglecrest Board:** Liaison Crane said the Board met on March 28 to hear several public comments about the master plan, which would continue to be reviewed and was anticipated to be before the Assembly for review in the early summer.

**Docks and Harbors Board:** Liaison Becker said the Assembly acted on two items that had been forwarded from the Docks and Harbors Board 1) Resolution 2611 Re-naming of Douglas Harbor to the “Mike Pusich Douglas Harbor” and the award of the Statter Harbor bid to Pacific Pile and Marine. She said the Planning Commission, at the next meeting on May 8, would consider a Conditional Use Permit for the 16b dock project. She said the visitor’s center construction should start May 31 due to some window problems that did not come when they were supposed to. Regarding the Douglas Harbor project, they had driven seven of the twelve pilings but had to stop because it was fishing season but would start again August 1.

Ms. Becker said that Mr. Kiehl could explain some difficulty with a land conveyance and Senator Egan’s office was currently working on the issue. She said that the first cruise ship arrived May 3 at the Franklin Dock and the JDHS Jazz Band would perform as the passengers disembark. The first cruise ship at the city dock would be May 4. Docks and Harbors was going to have an appreciation event Wednesday, May 2 at the Aurora Harbor from 11-1 p.m. and Docks and Harbors wanted to convey to the Assembly and public that no Docks and Harbors or CBJ funds would be used for this event.

The Assembly HRC committee directed the Port Director to comment on safe lightering practices and that a memo would be presented to COW at its April 30 meeting.

**Alaska Committee:** Ms. Becker said the Alaska Committee was discussing ways to encourage in-state visitation to Juneau, especially through incentives at the fairs. They were also looking into an outreach media campaign that would encourage various newspaper editors and be hosted to give them a better feeling for how wonderful we are.

**Juneau Commission on Sustainability:** Ms. Becker said the commission had just about finished its annual report and would present that to the HRC.

**Local Emergency Planning Committee:** Ms. Danner reported that the LEPC met on April 11 and talked about food security. The food security subcommittee was soliciting articles from
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anyone in Juneau who had a story to tell about their own local food production processes. The articles would be published in the Capital City Weekly. They were also working to try to re-establish a Community Emergency Response Team. It took many phases and needed to come before the Assembly for reauthorization at some point. The next LEPC meeting was May 9 at the Bartlett Regional Hospital Boardroom at Noon.

Juneau Human Rights Commission: Ms. Danner reported that the commission was holding its 3rd Annual International Potluck on May 5 at Sandy Beach from 1-4 p.m. The public was invited and encouraged to bring an international dish to share.

Airport Board: Ms. Danner reported that the Airport met on April 11 and was not able to attend due to a conflict with Assembly Finance Committee. The next meeting was set for May 9. She said if anyone from the public was interested in attending the meetings of the Airport Board, they had now switched to their daylight savings time hours and were beginning their meetings at 7 p.m.

Bartlett Regional Hospital Board: Mr. Stone reported that the Hospital Board would meet Tuesday, April 24 at 5:15 p.m.

XII. ASSEMBLY COMMENTS AND QUESTIONS

Mr. Wanamaker reminded everyone that he sent a proposal for their review and consideration, which he hoped to take up at the next AFC meeting. He would work with the Finance Chair to put it in the proper place on the agenda. It was a proposal for the Assembly to ask the City Attorney to prepare an ordinance to be placed on the ballot for the citizens to vote to lower the mill rate tax cap.

Mr. Smith said he saw the notice for the Petersburg Annexation Hearing and asked when the CBJ testimony might be able to be reviewed. Mayor Botelho said that the testimony by the City and Borough of Juneau would take place at the public hearing in Petersburg May 30, 31, and June 1.

Mr. Kiehl commented that the issue Ms. Becker discussed during her Docks and Harbors liaison report regarding a transfer of a parcel of state tidelands that was necessary to complete the permit requirements for the Auke Bay Commercial Loading Facility. He said that the Legislature, in its final hours, with a flurry of cooperation from the Department of Natural Resources, directed the transfer of that parcel in a bill that was now heading to the Governor for his action. It had a couple of other loose ends that needed tying up. He said that Juneau’s legislators worked closely with the Department of Natural Resources and with the capable Docks and Harbors staff on this issue and while it was not yet completely resolved, it was much closer to being resolved.

Ms. Becker thanked Mr. Kiehl for his explanation.

Ms. Danner read from a prepared statement, saying that a few days had passed since the April 18 Special Assembly meeting and she had received many positive comments supporting her on this issue. She apologized for any lack of skill in delivering her message and said she meant no disrespect. She wanted to use this opportunity to explain her objectives. Despite reading the Charter and Roberts Rules of Order, the system is not clear and some people understand it, and others do not. She attended Harvard’s Kennedy School of Government for a three-week course...
on local government and one highlight was the “lesson of the complicated thing.” This lesson applies to all situations and regards when a group gathers to consider a course of action, it is as if there is a complicated thing in the middle of the room, and all see it from their own vantage point. To come to informed positions, people must be willing to listen to each other and give consideration to each other’s observations and concerns. She said everyone in the room wanted to do everything in their power to support growth and development of the community.

Ms. Danner said prior to Watergate, projects could be expedited. When she was young, she admired Richard Nixon. When his political opponents accused him of a break-in, she did not believe it and thought it was a power play to stop the game mid-stream and accuse the president of inventing and orchestrating this. The game was wrong and in the end, it was his downfall. The 60’s are over and back room deals are no longer allowed. There is a public process that must be followed. Everyone understands that people make mistakes. When they are discovered, they must be acknowledged and corrected. That is what was done with the Atlin Drive rezoning issue. The rules we agree to in writing protect the rights of all property owners equally. Adoption of the code has passed through the public process. We all agree that any reinterpretation of the rules that does not pass through the public process violates the rights of the many to benefit the few. If the public believes we operate on a solid foundation and follow the rules to govern our decisions, we will have their trust and their permission to go forward and act on their behalf. If we do not, we are undermining their trust in this institution.

Ms. Danner said she was shocked and saddened when she read the discussion as recorded in the minutes of the February 28 Planning Commission meeting on the zoning ordinance change that the Assembly adopted at its last meeting. As a body, they seem uncertain, as to whether the Assembly wants to retain overriding authority to “grease the skids” and allow certain projects to go forward for “political reasons,” even when a project does not, strictly speaking, meet the limits of the code. The Planning Commission diligently reviews the facts of an application and the related code and makes its rulings based on law. When they receive word that the Law Department has reinterpreted code to suddenly allow for something that staff has already ruled was not permissible, what are they supposed to believe. Ms. Danner referred to an email from Senior Planner Beth McKibben on November 15, 2011, included in the record for the recent Planning Commission action SGE2011-0003, which read, “A rock crusher is not permitted in this zoning district. It cannot be allowed by the Planning Commission or the Assembly without an amendment to the zoning code.” At that point, the permit application was stalled indefinitely. Five months later, at the Planning Commission meeting on April 10, the community learned that the Law Department reinterpreted the code without the Assembly. At the last meeting, she looked for an explanation. She said the entire Assembly should be looking for an explanation. Was this a question of a secret being kept from the people in case they decided to appeal? Did it make sense that the people were the enemy against whom the Assembly must guard, and could not be trusted to hear the attorney’s interpretation of a rule that the Community Development Department knew and used? She referred to other rock crushers in the area and their status and said that the owners of those pits would not testify because it was indicated that the issuance of SGE2011-0003 would set a new standard by which they could benefit. She asked if this was a tempest in a teapot based on not wanting something in her backyard or if it was a smoking gun. Presidential impeachments had begun over less obvious questions.

Ms. Danner asked the Assembly how to move forward and asked if it was necessary for the citizens to go through all the work of an appeal of a Planning Commission decision that would not have been possible if the attorney’s office had not reinterpreted the code that Ms.
McKibben said could not be changed without Assembly action. She maintained that this is a simple mistake and there must be an administrative avenue to fix it, as it was fixed in the Atlin Drive rezoning. She asked the Assemblymembers if she was correct in her perceptions.

Mayor Botelho responded by discussing the process that was in place with respect to the separation of powers between the administrative, legislative, and quasi-judicial roles. The purpose behind appointing a Planning Commission and delegating land use determinations to it was to allow people with specific knowledge to make determinations free of partisan political considerations. There is a process of appeal of decisions by the Planning Commission to the Assembly to determine whether a mistake has been made. He stressed the fact that the appeal period for this project has not yet closed. For Assemblymembers to intervene each time that issue might arise, or in another example, to urge the School Board, which again has authority to decide how funds will be spent once allocated by the Assembly, is a line that reflects the charter and state law.

Mayor Botelho said for the Assembly to engage in this debate right now, works to the disadvantage of a party. He said that Ms. Danner made appropriate reference to the importance to protect the rights of all parties. He said the appellate process authorizes the Assembly to undertake that review with the assumption that they have generally contained themselves to the record before them. He said he thought the record was now contaminated to such an extent that, were there an appeal to be taken, this body should recuse itself from participating in that decision. He said that was a consequence of both the separation of powers and a respect for the functions that were delegated by ordinance to the Planning Commission. It was also to make sure that when appeals were taken, that the decisions were based on the correct application of the law through the facts.

Mayor Botelho said he was not prepared to say that the advice given was correct or incorrect because they had not formally received an appeal to test that proposition. If no appeal was filed, it would be appropriate for them to consider the question. He said today, given the extent to which the Assembly had now been given lots of information and an advocacy on one part, he said it would be difficult to say that they could render a decision which was fair to all parties and had the appearance of fairness to all parties, which was equally important in terms of securing the integrity of the system that was in place.

Mayor Botelho said a mistake may or may not have been made. He was not prepared to exercise that judgment. He was concerned about protecting this barrier, which was appropriate in the terms of the separation of powers to keep the role of the Planning and Zoning Commission separate from the Assembly. He said that when the Assembly, either individually or collectively, tried to intervene in that process they were barring themselves from participating later and that was the consequence of where they were at this point. Having said that, he was rendering his personal opinion with some legal background but he asked Mr. Hartle if he had any view in that regard.

Mr. Hartle said that if the Conditional Use Permit referred to was appealed to the Assembly, he thought a Hearing Officer would be the only proper way to handle it at this point.

Ms. Danner said that if that were the case, why the Assembly could not ask this question of Mr. Hartle.
Mayor Botelho said that would be the subject of an appeal if it took place and the question would be appropriate if one of two things happened: 1) No appeal was taken within the 20-day period allowed, then this body could engage, or 2) if an appeal were taken, that would be the central question presented to the hearing officer. It would be the responsibility of the hearing officer to make a determination about whether the code had been appropriately interpreted or not. That was the context and that was the system in place. It may be imperfect, but it is the one that has proven itself as the consistent model around the country.

Ms. Danner asked what about the appearance that our staff, through the Legal Office, is selectively exercising the law.

Mayor Botelho said he did not see it the same way she did. He said that was his opinion but that he did not know if any other member wished to comment.

Mr. Kiehl said that particular question had been raised by members of the public to him by email and he was careful not to respond beyond that the city does have a process in place. That process was built to ensure fairness, when someone perceived that things had been unfair to them. Whether it was a successful applicant or an unsuccessful applicant or a successful challenger or an unsuccessful challenger, that appeal process was available. It may not be fun, but it was available and there was a system set up designed to be impartial. He said he did not have any other background knowledge on whether or not the Assembly could, in that hypothetical situation, hear an appeal or not. He asked how a hearing officer would be retained and how much that might cost. Mr. Hartle responded that a hearing officer would have to be retained and, in the past, it had cost approximately between $10,000-20,000. Mr. Kiehl said that would be part of his concern.

Ms. Danner said she would like to respond to Mr. Kiehl’s comments about the perception that an appeal is a process that is “fair and impartial.” She said that having been through the appeal process, it was neither fair, nor impartial. She said from the appellant’s point of view, information that should be in the record, was not in the record. Information that should be in the record that demonstrates misbehavior on staff’s part, once found, could be excluded from the record. She said it would be good to ask Mr. Hartle about the conditions on which this body or an appeal officer could find in favor of the appellant. They can only find in favor if due process had not been followed. That was her understanding. She said she did not know if you could have an appeal where the reason why you were appealing was because the law was broken. She said she does not think you could, because it was not the attorney whose decision was being appealed, it was the Planning Commission’s decision that was being appealed. The decision of the Planning Commission was appropriate given the information presented to them.

Mayor Botelho said that there were distinct circumstances. Sometimes the issue revolves on “what are the facts.” Those facts, in normal administrative law, are those that are before the body from whom the decision was appealed, i.e., “What did they have before them?” There are circumstances, and he suspects that this was one, that was simply a question “Had the commission appropriately applied the law?” and that would be the question, if an appeal was taken, that a hearing officer would confront. Parties will be free to argue what the law or the misapplication of the law was. However, the decision of the hearing officer, in that circumstance, and he was again speculating since there was not yet any appeal before them, would be “has the law been properly applied?” Bodies have acted, sometimes even contrary to advice given by attorneys, and he was not suggesting in Juneau necessarily, but whether the decision of the body had been upheld was still a proper exercise of the law.
Ms. Crane said that at this point this discussion was inappropriate. She said that Ms. Danner was referring to other hearings and issues of which Ms. Crane had no knowledge and was making comments about situations of which some of the members had no knowledge. Ms. Crane said that the Mayor laid out the process. She said that Ms. Danner may not be happy with that process but that process was in place and that was the way it needed to proceed. The Assembly was not going to change the decision or the process by having this discussion and she proposes that they end the discussion.

Ms. Danner referred to Roberts Rules of Order, which called for this body to act according to its considered judgment after a full and fair working through of the issues involved and said that under no circumstances should undue strictness be allowed to intimidate members or limit full participation. The fundamental right of deliberative assemblies required all questions be thoroughly discussed before action.

Ms. Crane asked what single question was currently being discussed.

Ms. Danner said she was simply referring them to Roberts Rules of Order because she thought that sometimes, Assemblymembers really want to end the meeting before 11:00 p.m. She does not blame them, she did too.

Mayor Botelho said that at this point, Ms. Danner was slipping into areas that may perhaps be inappropriate. He said that Roberts Rules of Order were a procedure adopted by resolution and gave way anytime that its rule might conflict with an ordinance, among which was the Charter, which made the Assembly the final appellate body of the city and the ordinance which created the process of appeal from decisions of the Planning and Zoning Commission and for that matter, other boards.

Mayor Botelho asked if anyone had anything further. There being none, he closed the Assembly Comments portion of the meeting. He then asked if the City Manager or City Attorney had any further comments to provide and they had none.

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

XIV. EXECUTIVE SESSION – None.

XV. ADJOURNMENT – Mayor Botelho adjourned the meeting at 8:23 p.m.

Signed: _______________________________   Signed: _______________________________
   Elizabeth J. McEwen, Deputy Clerk   Bruce Botelho, Mayor