

MINUTES

PLANNING COMMISSION
CITY AND BOROUGH OF JUNEAU
Daniel Bruce, Chairman

REGULAR MEETING
June 24, 2008

I. CALLED TO ORDER

Chair Bruce called the regular meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in Sheffield Ballroom 1 of the Centennial Hall, to order at 7:03 p.m.

Commissioners present: Michael Satre, Dennis Watson, Dan Miller, Victor Scarano, Frank Rue, Maria Gladziszewski, Daniel Bruce

Commissioners absent: Nancy Waterman, Linda Snow

A quorum was present.

Staff present: Dale Pernula, CDD Director; Daniel Sexton and Greg Chaney, CDD Planners

II. APPROVAL OF MINUTES

June 10, 2008 – Regular PC Meeting

MOTION: *by Mr. Satre, to approve the June 10, 2008 regular PC minutes, with corrections.*

There being no objection, it was so ordered.

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

IV. PLANNING COMMISSION LIAISON REPORT - None

V. RECONSIDERATION OF THE FOLLOWING ITEMS - None

VI. CONSENT AGENDA

Chair Bruce announced there were six items on the Consent Agenda, and inquired if there was public comment on those items. No one from the public had questions, and no one from the Commission had comments.

MOTION: *by Ms. Gladziszewski, to approve the Consent Agenda per staff's recommendation, as presented.*

There being no objection, it was so ordered, and the six cases below were approved.

USE2008-00024

A Conditional Use permit for the construction of an 80-foot communication tower along with a 120 square foot equipment shed.

Location: 3161 Channel Dr.

Applicant: Mike Garrett

Staff recommendation: that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow the placement of an 80-foot antenna tower and 120 square foot equipment building on the subject lot.

USE2008-00033

Similar-Use Determination for automotive servicing/installation associated with the Conditional Use permit (USE2008-00033) for a proposed Automotive/Marine Service Center in the Light Commercial District.

Location: Jordan Ave.

Applicant: Lena Point Development

Staff recommendation: that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Similar-Use Determination. The permit would acknowledge the similarity between the proposed automotive operation and those operations permitted in a gas station; thus, allowing the applicant to proceed with Conditional Use permit (USE2008-00033) for the proposed automotive and marine service center. Conditions could be added to the Conditional Use permit to ensure the proposal remains similar in nature to a gas station, and not have impacts similar to an automotive repair center.

USE2008-000031

An Allowable Use permit for a new 6,000 sq. ft. Salvation Army thrift shop with parking lot.

Location: W. Willoughby Ave.

Applicant: North Pacific Erectors

Staff recommendation: that the Planning Commission adopt the Director's analysis and findings and grant the requested Allowable Use permit. The permit would allow the development of new 6000 square foot Salvation Army thrift store with a parking lot. This permit is subject to the following conditions:

1. This Allowable Use permit shall allow only indoor retail use and incidental indoor storage and sorting of goods to be sold onsite. Outdoor storage or sale of vehicles, boats, or merchandise is not included in this approval.
2. Prior to issuance of a building permit for the proposed structure, the applicant shall submit a plan for CDD approval showing the location and fixture models of all exterior lighting. The lighting plan shall demonstrate that no glare will be shed on adjacent properties.

VAR2008-00014

A Variance request to reduce the west side yard setback from 5 feet to 0 feet for the Salvation Army Thrift Store.

Location: W. Willoughby Ave.

Applicant: Salvation Army

Staff recommendation: that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Variance, VAR2008-00014. The Variance permit would allow for a reduction of the side yard setback for only that portion of the western lot line adjacent to the AEL&P no-build easement to be reduced to 0.' Staff recommends this variance would be subject to the following condition:

1. Prior to issuance of a building permit, the applicant shall present to CDD a copy of an executed and recorded no-build easement placing at least 10' along the entire eastern property line of Lot 7, Block 70 Tidelands Addition into a no-build easement.

VAR2008-00015

A Variance request to reduce parking from the required 9 stalls to 7 for the NEA Alaska Building.

Location: 114 Second St.

Applicant: Joann Lott

Staff recommendation: that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2008-00015. The Variance permit would allow for a reduction in parking from the required 9 stalls to 7 for the NEA Alaska Building. Staff recommends this Variance be subject to the following condition:

1. The applicant shall construct a sidewalk canopy as large as, or larger than, the one proposed in the attached construction plans (Attachment B).

VAR2008-00016

A Variance request to eliminate the vegetative cover requirement for the lot of the NEA Alaska Building.

Location: 114 Second St.

Applicant: Joann Lott

Staff recommendation: that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2008-0016. The Variance permit would allow for elimination of the vegetative cover requirement for the proposed NEA Alaska Building, approved under USE2008-0002. Staff recommends that this variance is subject to the following condition:

1. In-lieu of vegetative cover the applicant must construct a canopy equal in size, or larger, than the one shown in the attached construction documents.

VII. CONSIDERATION OF ORDINANCES AND RESOLUTIONS - None

VIII. UNFINISHED BUSINESS - None

IX. REGULAR AGENDA

Chair Bruce noted a conflict of interest, and was allowed to step down from the PC.

USE2007-00038

A Conditional Use Permit to develop an OHV Park at the Lower Fish Creek Quarry.

Location: Fish Creek Rd.

Applicant: CBJ Lands and Resources

And;

USE2008-00006

A Conditional Use permit to allow a recreational vehicle trailer to be used as a caretaker residence at the Fish Creek OHV Park.

Location: Fish Creek Rd.

Applicant: CBJ Lands and Resources

Chair Gladziszewski stated that the PC closed public testimony on April 15, 2008 (Attachment F); however, the applicant submitted additional documentation.

MOTION: *by Mr. Satre, that the Planning Commission re-open public testimony limiting it specifically to new information.*

There being no objection, it was so ordered.

Staff report

Daniel Sexton stated that the initial application was reviewed by the PC on February 26, 2008. However, due to the amount of information in the packet, and the number of individuals that testified on the OHV Park, it was continued to March 18, 2008. At that meeting, staff submitted additional written testimony they had received. At end of that hearing, there was also a lack of time due to the amount of people that testified, so the case was continued to April 15, 2008. This case was removed from the April 15, 2008 PC Agenda at the applicant's request, as they wished to provide additional noise information for the record to be heard by the PC tonight.

At the March 18, 2008 PC hearing, the Commissioners requested staff to gather additional information for review, which included:

- Noise information that was gathered for the AJ Mine conditional Use permit (CUP), Attachment A, and the flight seeing over Gastineau Channel (Baker Phase I – Noise Study, Attachment B); and
- Copies of All-Terrain Vehicle (ATV) ordinances from the cities of Anchorage, Bethel, Nome, and Wasilla (Attachment C); and
- Copies of the conditions placed on the Sheep Creek Dog Sled CUP (USE2006-00005, Attachment D).

After staff's review of the additional information that was provided by the applicant, dated May 28, 2008, staff determined that the *Fish Creek Off-Highway Vehicle Park Noise Study* is an evaluation of the initial noise study. Although the new documentation had additional information, staff is recommending modifications and additions to several of the previous conditions. He noted that one of the recommendations that staff had was a result of the evaluation of the noise study, which states the that proposed OHV Park could meet 45 decibels

(dB) on the A-scale (dBA). He said the 45 dBA is lower than what is regulated within Title 49 that identifies 65 dBA during the daytime. Therefore, staff proceeded to modify Condition 6, to read, "The proposed project shall not generate sound levels exceeding 45 dBA at the property line." He said Condition 7 has been modified to reflect the evaluation of the initial noise study, to read, "The applicant shall maintain a 650-foot noise abatement buffer between the riding area and the adjacent residential property lines." He explained that Condition 7 is different from the information presented by the consultant. He noted that the consultant reviewed the initial noise study, and based his evaluation on the distance between the noise emitter and the residential property; whereas, the current Title 49 regulates based on the property line. Therefore, staff modified Condition 7, accordingly, between the riding area and the property lines. After continued review of the application, staff recommended new Conditions 14, 15, and 16, as per the staff report, which includes the basis for staff's decision. He noted that in terms of Condition 15, they are requesting a design for a gate that cannot be cut with an arc welder or cutting torch. Although, after meeting with the applicants last week, the applicants identified that the existing gate has been already modified, and have not had any break-ins since that time.

Mr. Sexton stated that a staff memorandum, dated May 30, 2008, for this June 24 hearing was provided to the PC. Additionally, a modified memorandum was provided, dated June 20, 2008, whereby he noted an error, stating that Condition 6 (Page 3) should be stricken. He said staff recommends that the PC approve the CUP outlined in the initial staff report, dated February 21 2008, staff's memorandum dated May 30, 2008, and this memorandum dated June 20, 2008.

BREAK: 7:23 to 7:24 p.m.

Public testimony

Heather Marlow, the applicant, CBJ Lands & Resource Manager, and James Tipp, President of Rough Riders of Alaska (RRAI). Ms. Marlow noted that there are six Commissioners, although she was informed that there would be more membership tonight, so she expected to be presenting to a fuller body. Therefore, she asked if there are options at this point for presenting to a fuller body. Mr. Pernula replied that the PC could continue this hearing to a later date. However, realistically, during the summer months it is somewhat difficult to obtain more than six or seven Commissioners at a particular PC meeting. Mr. Rue stated that if the applicants request a continuation, he asked if the PC is required to grant it. Mr. Pernula said he does not recall any particular rule stating this. Mr. Rue asked if Ms. Marlow is requesting to continue this case. Ms. Marlow clarified that she did not, but only wanted to find out what their options are, and to note that they thought they would be presenting to a fuller body, as they might have had different thoughts otherwise, but they would carry on and present their comments. She stated that they have been working on this project for approximately one year. The origin of the project came from the Assembly's goals that were assigned to the CBJ Lands Committee, which identified the need for an ATV and Off-Highway Vehicle (OHV) riding area. Staff attended the neighborhood meeting in June 2007, and had one person in attendance. They presented the pre-application material at that meeting. Following that meeting, they applied for the application. After that, the CBJ Community Development Department (CDD) hosted another neighborhood meeting where they heard additional comments and concerns; therefore, amendments were made to the application, as follows:

- Removed the drag strip.

- Moved the parking lot an additional 700' off the Fish Creek Road, which is now positioned 1,000' off the road.
- Reduced the hours of operation from 12:00 a.m. to 10:00 p.m.
- Reduced the noise levels of the property lines somewhere from 65 to 55 dBA depending upon the time of day to 45 dBA throughout the day and evening hours.
- Established a caretaker to enforce permit conditions and to oversee operations.
- Provided more information on wetlands with a delineation that has now been accepted by the US Army Corps of Engineers.
- Provided more information of the affects to property values via the February 21, 2008 e-mail from the CBJ Assessor with a discussion on how this application relates to the review criteria of Finding 1, including Finding 5 that relates to neighborhood harmony and property values.
- Would provide more information on sound consulting services from Mr. Minor to the PC, and as a result of Mr. Minor's recommendations, they have amended the site plan to increase the minimum buffer from 350' to 650' to residential structures.

She stated that this list of activities demonstrate an ongoing pattern of listening to concerns presented by the neighborhood, and their response to those. She anticipates that with the issuance of a permit this pattern will continue.

Staff reviewed proposed amendments and modifications to the conditions on the project. In particular, Condition 7, whereby the applicants are seeking 650' from the adjacent residential buildings, rather than the property line to which Mr. Minor would later address. She said he would also speak to Condition 6 regarding sound levels not to exceed 45 dBA at the property line.

She noted that she was not in attendance at the March 18, 2008 PC meeting, although she wished to provide comments regarding these PC minutes, as well as the February 26, 2008 minutes. At the March 18, 2008 meeting, she addressed 10 points to a petition that had been circulated throughout North Douglas. In the meeting minutes, it reflects that she did not respond to three of the 10 points, and her response is noted below as [*italicized*] text:

Point 3) North Douglas highway already has high levels of traffic – the ATV Park would increase the noise to unacceptable levels;

[*Response*] *This proposal was submitted to DOT for their comments, which has not yet been received, and they did not agree with that analysis.*

Point 7) Establishment of a park would increase the amount of available city land for other development purposes (housing);

[*Response*] *7) (No responses were provided.) This would be an interim use until the CBJ develops it with additional sewer and road capacity.*

Point 8) Damage to the habitat would be long-lasting and impact any future development;

[*Response*] *8) (No responses were provided.) Housing and road development will cause more impact to habitat than development of an OHV Park in the quarry and clear-cut area.*

At the March 18, 2008 meeting, comments were provided by Mr. Sullivan, stating:

Excerpt "He stated that during this process, the co-applicant Heather Marlow, the CBJ Lands and Resources Manager, indicated at a previous WRB meeting that she has planned Off-Highway Vehicle (OHV) parks in Oregon."

[Correction] "He stated that during this process, the co-applicant Heather Marlow, the CBJ Lands and Resources Manager, indicated at a previous WRB meeting that she has planned Off-Highway Vehicle (OHV) parks in Oregon stated that she had worked on several applications."

Excerpt "He said that usually in planning for those other OHV Parks, neighborhood compatibility was rarely an issue. He said she also suggested in the parks that she helped design that the issues generally included ranchers and farmers concerns...."

[Correction] Instead, she worked on applications, and was not an applicant. She was serving in Oregon as the County Planning Director. They had applications for an ATV Park come through the planning office, and it was in that capacity that she worked on an application, and neighborhood compatibility was a large concern to the ranchers and the farmers in that area.

Mr. Tipps referred to the staff report, dated June 20, 2008, regarding Condition 15, which states, "...Conditional Use permit (USE2007-00038) shall be limited to a five-year period." He requests that this condition be extended to 10-years because of funding requirements. The Recreational Trails project already approved grant monies of \$30,000 for this project in 2001. The grant requires a 10-year commitment for any use of public lands. Therefore, placing a 5-year cap on this permit would remove their largest source of funding.

Mr. Miller referred to the last PC hearing when the applicants stated that the OHV Park was going to be constructed in a prescriptive method, so when the noise level reached 55 dBA at the top, the OHVs would be as far away as possible. Now, with a more thorough sound study that is recommending a noise abatement buffer of 650' to be established, he asked if they were continuing to plan to construct the trails in this method in order to maintain the newly recommended 45-dBA limit. Ms. Marlow said yes.

Mr. Rue said the original traffic analysis in the February 21, 2008 staff report states, "This 100-vehicle trip increase is minor in comparison to the traffic produced on account of the Eaglecrest Ski Area." When this analysis was made, he asked if consideration was provided for the timing of the peak traffic that is already generated by Eaglecrest. Mr. Rue stated that Eaglecrest closes at 4:30 p.m., so the traffic would occur much earlier in the day than traffic from the OHV Park, which closes at 10:00 p.m. Ms. Marlow stated that in terms of the impact to traffic, they deferred to the State Department of Transportation (DOT), noting that Douglas Highway and Fish Creek are under the jurisdiction of DOT. She noted that DOT did not have an issue with the proposed development. Mr. Rue stated in this same report (Page 9), under the noise analysis, staff evaluated similar communities down south to gain a better understanding of how they regulate noise and buffers to adjacent properties. He stated that the distance from adjacent homes and neighborhoods was not provided for in the Horn Rapids, Spokane or Grays Harbor ORV Parks in

the analysis. However, subsequently, public testimony was provided on March 18, 2008, stating the following:

- "Horn Rapids is 4,880' from the nearest residence, with the closest neighborhood being 6,318' away.
- Spokane is 1,500' from the nearest residence, with the closest neighborhood being 2,054' away.
- Grays Harbor is 2,319' from the nearest residence, with the closest neighborhood being 14,652' away."

He asked if Ms. Marlow could confirm whether those were accurate numbers in order for the PC to determine if those were good comparisons or not. Ms. Marlow believed those examples were provided to the PC from staff (*however, it was actually public testimony provided by Kent Sullivan*), rather than from the application submittal. However, she stated that she has been to several of those sites, and found that they are different in topography and groundcover, and also contain different land features. Therefore, it is probably not appropriate to take the analysis and conditions from one park, i.e., in the Spokane area and try to apply it to Seattle or Juneau. Mr. Rue stated that under the same analysis section, the study proposed to model ordinances of other counties, cities, and towns, one of which was to "Base noise enforcement primarily on complaints from neighbors and allow compliance assessments at the discretion of a noise control officer (pg. 11)." He asked if this might be a trigger for enforcement that the applicants intend to implement. Ms. Marlow stated that if they received complaints, they would respond to them. However, if they had too many complaints, and if they were unable to find solutions, they would have a problem with their permit.

Ms. Gladziszewski asked what the current application and management plan consists of, stating that she has Attachment A from the original February 21, 2008 staff report, and Attachment H that is an e-mail from Ms. Marlow, dated February 5, 2008, in response to questions from Mr. Sexton. She asked if this documentation represents what is being considered for this permit tonight, or if there is additional material that should be considered by the PC. Ms. Marlow deferred to staff because she has not kept track of the exact attachments and applications that they have. Mr. Sexton explained that there should be more information in regards to Attachment H, noting that there was a wetland delineation, revised language on the different layout maps, and Attachment F of the most recent staff report, dated May 30, 2008, which is the review of the noise study by the consultant. Ms. Gladziszewski asked if that included Attachment E, the memorandum, dated May 28, 2008, to Dale Pernula from Heather Marlow regarding the *Fish Creek Off-Highway Vehicle Park Noise Study* in the staff report dated May 30, 2008 as well. Mr. Sexton said yes. Ms. Gladziszewski explained that the PC has reviewed this case so many times, including the receiving of numerous attachments, so she wishes to confirm exactly what is being proposed. She noted that there were also comments provided regarding noise testing, e.g., on all OHVs to assure that all vehicles meet the project criteria of 96 dBA at 20" from the tailpipe. Ms. Marlow said they are not adverse to it, and it is called out in the noise study, which is part of the record. She said they are attempting to have a performance standard, and how they get there is somewhat onerous on the applicant, which might include testing 20 inches at the tailpipe, or installing exhaust apparatuses or mufflers. The proposal states that they would do this test as a component to meet the sound level. Ms. Gladziszewski asked where this verbiage is located in the proposal. Ms. Marlow said they would do the tests as a component of meeting the sound

standard at the property line, although it was not in the proposal, and instead, she is stating what standard they would meet.

Ms. Marlow stated that she contacted the consultant with a request to conduct a noise study of the Fish Creek OHV Park that is being proposed. He completed noise levels based on a tailpipe test of 96 dBAs at a 45-degree angle. After the tests were completed, the consultant provided recommendations to ensure certain noise level criteria were met.

Michael Minor, Michael Minor & Associates, Inc., the consultant representing the applicant. He stated that he is originally from Great Falls, MT, attended Whitman College in Walla Walla, WA, and obtained BAs in physics and mathematics. He has been a noise consultant for almost 20 years. He worked for Bruel & Kjaer Instruments in Narum, Denmark, who manufactures the finest noise measuring equipment, which he has the opportunity to utilize. He left CH2M Hill and went to work on the Alaska Juneau Mine completing noise measurement; therefore, he is familiar with the noise levels in this area. In Alaska, he mainly worked on mining operations and developments. This includes the Fort Knox Mine (where he is completing ambient noise measurements in Pedro Bay located near Iliamna Lake for the Pebble Mine project), along with several satellite mines around the state. He is also the noise consultant regarding noise effects on wildlife from the Kodiak rocket launch facility. He mainly works on large transportation projects in the Lower 48, consisting of major highways, high capacity transit systems, and airports. He has worked for the Portland International Raceway (PIR), which is very close to residential areas. He performed the PIR's noise monitoring and analysis, and has over 20 years of racetrack experience.

He believes what Ms. Marlow is proposing is that they have to test the OHVs. He said PIR performs tests of the vehicles, and allows public drags on Wednesdays, Fridays, and Saturdays because it keeps the children off the streets. As part of that process, the vehicles are required to be tested to ensure they are not exceeding the noise level criteria so as not to disturb the neighborhoods. In fact, people testified that they could hear them on Friday nights, although they were not racing during that specified time that those people said they were, so the neighbors were not hearing them, as opposed to some other noise. He also completed testing in the neighborhood that confirms this; therefore, it is possible to have a regulated system to verify that the riders utilizing the tracks are at, or below, the allowable dBA levels.

He conducted many noise measurements over the years through different types of foliage propagation and hillsides with accurate conclusions in terms of his predictions of noise levels. For example, as part of the Fort Knox mining system, at a satellite facility they utilized off-road haul trucks to transport ore from satellite mines to Fort Knox to complete its processing onsite. He completed a noise study with Bill Jeffers, Fairbanks Gold Mining, Inc., and the projected noise level at the closest residence was around 45 dBAs. The residents did not believe that, so Fort Knox hired another consulting firm to complete alternate noise tests. The testing was completed during low cloud cover with cold dense air, and they measured the dBA level at 42. He prides himself in making sure that if he projects a noise level and informs the PC what it is, in actuality it would be two or three dBAs less than that, which has been the case for any post-test of his previous noise study conclusions.

He explained that sound level meters range in cost from \$20 at Radio Shack to \$14,000, depending on what type of quality or sound information a person is seeking. For tailpipe testing, they should be able to do so with an \$800 meter to gain accurate and reasonable results, and if the person conducting the test is properly trained.

He stated that neighborhood noise levels are vastly different depending on where they are located. The quietest noise levels he ever measured were outside of Anchorage, and to a lesser extent in Iliamna. He stated that Alaska contains unique characteristics in which there is dense foliage that tends to absorb much of the sound. The noise levels around the OHV Park site would depend on the time of year, including what other concurrent activities are taking place. For instance, if Eaglecrest closes at 3:00 p.m., after 5:00 p.m. when everybody has left when it is cold in the winter and it is dead quiet, the neighborhood probably would experience noise levels below 30 dBAs. However, they more than likely would never experience noise levels below 30 dBAs because there is ongoing roadway traffic and ambient noise from aircraft, which raises the noise levels from 40 to 60 dBAs, although this is somewhat difficult to quantify because this noise changes very rapidly.

He stated that sound reduces as it leaves the noise source and travels through the receiver location. If water and/or concrete type of bases are present, the noise source is going to transmit fairly well over those reflective surfaces because no noise is absorbed. As the ground cover becomes softer, such as dirt or grassy areas, these would serve to reduce the noise. He completed a site visit of the proposed park today, and found it to be one of the densest forests he has ever seen, noting that he rarely accounts for foliage contributing to noise reduction. He stated that there are several factors that could reduce or increase sound. In a bowl shaped area, i.e., an amphitheater, it can increase the sound. In an area such as a hillside that contains a lot of density on topography between the site and the nearby buildings, there could be good attenuation.

He stated that the human ear hears sounds differently, and does not hear extreme low or high frequencies to well; however, it hears mid-frequencies extremely well. He said the American National Standards Institute derived an A-weighted decibel scale. He explained the noise levels utilized in this analysis are stated as sound pressure levels in terms of dBs on the A-Scale, dBAs. The A-Scale is used in most ordinances and standards, including the applicable standards for this project. The primary noise descriptor is the L_{max} because it is often the easiest to measure and utilize for compliance testing on this type of project. A complete list of noise descriptors that are commonly utilized are, as follows:

- L_{eq} (equivalent continuous sound level)
- L_{min} (maximum A-weighted RMS sound level)
- L_{max} (maximum A-weighted sound level)
- L_{xx} (statistical sound level descriptor)

He said most digital sound meters store data in eight- or sixteen-second intervals and the display updates every second. He noted that noise typically varies greatly, i.e., if a person went outside it might be very quiet, and an airplane will fly over, and then a car will drive by, so these noise levels would vary with time. The Federal Highway Administration (FHWA), Federal Trades Administration (FTA), and Federal Aviation Administration (FAA) utilize energy averaging, or an L_{eq} . He explained that L_{eq} takes the amount of acoustical energy it produces as it varies, and then it is averaged to determine a single number. He explained that over a one-hour time period, if ten trucks and five cars were drove by, each of these produces a certain amount of statistical

energy. Even so, there are times when it is very quiet ranging near 40 dBAs, and then a single truck is driven by by causing the noise level to rise to 86 dBAs, but the 86 dBAs only lasts for less than one second with the noise level reducing as the truck is driven further away. After all of this data is averaged, they end up with a single number of an hourly average L_{eq} of 63 dBAs, with a maximum peak at 86, and a minimum of 40. He said this method is great for highway noise, but not for this OHV park proposal because the neighbors are concerned with how loud the noise is going to be at the worst-case noise levels, which is termed the L_{max} . Similarly, when he stated that the truck that was driven by reached a peak dBA, if he had his meter and it stored the L_{max} for that measurement, the highest noise level he would be able to toggle through and review would be 86 dBAs, which is the L_{max} average. He said L_{max} is a useful descriptor to identify the noise source, and is the same descriptor they are going to utilize for this analysis. He explained that this is the loudest instantaneous root-mean square (RMS) level from the proposed OHV Park, not the energy average L_{eq} . He explained that the final statistical sound level descriptor, L_{xx} , is utilized in some city and state ordinances. The States of Washington and California utilize L_{xx} , although the State of Oregon considered doing so, and then chose not to. He explained that if many cars were driven by, people would experience a wide distribution of noise because it would continually become loud, and then quiet. From the L_{min} to the L_{max} , these noise levels might range from 40 to 86 dBAs; half the time it was probably at 60 dBAs, 25% of the time it was more than likely at 70 dBAs, and 15% of the time at 80 dBAs. Therefore, the noise is louder as the percentage decreases.

In terms of general outside noise, he stated that it usually takes a 3-dBA change in order for a person to hear a difference. In an acoustic test chamber, utilizing headphones, a person is able to hear a 1-dBA change, but that is only with pure tones. At a 10-dBA change, they would consider it as being a lot louder; at a 5-dBA change, everyone would notice a difference; and at a 3-dBA change, they might be unsure if it is louder. A passenger vehicle driven by is around 75 dBAs, and heavy trucks and buses are at 85 dBAs that are heard as being twice as loud, including the acceleration noise when they are moving away from a stop being as high as 80 dBAs.

Regarding general noise reduction, he said theoretically, if a source were close to the ground on a normal surface, for every doubling of distance they would have a reduction of 3 dBAs. Therefore, if he had 60 dBAs at 50' and then moved out to 100' it would be heard as 57 dBAs, or out to 200' it would be heard as 54 dBAs. In a real world, this reduction varies depending upon the ground cover, especially if it contains water. In addition, if a point source were high up in the air, e.g., an airplane or a helicopter, they would not have that ground effect, and instead have a sphere effect. At that point, the noise at 6 dBAs for each doubling of distance, so they would have more of a reduction because there is nothing reflecting that sound back up. If there was dense evergreen foliage, they would get at least a 5 dBA noise reduction for every 100,' noting that the area could not contain trees that have leaves falling because that would change the dBA level. His inspection of the site today confirmed that this would be a good site for this type of noise reduction.

He said the tailpipe testing attached to his noise study utilized the Society of Acoustical Engineers (SAE) methodology derived in Europe, which was later adopted in the US. He explained that if they have two noise sources and each one has 60 dBAs, and he is able to turn them on and off at will; if he turns only one on, they would hear 60 dBAs; if he turns the other

one on at the same time, they would barely hear a difference at 63 dBAs. Therefore, in terms of dBAs; $60 \text{ dBAs} + 60 \text{ dBAs} = 63 \text{ dBAs}$, not 120. Interesting enough, if they add another 60 dBAs noise source, they would have $60 \text{ dBAs} + 60 \text{ dBAs} + 60 \text{ dBAs} = 64.5$ to 65 dBAs. If they added another 60 dBAs they would only increase another dBA or so, another one about a .5 dBA, and again another one about a .5, and then finally another there virtually would be no increase in the dBA noise level. However, if he turned on a noise that had 70 dBAs, and then another that had 60 dBAs, they would not be able to hear the 60-dBA noise source. For example, when a bus is driven by, along with two cars, they would not hear the cars because they are more than 10 dBAs quieter than the bus. Therefore, 10 dBAs is the rule, i.e., if there were more than a 10-dBA difference, they would not hear the quieter noise source. He explained that dBs are a logarithmic conversion, not linear, of pascal (the actual air pressure).

Mr. Minor stated that he utilized five 96-dBA tested OHVs, with the tailpipes facing directly towards the residences, and placed those in separate groupings around the entire OHV Park. He noted that typically these types of riders ride in groups of two and four, or as many as five and six; therefore, he figured five would be a good average to utilize. He also assumed the worst-case scenario that they were pointing towards the residences, which is highly impossible because they would have to be sitting with the OHV tailpipes facing as close as possible to those residences, and he utilized that to project the 45-dBA distance. As his reduction, he utilized 3 dBAs for doubling of distance, and 5 dBAs between the source and the receiver location, with activity generating noise in the parking lot and pit areas. He found that the noise levels from those locations, because of the foliage and distance, that it would probably never be audible at any residence, noting that it actually ended up being below 10 dBAs at the residents from these areas. He stated that even on the quietest nights, the maximum dBA might only reach the high 20s. He also conducted an analysis of the highway traffic accessing the site, including noise from construction that would occur. He derived information from studies he conducted, and plotted it to figure out how far the OHVs would need to be away from the residences, and then determined a 45-dBA limit at a buffer of 650' from the property line. In providing the PC with these numbers and if the OHV Park was constructed at this site, and it was later re-tested, he was going to be right and would not budge on his numbers. He also completed a calculation regarding the three closest residences, with the groups of five OHVs around different areas of the site, and the maximum noise level readings were 44, 35, and 32 dBAs, which are all below the criterion of 45 dBA.

Mr. Rue noted that sound meters do not have moods, nor do they need to sleep at night. He said they have to consider this when neighbors are attempting to get to sleep, or are trying to put their children to bed. Additionally, he questions the quality being random, versus routine noise. For instance, when he lived in Anchorage he resided close to the airport, and the aircraft touch-n-goes were very annoying, which was constant, as opposed to random take offs. He asked why high-pitched noise is more annoying, versus lower pitches. Mr. Minor replied that the most disturbing noise to the human ear is large jackhammers, pile drivers, and heavy equipment back-up alarms. He explained that these emit higher pitched noises, which carries very far. He understands Mr. Rue's touch-n-go noise issue as well, because that repeated noise source was happening quite frequently. In terms of low versus high frequency, the human ear is more sensitive to mid-tones. He explained that humans are not as sensitive to low frequency noises, with the inherent problem that they travel through objects. For instance, if he was sitting in his

car with his window rolled and it is pouring rain outside, and he suddenly hears the base sound of a stereo coming from a car next to him. He is able to hear this music from that car just as clear as if it was coming from his car. The reason is that the base speakers in the other car are actually moving the steel, making the car a speaker, which hits his car and moves the windows and doors, that makes his car a speaker as well. He stated that high frequencies are easy to stop, while low frequencies tend to roll, bend down, and travel over objects. He noted that sound walls are often provided on the highways, and the height of the walls are constructed in relation to the heavy truck traffic, as the low frequency noise of the trucks tends to bend down and over the top of the wall. Therefore, when they build those walls higher, they account for that low frequency energy. In contrast, if it were just a passenger vehicle roadway, a 6' high wall would suffice to stop the majority of traffic noise. In response to attempting to put children to bed, he stated that windows have a Sound Transmission Class (STC) factor, which is how much noise is able to come through that structure. If the residence has double-paned windows, they would have a greater STC factor and experience the same 45-dBA level in the 30s, although with good insulation this is further reduced to 10 to 15 dBAs, which would be barely audible. He said a 45-dBA noise level is transmitted as approximately 20 to 25 dBAs with single-paned windows that might be noticeable, most of which would come through the windows because minimal noise travels through walls. This would be the case, especially if a person was close to the window, but it would not be 'it is going to wake them up in the middle of the night' type of noise, and would probably not stop them from falling asleep because 25 dBAs is fairly quiet; i.e., in a library with nobody talking type of noise.

Mr. Miller stated that he based his entire noise study on OHVs that put out 96 dBAs and have a 20" tailpipe, and asked which models have such features. Mr. Minor replied that there are many OHVs manufactured in the last 25 years that emits 96 dBAs or lower. There are varieties of custom tailpipes that are able to reach the 99- to 101-dBA range under that same test. He mentioned that at the PIR, they have a person with a sound meter, and if any vehicle exceeds the 96-dBA tailpipe noise limit, it is not allowed to remain onsite, and it is not able to return until it has a quieter muffler. He said they have to do the same at this proposed OHV Park. He trained the people on how to conduct vehicle testing at PIR, and more often than not, they are able to detect, without utilizing the meter, whether or not a certain vehicle is too loud. They also know after sometime when riders have modified their vehicles that most of the time it is not that they sound louder, and instead it is because they sound different. In addition, they are often able to visually detect whether a rider has changed their muffler.

Mr. Scarano thanked Mr. Minor for the presentation, stating that it was interesting. He noted that he is utilizing noise standards to develop L_{max} and that he does not want to exceed 45 dBAs, although he did not utilize an average to obtain that limit. Mr. Minor said that is what they do at the PIR, stating that they cannot average the L_{max} because vehicles are moving at dissimilar speeds, separate areas of the track, and generally have different loads. Therefore, there is really no good method in which to average noise levels on a closed site such as a PIR or the proposed OHV Park. Instead, they just want to utilize a residential structure type of criterion to determine the maximum dBA level. Mr. Scarano stated that there would be noise at different times of the day. For example, if his neighbor is mowing his lawn at 7:00 a.m., it annoys him; however, if it is at 10:00 a.m., he barely hears it and does not really pay attention. Mr. Minor said when a person is asleep, their sensitivity to hearing increases, and they want to escape from the noise

they have heard all day long. Mr. Scarano asked for an example of what generates a 45-dBA level of noise. Mr. Minor replied that a quiet office building ranges from 52 to 55 dBAs, and inside a library with people moving about would generate noise levels ranging from 40 to 48 dBAs. If a person is sitting inside their residence and it was quite, they might hear 45 dBAs being generated outside. He stated that he is not going to tell the PC that some of the closer residents would not hear OHVs some of the time. He said more so when the OHVs are in the park and a rider is climbing up the hill, the neighbors might hear it, especially during quiet evenings when there is no noise on the highway. However, by utilizing the mitigation measures that he is proposing, they should be able to reduce the noise levels at most of the neighboring residences to below 25 dBAs, which is a stringent level in terms of nighttime noise. He noted that Oregon has a very stringent level at 50 dBAs for nighttime and 60 dBAs during the daytime.

Mr. Satre asked what type of noise-test training program he is recommending for the applicants in order to record accurate dBA levels of OHVs operating in the park. Mr. Minor stated that several mistakes that are commonly made while taking these types of OHV noise measurements is that they are doing so too close to an exhaust pipe, which could potentially emit puffs of air out of the tailpipe that would provide a false reading; and a breeze of wind might provide a false reading when they are attempting to read low noise levels. However, considering they are utilizing a 20" tailpipe, it has to be tested at a 45-degree angle to avoid that exhaust air pressure, as it might push the microphone and skew the meter reading. Therefore, it is just a matter of teaching a person how to utilize the meter properly. Additionally, they might consider automating the tests regarding how they set the height of the tripod the meter sits on, and then once the reading has been conducted, they would determine whether the OHV passes or fails. He stated that it becomes somewhat easier because it is a repeatable test. However, it would be preferable if the tester had some understanding of what actions might provide false-high readings, as it is unlikely for false results to provide low readings.

Mr. Rue stated that previous public testimony, provided at subsequent PC hearings, stated that neighboring residents residing over 2,000' away heard illegal OHV use in this area, and asked if that was potentially due to bad mufflers. Mr. Minor said that was possible, or they might not have had any mufflers at all. He explained when mufflers are removed on OHVs, and a person installs a straight pipe, the OHV would always become louder. The low frequency energy could carry quite a ways, including during a situation of low cloud cover and dense air that would provide for good transmission of that noise. He said the fact that the neighbors heard the OHVs does not mean that those vehicles were the only sound that was measureable. Instead, if they were to go outside, they might hear other background noise as well. He noted that in this situation, a meter might reflect there is no difference, and that noise level might still be under 30 dBAs. However, because the frequency of OHV noise is so different from everything else surrounding it, it is going to be noticeable at certain times.

Ms. Gladziszewski thanked Mr. Minor for a great presentation, stating the PC has spent quite a lot of time reviewing noise issues. Regarding the tailpipe testing of every OHV entering the park, she noted that a testing person would have to be present to do so during all hours of operation. Mr. Minor agreed, noting at the PIR they test each vehicle every night. He said eventually the persons conducting the tests knows the riders that they are able to trust, and knows if someone altered or customized their tailpipe system. Ms. Gladziszewski said additional

testimony was provided suggesting that stickers might be provided for the riders to place on their OHVs after a vehicle passed the test; however, the riders might just take the sticker off. Therefore, it might make more sense to have each OHV tested every time they enter the park. Mr. Minor agreed, although stickers might not be a bad idea because they would allow the tester to tell from a distance if a certain OHV has a sticker because sometimes an OHV might have a different driver.

Mr. Minor continued with the presentation, explaining that it takes twice as many vehicles to get a 3-dBA increase, which is under the same doubling scenario previously mentioned. Therefore, if there are 100 vehicles per day on Fish Creek Road, and 100 more vehicles are added, the noise level would increase by about 3 dBAs, which is acceptable to most people. He said there are currently 105 to 130 vehicles in the summer, so he predicts the traffic noise to increase by approximately 3 to 4 dBAs. He added that Eaglecrest is closed during the summer months so it would not generate that traffic; therefore, they should only notice a slight increase in traffic noise during the summer months.

Mr. Pernula said Mr. Minor's study mentions that as OHVs are at the bottom of the site, and then start accelerating up the hill that the noise levels would increase, and asked if that noise level would remain below 45 dBAs at the 650' buffer. Mr. Minor said yes, and he is very comfortable stating this, especially following his site visit because it has denser foliage than he envisioned. Additionally, once they constructed the trails, he did not believe this should pose much of a problem either. He mentioned that he is assuming the worst-case scenario of five tailpipes simultaneously pointing towards any one residence, which he does not anticipate happening very often, if at all. Although, realistically, the OHV riders would be following each other around and through the hills so the direction of their tailpipes would change, which is critical as to how much noise these OHV would produce.

Mr. Scarano said he commented several times regarding the landscape foliage lessening the affects of the OHV noise to the adjacent neighborhood, whereby he found it to be denser than what he expected to find. Therefore, he asked if that foliage might provide even a greater buffer from noise emitting out of the site. Mr. Minor said yes, mainly due to the groundcover providing density at low levels, instead of just the evergreen trees. He noted that the tailpipes are only 3' off the ground, so they are close to the groundcover, which would also be helpful to reduce noise.

Mr. Rue asked, in Mr. Minor's opinion, if it was 45 dBAs in this Sheffield Ballroom 1 when no one is talking. Mr. Minor said it might be a little bit quieter than that, but the overhead fan would probably place this room at a dBA level in the high- to mid- 30s. Mr. Rue stated that his residence is about 2,000' from the highway, and when he sits out on his porch, he hears highway traffic noise, which he finds to be annoying. He explained that he has evergreen trees between his residence and the highway, so he does not understand why he hears traffic. Mr. Minor said there are two things; first, it is quiet out there, with occasional trucks passing by that he hear, and second, some people are more sensitive to noise than others are, and he might be one of those people.

Mr. Miller asked what throttle level was the 45-degree angle testing of tailpipes completed at when the OHVs were traveling through the swale area up through the hillside. Mr. Minor believes it was at half throttle to redline; however, he would need verify this, and then get back to the PC. Mr. Miller stated that the noise level produced would be less at half throttle, and more at full throttle. Mr. Minor said not necessarily, as full throttle is louder than half throttle only in terms of the OHVs transmission because as the revolutions per minute (RPMs) increases, and the frequency of the OHV changes. Therefore, if the frequency increases, the energy is going to decrease. In addition, lower frequencies contain higher energy, so they could have louder RPMs at the same mid-band when the OHV is producing the maximum horsepower. He noted that an OHV does not produce the maximum horsepower at redline. Instead, that is where they want you to shift to drop down to the next gear so they have the power to get going. That said, he is not sure that maximum RPMs would provide maximum loudness, and is somewhat sure that it would not. Ms. Gladziszewski said the 96-dBA level was derived at when they were testing the OHV while it was stationary at a certain throttle level, which he would figure out. However, she wanted to know the dBA results of an actual moving OHV running as it normally would up and down the hillside, and at what OHV throttle level those tests were conducted at. Mr. Minor said there has been a lot of research of bypass testing of OHVs, and they found that they are not repeatable because those test results were very sketchy in terms of the accuracy, so this is why they switched over to the stationary tests. Ms. Gladziszewski said stationary sound levels are different from what the neighbors would hear at their residences. Mr. Minor replied that is why he presented the worst-case scenario. He said if an OHV was coming towards a person, it would be much quieter than if it were going away. However, if the OHVs were going in different directions, he believes that would be the same as the worst-case scenario noise levels that he presented. Mr. Scarano stated that it does not matter whether it is at full or half throttle, it would not exceed the 96-dBA noise level. Mr. Minor said yes, stating that many of the newer models are quieter, as well as getting rid of the two-stroke models that generate more noise. Mr. Watson referred to Page 17, Appendix B: SAE J1287 Standards, 6.1., and cited, "The rider shall run the engine with the gearbox in neutral at a speed equal to one-half of the rated engine speed."

BREAK: 8:40 to 8:45 p.m.

Chair Gladziszewski limited public testimony to four minutes per person.

Public testimony

Ben Carney, 10065 No. Douglas Hwy., said that Mr. Minor stated, "For instance, if the Eaglecrest closes at 3:00 p.m., after 5:00 p.m. when everybody has left when it is cold in the winter and it is dead quiet, the neighborhood probably would experience noise levels below 30 dBAs". He stated that frankly that is why the neighbors purchased their residences because it is a reasonably quite area. He noted that the 45-dBA limit is greater than 10 dBAs above that, which Mr. Minor states is a significant increase, which they would notice. He said Mr. Minor then went on to state that OHVs could be audible, but is not measurable because it is a different type of noise. However, he believes that 45 dBAs of constant OHV noise would in fact be audible. In terms of the noise study, he stated that Mr. Minor did not acquire new data; instead, he applied his expertise in sound to the applicant's data, noting that the study contains several flaws. He said this is a hypothetical model, which is only as good as the assumptions that were made in terms of the analysis. Regarding Mr. Minor's assumptions as to the dense foliage,

conversely, he is able to view a clear-cut area from his property, including deer in this area as well, which is 350' away. Granted there is dense foliage in much of the area, but other areas are not as dense as Mr. Minor states it is; however, he includes that assumption in his calculations. He referred to Mr. Minor's statement, "If there was dense evergreen foliage they would get at least 5 dBAs noise reduction for every 100' of dense foliage." He noted that Ms. Marlow stated on several occasions that 30 is not the maximum number of potential OHVs in the park. In fact, he questioned her at a meeting, and she said that is probably not the type of experience they want to have, but there could be 200 OHVs if they wanted to ride that way. Therefore, he believes that if they were to conduct a study properly, they need to err on the high side, not on low side. Furthermore, Mr. Minor placed 30 OHVs into smaller groups of five, and then distributes them throughout the park. He said it is unreasonable to expect that the OHVs would be distributed in such an even manner. The very nature of the park is that riders would be riding around at their own free will; some having different experiences, riding abilities, and machines, which would all be random. He instead believes there would be more than 30 OHVs in the park at one time, including more than five near a particular residence at a given time near the closest boundary to the neighborhood. He stated that Ms. Marlow originally stated that 350' was an adequate distance for a sound barrier; however, even with the faulty assumptions applied in the study, it demonstrates that barrier should now be 650.' However, he believes 650' is also inadequate because this was determined utilizing a hypothetical model that is only as good as the assumptions that were put into it. If the goal is to minimize noise, and set attainable noise levels, then the assumptions should be provided under the worst-case scenario, and failure to do so is not correct in order to provide justice to the neighborhood.

Dave Hanna, 11495 Mendenhall Loop Rd., said he is not an expert on noise; however, he is able to speak with some authority on the subject because he has ridden OHVs for the past 40 years, and has operated heavy equipment for 49 years. He believes Mr. Minor is entirely correct, particularly when he mentions that the most onerous noise is jackhammers, pile drivers, and heavy equipment back-up alarms. He would add to that list rock drills, large air compressors, and scooping and digging out rock, and then loading it into dump trucks. He said this is exactly the permitted activity that this quarry has experienced over the past 35 years, whereby thousands of truckloads of rock have left that site, which is right next to the neighborhood. Although people state that the OHV Park would create a new noisy activity to the neighborhood, he instead states that they are bringing a quieter activity to the neighborhood if this OHV Park is approved, which is much mellower and more controllable, as opposed to rock quarry noise. He asks the PC to approve this permit, and extend it to 10 years so the applicants do not lose their funding. He suggests that some type of system be implemented in terms of a membership for a riders club, so they could have their machines tested at regular intervals and be provided a sticker, versus every time they entered the park. He believes this would provide the riders with a feeling of ownership of the facility, which might produce more controlled riding at the park.

Mike D. Plotnick, 1001 Fish Creek Rd., said he and his wife would have a front-row view of any impacts of OHV use at the proposed location, and additional road traffic as well. He rode ATVs from Unalakleet to Nome, and in Ketchikan and Carlyle in Alaska. Based on his review of the proposal, he objects to the introduction an OHV Park in the Lower Fish Creek Quarry, and asked the PC to deny the permit. The proposal fails to adequately meet recreational opportunities over the long run for the expressed user group because the size of the footprint of the site is too small,

whereby the applicants have stated this. The proposal fails to mitigate the well-documented negative impacts associated with similar OHV activities at Dredge Lake and Echo Cove. The location of the proposed OHV Park is incompatible with the qualities of life and the standard of living associated with the nearby residential area where they own their homes. He is convinced that the market value of his property would decrease if this proposal is approved. He also believes the noise associated with the park would not be in harmony with the nearby residents. The homes located across the channel would experience sound, which would be episodic in nature. However, the North Douglas residents would hear constant OHV noise until 10:00 p.m. in the evening, which would be quite a change from the noise they currently experience. He said 10:00 p.m. is too late in the evening in terms of compatibility with neighborhood. He believes the residents would hear OHV noise as it ricochets off the mountainsides on low cloud covered days. He has witnessed a 16-year-old boy lie dead near his driveway from a car crash. He said one of the attractions to ATVs is its speed, noting that he also likes to drive fast. Fish Creek Road is on a mountain, and approving this OHV Park would turn Fish Creek Road into a racetrack for some people – he hopes he is wrong, but experience tells him otherwise. He supports the creation of a large remote OHV track located in the community away from any residential area. Changing the characteristics of the nearby residential area for OHV activity at the proposed location represents poor community development planning. For all these expressed reasons, he asks the PC to reject this proposal. Mr. Watson asked how far he resided from the proposed OHV Park site. Mr. Plotnick said his residence is approximately 2,000' away. Ms. Gladziszewski asked if he heard previous quarry activity types of noise. Mr. Plotnick said yes, when it is operational.

Ron Berg, 10725 Horizon Dr., said he and his wife moved to the Bayview Subdivision many years ago because it is a nice and quiet area. He is concerned regarding the CBJ noise analysis. He had hoped that CBJ was going to conduct a real analysis of OHVs riding in the park that was relative to the impacts to the neighbors, the parameters regarding the distance, topography, and vegetation in relation to its size. Instead, CBJ hired a contractor who produced noise levels utilizing certain portions of the applicant submittals. He said the applicants originally utilized a 55-dBAs noise to the nearest properties, and now the consultant contends that trail locations would be restricted so that the noise would not exceed 45 dBAs at those nearby locations. He said the consultant makes several assumptions about what noise levels might occur; one is that 30 OHVs operating simultaneously distributed throughout the park in groups of five would generate a maximum sound level of 44 dBAs at the nearest properties. He said these noise levels were extrapolated from a graph that depicts sound levels as a function of distance; however, they term this as being 'noise-level modeling.' He is concerned that the assumptions might not reflect reality at all, which could be significantly worse. He stated that a model is only useful if it projects results that agree favorably with onsite testing utilizing real data, as all models have to be groundtruthed. If all 30 OHVs were operating simultaneously, traveling on the trails, the noise levels are probably going to be much higher than 45 dBAs. He said the CBJ has to conduct a real noise study before it permits this application. The study should first measure background noise to determine the baseline noise that is typical without any OHVs, and then employ a representative number of OHVs to measure background noise to that result. Given the adverse impacts to the nearby property owners, including their property values potentially decreasing, he said CBJ has to do this job right. He stated that noise is an insidious form of pollution that

would directly result from an OHV Park at this site, which would greatly impact the neighborhood.

Logan Dameron, 6721 Sherri St., said he agrees with the previous testifiers. He believes constant monitoring of OHVs at the park is unrealistic. His understanding is that the risk is the deleterious effects on the quality of life and property values of nearby people and their homes, which does not appear that it should be warranted for the benefit of a small group of OHV users. This is not a project such as a swimming pool or an ice arena that serves the whole community; therefore, he respectfully requests that this proposal be rejected.

Kent Sullivan, 9371 No. Douglas Hwy., referred to the assumption by the noise consultant that there is dense foliage that would greatly reduce impacts of OHV noise from the park. He agrees there is foliage at the location around the proposed OHV Park, but in driving up Fish Creek Road most people would witness a substantial lower portion of Fish Creek Road was constructed through a bog. He said that bog does not contain large evergreens, and has very little foliage. Near his residence, from the access point from the Fish Creek Road into the quarry site, it is virtually uninterrupted with foliage; instead, there is a small strip of trees between where the bog begins and his residence. His residence is located about 2,000 feet away from the proposed site, yet he is one of the persons that heard ATVs when illegal trespassing occurred last fall with OHV riders driving up Fish Creek Road and into the quarry, and it sounded like they were in his driveway. He stated that a problem with Mr. Minor's study is that during his presentation he stated several times that if the riders are greater than 650' away from the residential property line, the residents would likely not hear the sounds of the OHVs, although at other times he stated that the residents might hear the sounds. Another issue he has is that many of the conclusions were that the OHVs would not be heard if the residents were inside their house with the windows closed in the summertime. Although he leaves his windows open in the summertime, including the wintertime, and his bedroom is located on the second story of his home. He said the noise from the proposed OHV Park is going to significantly impact the neighborhood. Those folks who like to enjoy the outdoors, and take walks in the evening along the highway or Fish Creek Road are going to be drastically impacted by OHV noise. That said, what demonstrates that the noise study is flawed is in viewing a court case that was previously presented to the PC on March 18, 2008. He said this Ohio case, Angerman v. Burick, relates in all intents and purposes to this proposed OHV Park. He noted that the Ohio case was decided by an expert that the neighborhood provided facts that the proposal was inconsistent with neighborhood harmony. In this case, 100 residences were affected by the OHV Park, with the closest residence being 1,000' away, and the furthest one mile away. Yet in that case, the court found that the plaintiffs who resided closer to the track testified that they could hear the motorcycles on the track from inside their homes, even with all the windows closed. He is able to verify this same situation happening when trespassing occurred last fall, including last summer, even though there were only three or four at most, and all of his windows were closed 2,000' from the site. He cannot imagine the OHV noise the people that now reside 650' from the proposed site would have to endure, which he takes issues with; therefore, he hopes the PC votes against this application. Ms. Gladziszewski asked him to expound on what he heard when illegal OHV riding was taking place. Mr. Sullivan explained that they were basically 'drag racing' up and down the road leading to the quarry, and because of that it was fairly easy to distinguish one OHVs from another, and he assumes there were only several last fall. He believes this took place after they

shot the locks off the gate, and then rode around in the quarry in the middle of the night because they wanted to, or could do so. He noted that the riders always left before the police arrived. He stressed that it is extremely annoying and bothersome, which they have tolerated for quite some time, and they are now being asked to close their windows to such noise. He said this is not what they feel they should have to do in their own neighborhood. However, with the proposed OHV Park, there would be numerous OHVs constantly riding around, not just three or four.

Mr. Rue asked if the time of day would matter to him; i.e., drag racing at 3:00 p.m. on Saturday, versus midnight. Mr. Sullivan said he does not believe the OHV Park would be compatible with the neighborhood irrespective of the time of day. Nevertheless, he acknowledges that the time of day did play into it, as it is normally much quieter in the neighborhood at night because they do not experience much vehicle or aircraft traffic, so the OHV noise was much more grating and annoying after 7:00 p.m. at night.

Ms. Gladziszewski asked if the case he referred to in Ohio was provided in his written testimony. Mr. Sullivan said it was not, and instead it was provided as an attachment by the expert witness, Charlie Elliott, a Real Estate Appraiser and Consultant from Greensboro, NC, to his presentation to the PC on March 18, 2008. Additionally, he noted that Mr. Elliott stated in this same presentation that property values in the neighborhood would decrease due to the proximity of the proposed OHV Park to the residential homes, and Mr. Elliott cited this case to support that conclusion.

Rachael Sanders, 9547 No. Douglas Hwy., said she resides across the street from the Plotnick's residence. She agrees with most of the previous comments made by the neighbors; however, in response to Mr. Hanna's testimony, she stated that at least the rock quarry operations shut down in the early evening, not at 10:00 p.m. when the neighbors are attempting to put their children to bed. She wants a place for the OHV riders to ride, and if the proposed site were located three more miles up Fish Creek Road, they would not be having this discussion because the noise would not have been as much of an issue. However, given the history of the OHV riders being banned from Dredge Lake, Echo Cove, and Thane Road in terms of the importance of adhering to the 45-dBA level, as a North Douglas resident, she does not believe this stringent of a noise level would continue to be monitored. She respects Mr. Minor's opinion, although it is just an opinion based upon his assumptions. She said if this proposal is approved, a number of property values would decrease, along with their quality of life being greatly affected. Before this proposal is accepted, she felt that another consultant should conduct actual noise impact studies as Mr. Berg mentioned. She is very concerned, and urges the PC to reject this proposal. Mr. Rue asked if she walks on Fish Creek Road. Ms. Sanders replied that she walks her dog and takes her children for walks three to four times per week on that roadway, which is the primary area they utilize in the summertime. However, they do not utilize the road very much in the wintertime due to the heavy traffic traveling to/from the Eaglecrest.

Pam Eberhardt, 9361 No. Douglas Hwy., said she resides very close to Mr. Sullivan's residence, and her home is approximately ½-mile from the access road to the quarry. Her residence is situated high up on the bench at the same elevation as the access road. If they were to travel up Fish Creek Road, and then look back to her residence, they would notice that there is a big gap in the foliage because the previous owners cut down a narrow strip of trees behind her residence.

Therefore, there are only two remaining large trees, with muskeg between her residence and the access road to the quarry. Her residence is 27 years old and has single-paned windows, so the evergreen foliage scenario would not apply. She said although there was interesting data presented by Mr. Minor, it does not factor in human emotions into its conclusions. She is highly sensitive to noise, and struggles with insomnia as well, which is one of the reasons they chose to reside in North Douglas. She used to work for the US Forest Service (USFS) and coordinated an environmental noise assessment regarding helicopter tours, including a noise study where they utilized experts from the Lower 48. Because of this, she was the point person for which people directed their complaints, so she became very sensitive to noise because of that. She noted that while the experts gathered information for the study, they did so at places where the people were most concerned about helicopter noise and they set their equipment up at those locations, and then the helicopters would fly overhead in groups of five or six in order to measure the actual activity. She said the experts then utilized that data to compile a noise study, which also needs to be done for this proposed OHV Park site. She would like to invite the noise experts to her home, with her single-paned windows, to measure the actual noise with actual numbers of OHV riders that are anticipated to be in the OHV Park. She is concerned that there is no limit as to the number of OHVs that are allowed in the park, and does not believe sufficient parking has been allotted for the users. Therefore, she wonders if this would cause overflow parking onto Fish Creek Road, as was the case at Echo Cove. She witnessed this because her family used to recreate there. If so, those OHVs will be offloading/onloading, including starting up and revving their OHVs closer to the access road, which would be closer to her residence. She is not only concerned regarding the noise within her residence, but they recreate outside as well. She has two boys ages 12 and 14 that she home schools, so they are at home most of the time. They also ride their bikes or walk most everyday along North Douglas Highway and Fish Creek Road. When Eaglecrest opens and closes it causes a rush hour in the morning and in the evening; therefore, they avoid utilizing Fish Creek Road at those times. She is concerned regarding safety in terms of all the additional traffic consisting of big trucks and trailers mixing with pedestrians walking on the highway and roadways. Therefore, she is asking the PC to deny this permit. She agrees with Mr. Sullivan that this use is incompatible with the neighborhood during anytime of the day. Ms. Gladziszewski asked her to expound on the noise study she assisted in coordinating for the USFS. Ms. Eberhardt stated that it was a *Helicopter Flightseeing Landing Tours Environmental Noise Assessment Study* conducted by experts from the USFS Research Station out of CA, which was completed 14 years ago.

Joan Wilkerson, 9779 Nine Mile Crk. Rd., said her property is above the highway at an elevation level of the proposed track, so there is no questions that she would hear OHV noise. In regards to the information provided tonight, she was hoping that the application submissions would include more information about plans to muffle OHVs, and is concerned that it does not. The applicants wish to extend this permit to 10 years, although the permit condition states five years, and now it appears that the target is being moved quite a bit. If the CUP allows this to occur, the RRAI would not be able to obtain available funding; therefore, she asked if the CBJ would absorb that lost RRAI funding if this body determines that the applicants should have this permit for five years. She said this funding matter, along with other issues, causes her grave concern regarding this project. Many of the questions posed at the last PC meeting on March 18 did not necessarily address noise, and instead addressed pragmatic and monetary issues. She believes this proposed project includes many hidden costs. Utilizing the property in this manner, as was

previously stated by Vance Sanders when he formally testified on March 18, that this proposal is inconsistent with the CBJ Comprehensive Plan. There was also testimony provided at previous PC meetings that property owners would protect their property. She stated that she and her husband feels the same way and intend sue to protect the value of their property should this proposal be approved. The property owners already provided their own money to pay for an assessor to address the PC on March 18, 2008, and he stated that this project would have a deleterious effect upon property values, noting that the CBJ Assessor is not present to tell her the opposite. She informed the PC that CBJ has to protect the resident's property, which seems so ridiculous. In addition, she said the North Douglas residents should not have to spend their own money to sue the CBJ to protect their own property. Especially when a person considers that this is a situation where the applicants for this permit are doing so to pursue a hobby, whereas the residents have homes worth \$300,000 on up that they pay property taxes on, which is not being considered. She asked the PC to deny this proposal so the residents would not have to spend more money to protect their property. She said that undoubtedly the CBJ paid the noise consultant to conduct this latest noise study; whereas, the residents have found flaws with it. Therefore, she also requested that CBJ not spend any more money or time on this proposal as well.

Steve Morley, 8929 No. Douglas Hwy., said he grew up in North Douglas near Fish Creek Road, and he is a motorcycle rider and has straight pipes that are loud and everybody hates it. However, he thinks the OHV riders should have an area to ride, but not near a residential area. He said people that state 'not in my backyard' have a legitimate argument because no person wants this type of OHV activity nearby. Some of his concerns regarding the comments made tonight are in regards to low cloud cover, as this is almost a daily occurrence in Juneau, and it increase noise levels, which he believes should have been an assumption in the noise study. Additionally, people mentioned material being hauled out of the quarry in hauling trucks causing a lot of banging noise, and compared it to the proposed OHV noise, but the quarry was restricted in size, so is much smaller than the proposed park. Additionally, the quarry is not close to the resident's property, which also abides to a more restricted hours of operation. He also wished to clarify that the nearby residents have complained about the quarry noise. He noted that when he constructed his driveway, he utilized rock from that quarry, and hired Miller Construction to blast because CBJ was not conducting much blasting at that time. Even so, the quarry is rarely operational right now; therefore, a person has to have the right connections with local contractors in order for them to blast to obtain any rock. When he built his driveway, they had to shut down operations in the quarry at 4:00 p.m.; however, the proposed park would close at 10:00 p.m. so it would be six more hours of OHV noise. Aside from more traffic on the highway and roadways, there is also the Fish Creek Trail on the other side of the OHV Park that runs to the backside of the island. He and his wife run weekly on that trail, along with many other people, and it contains wildlife that would also be impacted by OHV noise. He is mainly concerned when people want to hang out in their yards, they would constantly hear OHV noise that no one wishes to hear. Even though the noise consultant said the most annoying sound for a person to hear is jackhammers, etc., he said this reminds him of Dumb and Dumber with Jim Carey asking if "You want to hear the most annoying sound in the world?" He said Mr. Carey then makes this hideous sound, which to him sounds just like an ATV. Therefore, he could not imagine while he is standing on his back porch that he might have to constantly listen to annoying OHV noise.

Mark Hunt, 10075 No. Douglas Hwy., said he resides next to Mr. Carney near the property line of the proposed OHV Park. He agrees with most of his neighbors in terms of incessant OHV noise. He said they did consider noise when they chose to purchase a home, and looked at several homes along Glacier Highway that had beautiful views, but turned them down partly due to the noise along Egan Drive that they would constantly be exposed to. He rode his bicycle to the site last week and was appalled at how small the proposed site is, which is not much larger than this Sheffield Ballroom 1. He said this is the area that would contain jumps to allow the riders to catch air, which appears to be a tremendous liability for the CBJ. He said there is no doubt there would be waivers requested, and any attorney would inform the PC that waivers have limited value, and they might bind the rider not to sue, but it does not bind their heirs. He believes if the users were required to wear safety equipment that it might help somewhat. However, only two weeks ago, at a motocross park near Soldotna, a young man was killed on a motorcycle wearing proper safety equipment in a single-vehicle crash. He said the child apparently landed hitting his head, and they speculate that the motorcycle landed on top of him. He suggests that this needs to be a strong consideration while the PC contemplates making their decision. He is concerned that there is no limit on the number of riders that would be allowed to utilize the OHV Park, which is a very small area, so there is very good chance that there is going to be a crash. He is an Emergency Medical Technician of 17.5 years, and has treated and transported many people in these situations. Additionally, he has medivaced seven people, noting that this is not a pretty sight. For all these reasons, he believes this proposal, as written, is not a good idea. He has no objections to OHV riding, as he owns one, and agrees the OHV users need a place to ride, but not near this residential area.

Karen Wells, 9851 Nine Mile Crk. Rd., said the level of the PC's questions leads her to believe that the Commissioners understand the neighborhood concerns, which she thanks them for. She asks that the Commissioners vote no on this proposal because the neighborhood wishes to retain peace and quiet, which she finds to be a very eloquent group of people. She appreciates the PC's dedication to this proposal and the respect they provided for this entire process. She is somewhat concerned regarding possible liability issues, hidden costs, and the hours of operation, which she would like to have addressed if the PC were to pass this proposal, as well the CBJ appointing a full-time employee that is directly linked to this project.

Mr. Minor said comparisons were made with respect to other OHV and motocross parks. He noted that they have a motocross park at PIR, which is substantially louder because one typical motocross bike has a 108-dBA range so they are much louder than ATVs, and motocross muffler performance is not nearly as stringent. As far as having 30 ATVs running around the proposed OHV Park, due to the limited size of the parking lot, they would not be able to accommodate more riders than that. He noted that if they were to have seven or eight ATVs in the OHV Park, it would increase the noise levels by 1 or 2 dBAs, and if they doubled these numbers they would gain a 3 dBA increase. He said this would probably not increase the noise level that much; however, this would depend on how the ATVs were spread around the park area.

Mr. Rue stated that there is quite a bit of water generally found in muskeg areas, so asked how muskeg acts as a sound reflector, versus grass. Mr. Minor said a body of water greatly increases the transmission of noise, which has much less attenuation. However, a muskeg area that has many plants would assist in reducing some of the noise. He realizes that there are residents

located further away that are less shielded by foliage, but his main concern in conducting his noise study were the closer residents. Even so, they did view all the other residents around the surrounding area to ensure there was not going to be somebody that might have better transmission noise because of their location, and he did not identify anyone that had noise levels over 50 dBAs. Even so, he offered to go back and conduct a more thorough testing at those locations, if it is the wish of the PC.

Mr. Satre stated that several residents addressed concerns regarding the method in which the noise study model was developed, including how it is being applied to this project. He asked if it was fair to state that the point of Mr. Minor's study was not to get to the levels of noise from the park at any one time, rather to set a conservative performance standard that the park must meet. Mr. Minor agreed, stating that in fact when the applicants provided him the proposal requesting a 350' buffer, he was worried about that from the start as being insufficient. Therefore, he determined a more conservative analysis requiring a 650' buffer between the adjacent property lines and the riding area to meet a lesser 45-dBA limit. Mr. Satre stated that in regards to Mr. Minor's experience of similar activities at PIR or at other OHV parks, he asked if a 45-dBA limit is a relatively conservative level, not taking into account the topography, vegetation, and distance. Mr. Minor replied that the 45-dBA limit is about average.

Mr. Rue asked if he had any experience to be able to state when noise begins to create human stress. Mr. Minor replied that this is different for every person, and at times it is not even the magnitude of the sound, and instead just the sound itself. He explained that someone might be playing music that another nearby person might not like, even though the music is not being played very loud, which might be disturbing. For many people, he said the sound of engines are somewhat annoying. He believes what is being lost here is that the SEA noise test that he is proposing for this OHV Park would not eliminate all the obnoxious potential noise of OHVs at this site. That said, he has seen and heard many ATVs in Alaska, and a majority of them that he has dealt with in rural areas probably would not meet the 96-dBA tailpipe criterion, as most are not in very good shape, and have bad mufflers or no muffler at all. He noted as far as conducting actual noise tests, such as they did for helicopter flightseeing landings, they would have to build the OHV Park first in order to do so; however, he does not believe this is possible.

Mr. Scarano stated that a person commented regarding 30 ATVs in one area, and during Mr. Minor's testimony, the concept of the direction of the ATV has a large impact on sound concentration. Mr. Minor agreed, stating that an ATV riding away from a person would be heard very clearly due to the exhaust noise being the majority noise source. He stated that if an ATV reached 50 dBAs that would be reduced at the nearest residence to 40 dBAs, so they would not hear it. Noting that in his analysis, he assumed that every ATV tailpipe was pointing towards the closest residence at the time of testing.

Ms. Gladziszewski stated that a couple of people mentioned the issue regarding low cloud days. Mr. Minor said low cloud cover would definitely increase noise, which is only heavily applicable on low frequency noise, e.g., blasting and sonic booms. He assumes the worst-case scenarios of this might include quarry blasting and helicopter noise, although heavy trucks might possibly be affected; however, ATVs would only notice a minimal change.

Ms. Marlow said she admits that due to the features of the location of the park, it is a small area; however, if they could have made it larger, they would have. She said RRAI has been pursuing other rural riding areas of the borough away from neighborhoods, and have run into problems obtaining use agreements on private or public lands; therefore, they pursued this application. Most recently, the RRAI has been working with Goldbelt for a riding area, although they have also run into snags at the State level because of Goldbelt's native land designation. If they complete a use agreement, and then make improvements to the Goldbelt property, it would turn the land into a taxable asset, which is contrary to the mission that Goldbelt has with their shareholders to retain a non-tax status. She agrees that the Fish Creek Quarry site is neither the best, nor the most preferable site; however, it does serve the direction that the Assembly provided to find an OHV riding area that could be developed in the municipality, and this one happens to be near a neighborhood. Therefore, this is the reason they are pursuing this action today while they work on noise issues. There has been illegal riding that takes place, so the direction was to work on solutions before they work on regulations. There is OHV riding in the Montana Creek area for the next year or two, but those riders are being pushed out as well with more signage, more enforcement, and more barriers. Therefore, this project is serving the community by removing the OHVs out of the illegal use areas that are causing damage to the habitat, which includes the Montana Creek area that is approved and has oversight. In terms of parking overflow, if this becomes a problem, she said the users would be able to pull their vehicles and trailers further into the quarry area and park on the shoulder of the road and on the quarry sides. Therefore, the users would not be parking on Fish Creek Road. In regards to the quarry floor, she explained that the CBJ currently has one project that is blasting and hauling out of the quarry for the Casey-Shattuck reconstruction. The next project is going out to bid for the Douglas Harbor breakwater, which would take a considerable amount of fill to actualize, and this project would close out the quarry. Therefore, the ends of the quarry floor would expand in width and depth. Providing an OHV Park to the community has been previously identified as coming from a cooperative planning effort with the USFS, the State, and the CBJ. When they obtained the CUP for the Fish Creek Rock Quarry, they identified an OHV riding area in its Reclamation Plan. Therefore, this OHV Park has been in the works for quite some time, so they are addressing how to meet the OHV riding area need. Regarding the alternate riding areas in the community, she referenced a planning effort that was completed eight years ago. However, since that time, there is no new CBJ land, so revisiting that question is not effective in resolving the problem of locating an area for the OHV riders to ride. Mr. Rue asked if Ms. Marlow met with neighborhood during the Reclamation Plan process when they chose to turn it into an OHV Park. Ms. Marlow said she was not the applicant tasked with that process, although she believes there was at least one meeting, and there could have been more, but she is unsure. Mr. Rue stated that one of the participants provided a letter stating that there was not much public outreach provided for with the neighbors, and instead it was mostly agencies, CBJ personnel, and user folks that derived the option of a future OHV Park at the quarry. In addition, he understood that the process consisted mostly of preliminary discussions with the neighbors, and after that it did not include much public involvement. Ms. Marlow said that she heard discussions from other people that were involved in the process felt that the CBJ had done due diligence with public meetings and providing public notice to get people involved. However, she is not able to directly state whether or not that actually took place.

Mr. Watson referred to comments that were made regarding potential liability issues. He stated that in his experience with activities on CBJ property, the stakeholder has to carry a significant level of liability insurance to protect the CBJ. Ms. Marlow said they have not completed much liability analysis on this project. She explained that when this OHV Park proposal was presented in 2001 for grant funding, they took a preliminary look at liability issues at that time, and the CBJ Risk Manager informed them that the liability was covered under the CBJ's blanket insurance. There is more case law that has surfaced since that time, which provides additional examples to review, but they would be revisiting that concept with the CBJ Risk Manager to determine what the appropriate response is should this permit be approved. Mr. Watson noted that the Diamond Park facility was required to obtain \$1 million of liability insurance.

Mr. Miller asked if there is a current CBJ noise ordinance. Ms. Marlow deferred to staff. Mr. Pernula said there are a couple of noise provisions in the CBJ code; one regarding noise distance, and another regarding noise that is emitted from industrial areas. Therefore, the CBJ does not currently have an ordinance that covers all the noise regulation needs in the community. However, they are in the process of preparing a CBJ Noise Ordinance that is being reviewed by the CBJ Attorney right now, which the PC should be reviewing shortly.

Mr. Rue stated that Mr. Minor referred to other OHV and motocross tracks regarding the need to have enforcement personnel onsite at all times. Given the fact that there has been a lack of ability to enforce OHV use, he asked what the applicants intend to do in order to dedicate staff to enforce the OHV regulations. Additionally, if the users were to violate the terms of the permit, he asked if it would be immediately terminated. Ms. Marlow said they propose to hire a contract employee, rather than a staff person. She stated that the Assembly and the CBJ Manager are holding a tight budget line on funds for additional full- and part-time staff positions. Therefore, to bring enforcement personnel on as a full-time CBJ staff position, she cannot represent the CBJ, although the Assembly would need to approve the position(s) if the Manager were to support doing so. However, the CBJ does have examples of utilizing contract employees as caretakers at other projects in the borough that have been successful, and they plan to model the caretakers from those previous experiences. Mr. Rue asked for an example of such a caretaker. Ms. Marlow replied that they have a caretaker at the Thane Campground that primarily serves the homeless population, the Montana Creek Rifle Range, and the Jensen-Olsen Arboretum. When they had a caretaker at Echo Cove, the OHV riding was managed and controlled; however, that caretaker later left for CBJ Docks & Harbors employment, and staff was unable to locate a replacement caretaker, so the OHV riding issues escalated soon thereafter. Mr. Pernula stated that as far as enforcement, if they are out of compliance with the conditions of approval, the CDD has one enforcement officer now, and would be adding another on July 1, 2008. Even so, he said it is going to be difficult to enforce activities on the weekends when he foresees OHV use at its peak. Therefore, they might consider adjusting the hours of the enforcement personnel. However, the more the applicants are able to deal with testing the OHVs to ensure that only compliant vehicles are onsite, it would greatly assist in terms of enforcement. If the OHVs are out of compliance, they would need to conduct testing at the property lines, and then issue a compliance order, and then hold a public hearing. Ms. Gladziszewski assumed that the caretaker would not have any police-type enforcement authority, i.e., they are not deputized to issue citations for infractions. Mr. Pernula agreed; however, the CDD Enforcement Officer does have that authority. Ms. Gladziszewski stated that before the USFS made the decision to not allow

OHV riders to utilize the Dredge Lake area, they experienced 21 years of OHV user infractions. This took place even while utilizing park Rangers and placing boulders as barriers, which did not work in that 200-acre area, on top of that the OHV riders were illegally riding on 500+ acres that they were not suppose utilize. However, in the USFS experience, they state that it usually requires a minimum of two full-time law enforcement OHV Rangers. Therefore, she asked Ms. Marlow to explain how the caretaker could provide these functions that in the past has required two full-time personnel. Ms. Marlow explained that the Dredge Lake site is much larger than the proposed OHV Park. The Dredge Lake area also has multiple access points, with a porous border. The Fish Creek Quarry has one access that would contain a gate, with a caretaker residing nearby. The limit, size, and configuration of the proposed project, including only one access point would lead to more control at this site, versus at other areas such as Dredge Lake. Regarding enforcement powers, she explained that this past Monday she had a person evicted from the Thane Campground. The caretaker advised her that there was a problem, whereby she contacted the Juneau Police Department (JPD) whom assisted her in issuing a letter of trespass and an eviction notice, and then they escorted the person off the property. She informed the person if they returned that they would be trespassing and would be arrested. She assumes they would utilize this same model at the OHV Park. If the caretaker has a problem with an OHV user not operating under the rules, or is operating in a threatening manner to others, the caretaker would be allowed to approach that person with a letter of trespass, and remove them from the property. If this does not go well, they would have the JPD at their service just as she did. She noted that this is an extreme scenario, and they have also discussed other possibilities. However, they first need to find out what the conditions of the permit are in order to figure out how they could develop a program that supports those regulations. If there are other conditions that are problematic, her line of thinking is that the riders would sign a user agreement stipulating the terms and rules of operation. They would also be provided a sticker for each OHV, including agreeing to random testing of their vehicle. These types of concerns would later be discussed with the CBJ Risk Manager and the CBJ Law Department. However, it is problematic to present them with scenarios and ask them to write up terms and conditions when she does not know what the permit rules are.

Mr. Miller said the hours of operation from 8:00 a.m. to 10:00 p.m., seven days per week, is very liberal for the users. He realizes that they are probably requesting the maximum, hoping to get as many hours as possible. However, he asked what the minimum acceptable hours would be for the users as a compromise to the neighborhood, and if they would also consider omitting a day or two of during the week. Additionally, he asked that they keep in mind that one of the nearby residents pointed out that when the pit operations are underway, they have a cut off time at 4:00 p.m. Ms. Marlow said she has considered different scenarios regarding seasonal operations. However, she agreed that they did ask for as much hours of operations in the permit as they could get, thinking that they were going to start with less hours, and then work into more hours, which she feels is the method that the OHV Park operations would be most successful. She doubts that they would see all of the permit conditions being implemented on day one of operations, and instead they intend to phase these in. She has been somewhat concerned regarding wintertime operations, including the caretaker in residence. She noted that the caretaker would be residing in an RV trailer, and supplying their own water and heat. The plow truck usually plows Fish Creek Road several times per day during the winter, so they would be required to remove plowed berms in order to allow people in/out of the OHV Park. This means

that more likely than not the most cost effective method is to have the caretaker install a snow removal blade on their truck, which is a rather specific requirement of a caretaker. Therefore, in responding to Mr. Miller's question, she would lean more towards seasonal consideration, rather than days or hours of operation. She said a question was posed earlier by a Commissioner to lessen the hours of operations, and the preference stated was to deduct them in the morning, rather than the evening. In terms of days of operation, she referred to Eaglecrest that closes on Tuesdays and Wednesdays, which allows them to conduct maintenance. Therefore, she said the three ideas are to operate the OHV Park on a seasonal basis, shorten the morning hours of operation, and possibly close down on Tuesdays and Wednesdays.

Mr. Rue asked what type of sound meters, and how many do they intend to utilize – the \$80 version, or the \$14,000 version. Ms. Marlow said she is considering the \$800 to \$1,000 versions, although she intends to follow up with Mr. Minor's recommendations for the best equipment, and the number of monitors to utilize. She is thinking that they might utilize two or three sound meters; one for the caretaker for use at any given time and for stationary testing, and one or two to be placed at property line boundary areas of the OHV Park.

BREAK: 10:00 to 10:09 p.m.

Mr. Tipps offered to answer questions of the Commission. Mr. Watson asked if the applicants were in the process of developing a plan of action for oversight of the proposed OHV Park. Mr. Tipps stated that they completed a mission statement for RRAI, and a list of actions they plan to implement, which includes safety training. However, since they would not have control over the OHV Park, they are unable to limit it to club members only, therefore, RRAI is not able to provide liability insurance unless it is club members only. He noted that there are many options with other publicly owned sites, although not with this CBJ site.

Public testimony was closed.

USE2007-00038

Staff recommendation: that the Planning Commission adopt the Director's analysis and findings and approve the requested Conditional Use permit as outlined in the initial staff report, dated February 21, 2008, staff's memorandums, dated May 30, 2008, and the memorandum, dated June 20, 2008. The permit would allow the development of an OHV Park at the Lower Fish Creek Quarry, as outlined in the following conditions:

1. The applicant shall submit all signs proposed by the development to CDD staff for review and approval, per CBJ §49.45.
2. Prior to issuance of a Grading permit, the applicant shall prepare a detailed site-design and grading plan to be reviewed and approved by the CBJ Engineering Department. It will include the following elements:
 - a. All trail, parking lot and access drainage shall be directed into approved drainage ways.
 - b. All drainage from runoff and unpaved areas (including seeps from cut slopes) shall be directed into an approved drainage system.

3. The grading plan for the site development shall incorporate Best Management Practices to prevent sediment from being eroded from the site and being deposited into nearby wetlands and creeks.
4. Prior to issuance of any Grading permit, the applicant shall submit copies of the ACOE delineation and documentation of any required fill permits to the Community Development Department; and if the ACOE determines that additional wetlands are located on the property and requires the site plan to be modified, the applicant will have to reapply to the Planning Commission for approval to modify the project.
5. The applicant shall limit the hours of operation between 8am and 10pm.
- ~~6. The proposed project shall not generate sound levels exceeding 55 dBA at the project's property line during the day or 45 dBA at night. The night is defined as the hours between 7pm and 7am.~~
6. The proposed project shall not generate sound levels exceeding 45 dBA at the property line.
7. The applicant shall maintain a 650-foot noise abatement buffer between the riding area and the adjacent residential property lines.
8. The applicant shall assure that the following signage will be posted in the parking lot clearly stating the rules of the parking lot and the trail:
 - c. This Parking Facility is for OHV trail users only.
 - d. Motorized use of the parking lot and trails are only allowed when the trailhead signs indicate that the park is open. OHV's are not allowed on the drive access road or Fish Creek Rd.
 - e. OHV's are not allowed on Fish Creek Rd.
 - f. OHV's are not allowed on wetlands adjacent to or within the OHV Park.
 - g. Motorized vehicles are required to have factory-installed mufflers.
 - h. OHV's use of the parking lot is for loading/unloading and direct trail access only.
 - i. The access drive and the parking lot have a speed limit of 20 miles per hour.
9. A caretaker shall be present at the OHV Park at all-times during operation. The caretaker shall enforce the conditions of this Conditional Use permit and all other applicable CBJ regulations, as well as coordinate annual or semi-annual inspection of the Park. If a caretaker is not possible, the applicant shall reapply to the Planning Commission to modify the project.
10. No OHV's shall be allowed to operate within the park during blasting and extraction operations.
11. The OHV Park shall be for the strict use of All-Terrain Vehicles (ATV) and Off-Highway Motorcycles (OHM).
12. If snowmobile use would be proposed for this facility, the applicant will have to reapply to the Planning Commission for approval to modify the project.
13. The applicant shall be responsible for submittal of an annual report to Community Development Department beginning with completion of the first season of operation demonstrating that all conditions and aspects of the proposed development are fully implemented. The caretaker shall provide a briefing on the report to the CDD and Lands Division Directors or their designees. Subsequent reporting requirements will be identified through consultation between the CBJ Community Development Department and CBJ Lands Department, but may include technical participation from other agencies.

The applicant shall also maintain a stationary noise-testing log, which must be reported to Community Development Department in conjunction with the annual report.

14. Prior to issuance of the Grading permit, the applicant shall submit a secure gate design to be reviewed and approved by the CBJ Engineering Department.
15. Upon approval of the Grading permit for the subject development, all authorization granted under this Conditional Use permit (USE2007-00038) shall be limited to a five-year period.

Wetland Review Board Advisory Conditions

1. The 100-foot protective corridor shall be maintained to Nine Mile Creek.
2. The park shall post wetland signage and provide wetland educational materials with the user permit.
3. A 25-foot buffer shall be maintained between the OHV trail and any adjacent wetland, except at the wetland crossings indicated in the site plan.
4. The construction of the parking lot shall be sloped to a central collection point where runoff can be treated with a catch basin or vegetated swale before entering Nine Mile Creek.

Commission action

MOTION: *by Mr. Rue, that the Planning Commission adopts the Director's analysis and findings and approves the requested Conditional Use permit as outlined in the initial staff report, dated February 21, 2008, staff's memorandum, dated May 30, 2008, and the memorandum dated June 20, 2008. The permit allows the development of an OHV Park at the Lower Fish Creek Quarry per the conditions outlined by staff, as modified.*

Mr. Rue spoke against the motion. He noted that the PC has to revise some of the Findings in several of staff's memorandums. Regarding this CUP, his primary concern is the CUP would be out of harmony with the neighborhood, as this project is currently proposed. By the time the PC makes this project harmonious with the neighborhood, he is not sure the OHV Park would be a good place for OHV users to ride. Mr. Satre referred to the staff's Analysis, which states, "To determine whether the proposed project will substantially decrease property value or not conform to the neighborhood harmony." Mr. Rue further explained that he believes that the neighbors would hear noise, whereby people perceive noise differently, which would diminish the value of their property, making their lives unharmonious. Additionally, he believes there would be safety issues of pedestrian walking on Fish Creek Road and North Douglas Highway, and they are requesting hours of operation until 10:00 p.m. so trucks and trailers would be traveling up/down those roadways at night. He also believes the issue of property values decreasing is real, including the CBJ Assessor stating that if what they have today is going to change that it would affect property values, which he believes the addition of OHV noise would.

Mr. Scarano stated that he was not present during the testimony at previously PC hearing because he was at Goldbelt having discussions with Mr. Tipps and RRAI in relation to the property Goldbelt owns. At the time, they were not sufficiently clear that Goldbelt had reached the point where they could not move forward, although Goldbelt was later presented with negative tax implications that would affect its shareholders. He said they found the RRAI group to be very willing to work out reasonable accommodations. In fact, they felt that since it was going to happen anyway why not let them do so at Echo Cove because they would be motivated

to self-police themselves if they wanted a place to ride. He said otherwise, the area might be taken away, noting that there are limited opportunities in this town for the OHV riders to ride. However, he agrees that this case in front of the PC is a very difficult topic. Conversely, the landowners in attendance voiced very real concerns as well. He said the neighbors recreate and walk in the area, and have homes close to the vicinity of the proposed park site as well. He said any impact to property values would lessen a homeowner's ability to sell that home. He was honestly hoping for some type of divine intervention so he could support this project. He appreciates the testimony of Mr. Minor, which was very well done. He cannot imagine Mr. Minor wanting to damage his reputation on a project of this size, as compared to potential projects such as the Pebble Mine, which is how he makes his living. On the other hand, an individual testified that he was in his residence and the OHVs were riding in the nearby area and he heard it, and he also believes that this individual is not motivated to tell the PC anything different than what he heard. Somewhere in the middle is the reality; however, issues related to neighborhood harmony is what he is struggling with, as he is uncomfortable that this project would negatively affect the neighbors. He said he would go home tonight and not be able to sleep because it would bother him no matter which way the PC decides this case. He was hopeful that the PC would be able to come to some reasonable medium; however, he does not believe that is going to happen tonight.

Mr. Satre stated that this body has discussed many times how problematic quantifying neighborhood harmony is, and the method in which the PC has to balance such issues. He stated that North Douglas is a special place, and the folks that reside in the area love their neighborhood, which was selected for certain reasons. However, there is a large amount of public land in North Douglas, and just because they happen to reside next to it does not mean that it necessarily is their private playground. He said there are folks that view OHV use as being incompatible to their neighborhood, and he does not believe that there are any conditions that the PC could place on this permit that would make this OHV Park harmonious. He stated that some residents expressed a willingness to potentially let a park such as this exist with fairly strict conditions, although they have also expressed quite clearly that this project is not harmonious, and would rather see it placed somewhere else. The problem with the CBJ is that there is nowhere else. Therefore, the PC is not only making the decision on neighborhood harmony in North Douglas, but the ability of user groups like OHV riders to exist at all within this city. He believes public lands are the public's lands, and when a user group comes forward, the PC should provide them every right to utilize that land according to CBJ laws. He certainly feels that the PC has provided due process regarding this case. He has never liked the neighborhood harmony criteria; however, in this case, there are more arguments to utilize it, versus any arguments against doing so. He noted that there are OHV users that reside in North Douglas that are against this OHV Park being adjacent to their residences, even with very strict dBA noise levels that Mr. Minor proposed. He thanked Mr. Minor for presenting his proposal, which would assist the PC in making a decision on this project, as well as future projects. However, he does not believe they have convinced the neighborhood, and they are having a hard time in terms of this body guaranteeing neighborhood harmony in the North Douglas area. He stated that he reluctantly agrees with Mr. Rue; therefore, speaks against this motion.

Mr. Miller stated that he has only been on the PC for a year and a half, and this is definitely the most difficult application he has reviewed. His largest problem is that if this permit is denied,

there would soon be a new CBJ Noise Ordinance forthcoming. He suspects that the ordinance would state 55 dBAs at nighttime and 65 to 75 dBAs during the daytime, and it would apply to every neighborhood in the entire CBJ; however, this permit is proposing a dBA limit of 45. He is also troubled with the fact that the OHV riders are local people, just like the people that utilize the community ice arena and swimming pool, some of whom are boaters as well. Not everyone in town participates in every one of these activities, but this OHV user group is not being provided this same opportunity. He believes that the OHV riders have to address the safety issues with their constituency if they wish to realize a facility such as this. Conversely, many issues were raised tonight regarding noise impacts to the nearby neighborhood. He previously resided and worked in the a bush in Alaska for 11 years where OHVs were prevalent, although in between those jobs he had a cabin in Petersburg, and listened to what he termed the 'Mosquito Fleet' noise all day and night from boats that were constantly coming and going. He said it was that annoying steady drone of that Mosquito Fleet, which is similar to the affect this OHV Park would have on the neighbors. He also resided in Fairbanks for eight years where the actual mosquitoes did not necessarily bother him, but they do bother many other people. He said he does not know how he is going to vote.

Mr. Watson stated that he is struggling with the same issues as his fellow Commissioners. In terms of real estate values, he referred to the CBJ Assessor's e-mail, dated February 22, 2008, in the March 18, 2008 packet, which states, "Based on my research and some additional information from our meeting today, I do not anticipate any adverse impact in surrounding property values as a result of the Fish Creek OHV Park." He tends to believe Mr. Minor's statement that the proposed project would not generate sound levels exceeding 45 dBAs at the property line. He is leaning towards moving forward with this project, but based upon scientific research, the PC has concerns about the hours of operation, which has to be addressed in order to be in harmony with the neighborhood. He had the opportunity to be present at Echo Cove on a Saturday and Sunday afternoon when he witnessed OHV riding activities taking place. However, he fails to see why they are requesting to do so at this location until 10:00 p.m. If this project works, and he believes it could, it should not be at the risk of those late hours with possible unsupervised activities, which would in effect shut down this entire park.

Ms. Gladziszewski said she has served on the PC for many years, and this is probably the most difficult case in all those years. In part, it is not a standard type of project that the PC is able to place conditions on and still feel comfortable about doing so. This is an activity that would take place over many years that is dependent on enforcement of conditions, which the PC does not have control over, and with a group of users that have a track record of not being allowed in areas where they used to be allowed makes it complicated. She also believes the noise consultant stating that the proposed project would not generate sound levels exceeding 45 dBA. If all of this is true, including the CBJ Assessor's statement, stating that "If the noise is not any more..." but she noted that there are many "ifs" in her statement, including the noise consultant's stating that "if" all these assumptions are true then the noise level would remain under 45 dBAs. However, she is not convinced that all these "ifs" are true. Therefore, she tends to agree with Mr. Rue. As a body, the Commissioners are inclined to attempt to work out any issues together, which she feels they are good at while attempting to make positive decisions on cases. However, she believes that the PC is not able to craft a set of conditions that would be acceptable to both the OHV riders and the neighbors. She believes the OHV riders deserve a place to ride

successfully. That said, she does not foresee how this 25-acre park would work, as they would only be able to drive around in circles. She also understands that this park would be better than nothing; however, it needs to be located away from residences. She is worried that this proposal might be a setup for failure, considering all the enforcement problems many of the OHV riders created in previous areas in Juneau, so they need a management plan, which is very thin at this point. There is a long list of unacceptable behavior that needs to be addressed in order to provide the neighbors confidence. However, instead, what they have right now is the promise that the applicants would ensure the conditions would be implemented. Even so, with this project being so close to the neighborhood, she is not convinced that is enough.

Mr. Satre said he believes that too often in cases such as this where he really wants it to work, although it is difficult for the PC to find a solution that would allow this body to permit this type of activity that would work for both parties. However, he believes also in cases such as this that it is possible that the OHV riders are feeling as though they are second-class citizens, which is not true. He believes these folks are not intentionally tearing locations up, and instead have been working in good faith with the CBJ and other entities. These are the same folks that utilize other community CBJ facilities, and he wants them to be able to work with the CBJ, or the USFS, or some other entity to locate a place to ride. He has attempted very hard to come to a point where the PC could make this happen, but what the PC has in front them, he is not able to get there even though he wants to. He commends the OHV riders for what they have done with the CBJ in their attempt to find a location to ride.

FRIENDLY AMENDMENT: *by Mr. Miller, that the hours be reduced from 8:00 a.m. to 8:00 p.m. Mondays, Thursdays, Fridays, and Saturdays, and from 10:00 a.m. to 5:00 p.m. on Sundays, with the OHV Park closed on Tuesdays and Wednesdays. The sound level would not exceed 45 dBAs at the property line, or if the future CBJ Noise Ordinance is lower, the more stringent dBA limit would apply.*

Mr. Rue accepted Mr. Miller's friendly amendment.

Mr. Satre said supposedly if the CBJ Noise Ordinance stated different dBA levels, versus what this condition states of 45 dBA, he asked if this condition would default to the new ordinance. Mr. Pernula replied that if the permit dBA limit were more restrictive, it would apply.

FRIENDLY AMENDMENT: *by Ms. Gladziszewski, that onsite noise testing of all OHVs be conducted to assure that all vehicles meet the project criteria of 96 dBAs at 20 inches from the tailpipe, utilizing a 45-degree angle while testing.*

Mr. Rue accepted Ms. Gladziszewski's friendly amendment.

Roll call vote

Ayes: Watson
Nays: Scarano, Rue, Satre, Miller, Gladziszewski
Recused: Bruce

Motion fails: 1:5, and USE2007-00038 was denied.

Chair Gladziszewski thanked all those that attended.

Mr. Pernula noted that staff would revise the Findings based upon the testimony that was provided. Chair Gladziszewski stated that the Findings in all the all of staff's memorandums are now dissimilar, which needs to be revised. Mr. Pernula offered to have staff draft revised Findings, and provide them to the PC at the next meeting.

USE2008-00006

Staff recommendation: that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of a recreational vehicle, fifth-wheel trailer, or mobile home to be used as a caretaker residence at the Fish Creek OHV Park. The approval is subject to the following conditions:

1. Prior to the issuance of a grading permit for the development of the pad, which the RV will be placed, the applicant shall submit a signed contract agreement that will provide a port-a-potty or pumping service to the RV, which will include regular cleaning and emptying.
2. The applicant shall apply for and obtain a Building permit for setting up the mobile home to be utilized as a caretaker residence, per CBJ§49.65.300 *Mobil Homes on Individual Lots*.

Commission action

MOTION: by Mr. Rue. that the Planning Commission adopts the Director's analysis and findings and grants the requested Conditional Use permit. The permit allows the development of a recreational vehicle, fifth-wheel trailer, or mobile home to be used as a caretaker residence at the Fish Creek OHV Park. The approval is subject to the conditions outlined by staff.

Mr. Rue spoke against the motion, stating that the PC just voted against the related use, USE2007-00038, for an OHV Park, so it would not be consistent to have a caretaker facility at the site.

Roll call vote

Ayes:

Nays: Rue, Satre, Miller, Watson, Scarano, Gladziszewski

Recused: Bruce

Motion fails: 0:6, and USE2008-00006 was denied.

X. BOARD OF ADJUSTMENT - None

XI. OTHER BUSINESS - None

XII. DIRECTOR'S REPORT

Cottage Housing appeal update

Mr. Pernula reported the Assembly recently sustained the PC decision on the Heritage Hills cottage housing; therefore, the appeal was not successful. Chair Gladziszewski requested staff to provide the outcome of the appeal to the PC.

Title 49 review update

Chair Gladziszewski asked for a status update on the Title 49 review process. Mr. Pernula replied that staff has a lengthy ordinance that would be presented to the PC dealing with the development standards, including requirements, and then following are the subdivision regulations.

XIII. REPORT OF REGULAR AND SPECIAL COMMITTEES

Mr. Scarano reported that instead of reporting on the actions taken at the April 14, 2008 Public Works and Facilities Committee, he had staff provide formalized minutes in the packet as an informational item.

XIV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Rue stated that he should have stated these comments earlier in the hearing, although he encourages the CBJ to continue to search for a better property site in the borough that could accommodate an OHV Park facility. He believes west of Lemon Creek might be a suitable site for this type of activity. He hopes the CBJ would diligently review the issues that prevented this proposal from happening, in hopes of proactively obtaining workable solutions.

Mr. Watson recalls the PC requesting regulations pertaining to this case, although the CBJ Attorney stated that their office has been so busy that this never happened. He understands that the CBJ does not currently have approved OHV regulations. Therefore, this puts the burden on the folks that are organized and responsible; however, there is no consistent enforcement because of this, although the CBJ truly needs to take a closer look at doing so. He noted that the Municipality of Anchorage developed a good set of regulations, and suspects that several other cities have done the same. Ms. Gladziszewski said she completely agrees. Mr. Pernula stated this might be worthwhile, which is truly a planning task. However, the CDD staff is so far behind in many tasks as well. He noted that they still have much of Title 49 to review, the Draft Comprehensive Plan update, and the Historic District design standards, to mention a few. He stated that realistically they have quite a lot of work ahead of them, which he anticipates taking over a year or more to complete. He would like go through a priority-setting process with the PC within the next couple of months. Mr. Watson suggested that it probably would be worth considering hiring a bonifide organization to work with the RRAI. He said there are organizations within the community that have noise and sound issues, i.e., the Juneau Gun Club that are strictly enforced who have a set of rules they are required to adhere to, and are constantly looking at ways to improve them, and they have met with CDD staff as well.

XV. ADJOURNMENT

MOTION: *by Mr. Scarano, to adjourn the meeting.*

There being no objection, it was so ordered, and the meeting adjourned at 10:59 p.m.