

Assembly to reopen debate over mine law

By CHUCK KLEESCHULTE

THE JUNEAU EMPIRE

The Juneau City-Borough Assembly Monday night informally decided to reopen debate on how much power the borough should have to regulate new mining activity in the borough.

The assembly, at a committee of the whole session, expressed support for proposals by Mayor Bruce Botelho to reopen the municipality's mining ordinance for debate and to possibly beef up sections of the ordinance concerning the borough's authority to weigh the socio-economic effects of mining before deciding whether to grant a conditional use-mining permit, needed before large-scale mining activity can occur.

City Manager Kevin Ritchie said today that municipal staff was directed by the assembly to consider three changes to the town's 1986 mining ordinance, changes to make it clear that the borough can withhold approval of a large-mine permit, until a mining company submits all the socio-economic impact data the municipality might want.

Under the current ordinance the borough can ask a company to do more study of the effects of a large mine on the town's population and the borough's resulting need for social services, but can't withhold processing of a permit just because the data is not forthcoming. By the change the data would become an essential part of the permit process.

Botelho also suggested adding socio-economic issues to the list of areas that the borough can require a mine developer to offset. The proposal opens up the possibility that the language change would give the assembly the power to require mining companies to pay for additionally needed "infrastructure" improvements, such as larger schools, a water system expansion, more softball fields, or the added cost of mental health and social service programs in order to win a conditional use permit for a project.

Gabrielle LaRoche, the Department of Community Development planner who is handling mining issues, said today that the borough can require a mine to make physical road improvements required by a development, or environmental improvements prompted by establishment of a mine. But under the compromise reached with mining interests in 1985-86 when the new mining ordinance was passed, firms are protected from having to contribute to socio-economic improvements.

"There is going to have to be some discussion to define exactly what socio-economic improvements the ordinance change would give staff the right to require a mining company to make. It is not a cut-and-dried issue," said LaRoche.

The assembly Monday asked staff to draft up the proposed changes and to send them to the Juneau Planning Commission for review before they would end up again at the assembly level for debate.

The whole issue of how much power the borough has to require development to pay for costs connected with it was one of the more controversial issues that arose during debate over drafting of a mining ordinance. The issue of revising the ordinance arises now because of efforts by Echo Bay Mines to decide whether to reopen the old A-J gold mine.

Ritchie said staff was given no time table for drafting the changes to the mining ordinance and introducing them for formal debate. The discussion on changes to the ordinance comes as a 30-member mayoral committee continues its review of the impacts on the municipality of Echo Bay's proposal to spend at least \$170 million to reopen the A-J.

The mayor's so-called scoping committee will consider in detail the alternatives for tailings disposal.

Earthquake own 49 fee

By LARRY PERSILY

THE ASSOCIATED PRESS

A few miles across the road from the Alyeska Ski Resort near Anchorage is a 7.4-acre parcel with 6,579 co-owners, none of whom is likely to ever profit from the investment.

The mini-land barons bought their 49-square-foot lots 25 years ago as part of a campaign to raise money for victims of Alaska's 1964 earthquake.

Occasionally a certificate of ownership is found hidden in someone's attic or a family scrapbook. State officials receive a letter once every two or three years asking about the unusual certificates, said Odette Foster, an investigator with the state ombudsman's office in Juneau.

Eloise Schmidt of Pueblo, Colo., found one of the land certificates among her late mother's belongings and wrote to the 25-year-old address of the Rebuild Alaska Committee.

The address of the long-disbanded committee belongs to a Juneau apartment building. The building manager had never heard of the committee and forwarded Schmidt's letter to the ombudsman.

"When I came across this, I got curious about it," Schmidt said in a telephone interview. "I vaguely remember my mother saying she was going to send in some money

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MEMORANDUM

THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

Ad Hoc

TO: Planning Commission

DATE: March 24, 1986

FILE NO. 8530

SUBJECT: Mining Ordinance

Gabrielle La Roche
FROM: Planner II

By resolution adopted January 7, 1985, the City and Borough Assembly established an Ad Hoc Citizen's Advisory Committee to provide recommendations on the adoption of a Comprehensive Mining Ordinance for the City and Borough of Juneau (CBJ). The Assembly charged the committee "to hold at least one public hearing after which it shall formulate and recommend to the Assembly general mining ordinance policies that should be implemented in the mining ordinance. The committee shall review proposals made by the consultant and shall make recommendations on the ordinance to the Planning Commission and to the Assembly."

The Mining Advisory Committee (Committee) met regularly for eleven months, during which the committee held fifteen meetings, four of which were public hearings. After the Committee held its first two public hearings, it identified and approved a set of specific mining ordinance policies and recommendations. These policy recommendations were intended to guide the development of a draft comprehensive mining ordinance by the consultant (Sherman & Howard of Denver, Colorado) which had been retained to draft the proposed ordinance in conjunction with the Committee's work. The Committee's policies and recommendations were transmitted to the consultant, who then prepared a first draft mining ordinance for the Committee to review and approve.

During the public Committee hearings and meetings various issues of concern and benefits were identified by members of the community, mining industry, Forest Service and the Committee. These issues include; protection of private property rights; avoidance of duplication of federal and state permitting services and bonding requirements; water quality and quantity protection; air quality protection; subsidence and landslides induced by mining operations; blasting hazards; noise levels; traffic congestion and safety in urban areas; costs to the CBJ for mining infrastructure needs; subsidies for socioeconomic impacts; prepayment of taxes ; visual esthetics; excluding federal and state lands from the ordinance; excluding small mines from the ordinance; environmental protection and reclamation; impacts to fisheries and habitat; loss of recreation areas; local hire; confidentiality of proprietary mining information; unnecessary or excessive environmental studies; historical site protection; and altering the character of the community.

In the second phase of the Committee's deliberations, it reviewed numerous drafts of the proposed Comprehensive Mining Ordinance, each of which was prepared by the consultant at the committee's direction. The Committee also continued to actively solicit input from the public and the mining industry at every point along the way. On February 5, 1986, the Mining Advisory Committee adopted the final draft of the proposed Mining Ordinance. The final draft ordinance contains compromises in a number of areas where conflicting positions were presented and compromises were reached. It is the result of extensive efforts in

obtaining input and achieving compromise on issues in which positions, diametrically opposed, were held by members of the Committee and the general public.

I. Synopsis of Draft Mining Ordinance

The proposed Mining Ordinance has as its purpose the development of a safe, healthy and environmentally sound mining industry while protecting the overall interest of public health, safety and general welfare and minimizing the surface effects of mining. The ordinance creates a Mining and Exploration Surface Activities Exclusion District (MESAED) Map outside of which mining and exploration may be conducted in accordance with the terms of the ordinance. The ordinance regulates only surface use; it does not regulate subsurface use for mining purposes either inside or outside the District except that subsidence within the District is prohibited.

Prospecting activities are not subject to any requirements. **Exploration** activities are subject to the Ordinance only in that an operator must notify the City and Borough of its intent to conduct exploration activities and submit a financial warranty to cover the costs of reclamation after the exploration is complete.

Operators of **small mines**, defined as those disturbing less than 20 acres of surface area or underground mines which do not disturb 20 acres of surface and have less than 50 employees, must obtain a permit before commencing mining operations. The issuance of a permit will be subject to Planning Commission approval as part of the Conditional Use permit process in now in effect.

Operators of **large mines** must go through a process similar to that for small mines. However, available socio-economic information must be provided to assess the impacts of the operation on local conditions. Additionally, the processing fee may be increased to cover a share of the expenses incurred in reviewing the application. The timing of the review process is extended but the Conditional Use permit process is in force.

II. Areas of Compromise

One issue which was presented throughout drafting process was the question of the **jurisdiction** of the CBJ to regulate operations on lands which are subject to regulation by other agencies. This issue was focused on the United States Forest Service (USFS) lands on which agencies/mining activities might take place. This issue was accentuated by the United States Court of Appeals for the Ninth Circuit decision on the Granite Rock Co. v. California Coastal Commission case. In that case the court ruled that the State of California could not impose its coastal zone management program on USFS lands because those lands are subject to the USFS regulatory program. The State of California has filed a notice of intent to appeal, but it will be a long time before the decision is

final. Two options were discussed: preparing the ordinance so that it makes no distinction between USFS lands and other lands and eliminating USFS lands from the ordinance. With the former option, if the Ninth Circuit decision is upheld it could lead to a determination that the entire ordinance is invalid. In the latter case, if the USFS program is found not to preempt CBJ jurisdiction there would be no coverage of USFS lands by the ordinance. The compromise which was reached is the severability clause which retains flexibility for the CBJ.

Defining the boundaries of the MESAED was an issue for which the Committee sought compromise. Because it was seen as a rezoning matter related to the land use planning process and not to the general structure of the ordinance, the Committee decided to defer to the Planning Commission and Assembly and simply offer guidelines for its drafting. It is the Committee's view that the MESAED should include the developed, urban areas within the CBJ and that, any buffer area should be included within the District for ease of administration.

The degree of regulation imposed on various levels of exploration and mining activity caused much deliberation. The suggestions ranged from a requirement for a permit before prospecting activities commenced to a much less stringent requirement that only mining activities be regulated. The compromise is the resultant levels of exploration and mining, as defined in the ordinance, and associated degree of regulation.

The Committee recognized that there might be instances in which processing Fees for large mine permits might not be sufficient to cover the cost to the City in reviewing the application. Solutions ranged from requiring the applicant to bear the entire cost of such a review, to requiring the CBJ to bear all costs. The compromise requires fees in excess of \$750 to be shared by the CBJ and the applicant.

It is recognized that the sudden addition of any new industrial enterprise will cause impacts, both favorable and unfavorable on the socio-economic structure. A number of approaches were considered, ranging from prepayment of taxes to complete elimination of all socio-economic considerations. The compromise requires the large mine to submit information which is readily available to the applicant to address these concerns.

Proposals for standards for operators ranged from "operations shall be conducted in accordance with applicable federal and state environmental standards" to very detailed standards relating to a number of environmental concerns other than those imposed by other agencies. The standards contained in section G of the ordinance are a compromise, deferring for the most part to those standards imposed by other agencies while highlighting areas of specific concern to the community.

A number of proposals were received regarding the size of civil penalties. These ranged from \$25 per violation for minor violations

and \$500 per day minimum for major violation to no penalty at all. The compromise places an upper limit on the amount levied.

Staff Recommendations

The final draft of the proposed mining ordinance is the result of a lengthy process of public participation and input through public hearings and numerous meetings. Staff urges the Commission to recommend the 2/86 draft of the proposed comprehensive mining ordinance to the Assembly because it represents a compromise on issues in which different positions were genuinely held by members of the Committee as well as the general public.

In the course of its deliberations the Committee identified the MESAED map as an issue which requires additional attention by the Planning Commission and the Assembly. Staff has prepared a draft MESAED map in accordance with the Committees recommendations. Every effort has been made to take into account current zoning, current land use, comprehensive plan designations, and proposed land use ordinance. The location and width of buffer zones require additional Commission attention.

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