From: Nicholas Szatkowski
To: Xi Cui
Subject: Nicholas Szatkowski"s comments on Sundberg"s Feb 2014 heliport CUP application.
Date: Wednesday, February 12, 2014 4:17:02 PM

Hello Haines Planning and Zoning Commissioners-

Firstly, I would like to thank you all for your service to our community. I would also like to ask for your attention on an issue that has potentially major impacts on the well-being of me, my family, and my neighbors: Please uphold Borough law, in accordance with our Borough lawyer's opinion, and don't open approve the Conditional Use Permit for a heliport at Scott Sundberg's 26-mile property. My reasoning is as follows:

In 2012, the Haines Borough lawyer instructed our assembly to NOT grant a CUP applied for by the same individual for this same activity, at essentially the same location. The legal opinion of our lawyer was that, because the provisions for granting a CUP are specifically laid out in our municipal law, our Borough bodies (i.e., P&Z Commission and Borough Assembly) must make their decisions on the basis of that law; in the case of a heliport at the proposed location, the law indicates that a CUP should not be granted.

As the principal planning body in our municipality, it is crucial for the P&Z Commission to take leadership in this contentious issue, and *plan* where an industrial use such as a heliport should best be located. The purpose of municipal planning is expressly to avoid conflicts such as the one generated by this proposal to situate a heliport adjacent to a cluster of residential properties. An issue such as this is something that has numerous, large ramifications for future development, as well as quality of life in our valley. Significant effort has already been expended by both the borough government and the local citizenry to determine where heliports for heliskiing should best be located. If such developments are granted on a piecemeal basis, as each private company decides to create their own individual heliport, it will go against good and sensible planning. The interests of all parties in the Haines Borough will best be served by undertaking a more comprehensive process that will look to best serve the interests of all, rather than one individual's private development vision.

Please, good commissioners, act in accordance with our borough lawyer's legal opinion. Do not grant this current heliport CUP, and instead look to resolve this potentially divisive issue in a way that creates more harmony and less conflict and dissatisfaction, and best serves the interests of the greatest number.

The Haines Planning and Zoning Commission is given very clear direction on the reguirements for granting a Conditional Use Permit in section 18.50.040 of the Haines Borough Code. This section of code states that in order to approve a CUP, the commission "must find that each of the following requirements is met", and then lists 8 specific requirements. At least 4 of the 8 requirements are not met by the applicant. The first 2 of these requirements are also in agreement with a substantial body of case law demonstrating property rights that have been the basis for a number of successful lawsuits. And so the commission is encouraged to act legally and correctly in not granting the CUP.

Following are explanations for why SEABA's CUP application failed to meet 4 of the necessary 8 requirements:

Requirement 1 states "The use is so located on the site as to avoid undue noise and other nuisances and dangers".

There is simply no way that this requirement can be met by a heliport adjacent to residential property. In 2012, 2 of the 3 commissioners who voted in favor of granting the heliport CUP stated, in reference to this requirement, that they believed sacrifices must be made in order to support the profitability of private businesses. Any individual citizen has a right to this belief. But the HBC says that the commission *must find that each of the requirements is met.* It is not within the authority of the commissioners to decide that some of these CUP requirements should, or can, be sacrificed.

Moving the proposed landing site for the heliport approximately 100 feet doesn't significantly change the "undue noise and other nuisances and dangers" that would impact the surrounding community. It is possible that the last 30-50 feet of helicopter touchdown would be slightly muffled by a terrain feature. But most of the duration and spatial extent of the sound impact would occur when helicopters are above 50 feet elevation. During the 04 December 2013 "decibel testing", the sound of the helicopter approaching the area--*before it made its landing approach to the Sundberg property*--was loud enough for my 2-year old son to jump up and ask, wide-eyed, "What is it!?." The sound was approximately equal to the volume of a conversation--a mechanized, low-frequency, rhythmic and impulsive conversation--occuring *inside my home!* I looked out the front window and saw the helicopter flying at a distance of perhaps 1/3 of a mile, at an elevation of approximately 500-1000 feet, presumably approaching the area to prepare for the "decibel test." Some time later I heard it again, presumably leaving the area.

What this demonstrates is not that somebody else's decibel test is wrong or right, but rather, that the experience of sound is highly subjective. This fact has many times been acknowledged both in acoustic research and in legal decisions. The dynamics of sound waves have many different characteristics, only on of which is measured by a straight decibel test. Low-frequency sounds often have subjective impacts as much as 20dB higher than their measurement on a straight decibel scale. The propulsive nature of helicopter sound, as it literally "pushes" the air through which the sound waves travel, further increases this effect.

Even if requirement 1 weren't included specifically in the relevant section of HBC, one of the fundamental rights associated with the ownership of private property is something known in legal terms as "use and quiet enjoyment" of one's property. If any nuisance, including excessive noise, interferes with a property owner's "quiet enjoyment" they have a right to sue both the managing authority and the emitter of the nuisance. This is something that is very solidly ensconced in case law, with numerous precedents from legal suits all across the country. I submitted documentation regarding this legal issue for inclusion in the meeting packet for the 1/19/12 P&ZC at which Sundberg's first heliport CUP was considered.

<u>Requirement 2 states "The development of the use is such that the value of the adjoining property will not be significantly impaired."</u>

The following is a quote from an FAA study commissioned by the US Dept. of Commerce, entitled "Aviation Noise Effects": Studies have shown that aircraft noise does decrease the value of residential property located around airports. Although there are many socio-economical factors which must be considered because they may negatively affect property values themselves, all research conducted in this area found negative effects from aviation noise, with effects ranging from a 0.6 to 2.3 percent decrease in property value per decibel increase of cumulative noise exposure. This section reports on those studies. (section 15.1, page 100)

I recommend this study for looking further into aviation noise. It's also important to consider the specific effects of impulsive noise, and low frequency and subsonic noise, as these both have measurable effects far beyond the effects of simple measurable decibel levels. Subsonic noise has been found to vibrate building foundations, with effects equivalent to mid-frequency noises as much as 20 decibels higher.

I included excerpts from several additional studies on this topic in the 1/19/12 PC meeting packet.

<u>Requirement 4 states "The specific development scheme of the use is consistent and in harmony with the comprehensive plan and surrounding land uses."</u>

The HB Comp Plan acknowledges that this area of the borough has become predominantly residential. Local residents have expressed interest in rezoning to protect the residential/rural settlement character of the area at various times, beginning with a proposal in 1985. The version of the HB Comp Plan that was current during the last 10 years of settlement in the area stated:

> **"Borough residents generally want residential land use and neighborhoods protected from commercial and industrial activity that can bring in noise, traffic and lighting that is not compatible with a residential lifestyle. Growing neighborhoods along the Haines Highway may wish to pursue zoning**

designations that will maintain the rural residential character of their neighborhoods. The Borough intends to protect and strengthen the integrity of its residential areas, but also provide flexibility for home business and limited neighborhood commercial use, especially in outlying residential areas.

A case was made by heliport proponents that the surrounding land uses are industrial in nature, and comparable to a heliport in noise impact. This is simply false.
For example, the Woods' sawmill, located about 1 mile away on Porcupine Road, has not operated for the last couple of years. Similar in size to Buster's old sawmill, it was hardly equivalent in impact to a heliport. (I never once heard it from my property, even when outside, but SEABA's 2008 helicopter approach and landing was very loud, and shook my home).
Harmony is one the least applicable words that could be used to describe a heliport within this quiet, residential area, and so Requirement 4 is not met.

Requirement 8 states "Comments received from property owners impacted by the proposed development have been considered and given their due weight."

In 2011, 44 of 79 property owners (over 50%) in the area signed a petition opposing a heliport in the neighborhood, and supporting a rezoning to effect that purpose. This petition was submitted to the borough, along with an application to rezone the area as "rural residential". Some of these individuals have also written letters to the borough to further elaborate on their feelings on the issue. All of these statements were resubmitted to be included in the meeting packet for the 1/19/2012 P&Z Commission meeting which included Sundberg's first heliport CUP application hearing.
Aside from the SEABA owners, only 6 property owners (only 1 of whom lives on the property) had signed or written any statement in support of the heliport prior to that first meeting. One owner/resident (the Woods, owner of the formerly operating sawmill) told us verbally that they support the heliport. One other owner/resident wrote a letter emphatically opposing the heliport, but they didn't support the rezoning. Additionally, at the 1/19/2012 meeting:
7 people spoke against the CUP--6 of them owner/residents in the 26-mile area; 4 people spoke in favor of the CUP, only 1 of them an owner (and not a resident).

During the last 2 years, certainly more comments have been made by various individuals regarding ostensible pros and cons of a heliport at this location. It is now beyond my scope as a concerned resident to tally every single comment. However, it is still quite clear that a distinct majority of "comments received from property owners impacted by the proposed development" are in opposition to the heliport and CUP, and thus Requirement 8 of 18.50.040 is also not met.

Again, I ask you to please decide in accordance with the legal interests of our borough, and in the interests of positive, intelligent planning for the future of our community. Positive constructive developments, particularly in the area of eco-tourism, should not happen at the expense of adjacent residents and families. With good planning, such projects can be undertaken in ways that provide benefit without incurring such significant sacrifices for Haines residents and taxpayers.

Thank you for your time and your service,
NIcholas Szatkowski
resident landowner within 3000 feet of proposed heliport
HC 60 Box 2621
Haines, AK 99827
glaciallogic@gmail.com