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**To:** [Tom Morphet](#); [Debra Schnabel](#); [Gabe Thomas](#); [Ben AultmanMoore](#); [Kevin Forster](#); [Craig Loomis](#); [Natalie Dawson](#); [Kiersten Long](#); [Alekk Fullerton](#); [Annette Kreitzer](#)  
**Cc:** [Patty Brown](#); [Dan Schultz](#); [Eben Sargent](#); [Erika Merklin](#); [Brian Oriley](#); [Rachel Saitzyk](#)  
**Subject:** Commissioner Comments RE: CUP Appeal  
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Kiersten, can you please post this to the Borough web page? Thank you!

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April 21, 2024

Haines Borough Assembly and Mayor,

Thank you for considering my Planning Commissioner comments concerning the CUP applications #23-87 and #23-87B, for resource extraction on Lutak Road, applicants Southeast Roadbuilders and Glacier Construction.

Much of the following information is absent from or scattered throughout various meeting packets, but I believe it is important for you to see it all summarized in one place. I hope this letter serves that purpose.

In the beginning, the PC on 10/23/23 approved CUP application #23-87, and three separate citizen appeals were filed with the Borough Clerk.

At the 11/14/23 meeting, a newly-elected Assembly voted 5-1 to “rehear the Planning Commission’s granting of CUP #23-87 for resource extraction in its entirety”. The Assembly thus granted the appellants’ request for a hearing.

At the appeal hearing on 12/12/23, the Assembly identified nine shortcomings in the CUP application, and Assembly Member Schnabel moved to “remand the permit to the Planning Commission with the requirement that Southeast Road Builders resubmit the permit application with different permits for Site A and Site B...” (12/12/23 minutes). The motion passed 5-1.

The nine reasons mentioned above were included in the 12/12/23 minutes to serve as the findings of fact supporting the Assembly decision to take action on the appeal (quoted here exactly from the approved minutes):

<begin quote>

1. Two different sites presented with very different attributes—really should have been two separate applications so the criteria could be evaluated with respect to the different sites.
2. Concerns about type of rock, types of cuts to enhance safety in this geologically unstable area. Hazard area over 30% requires additional

engineering.

3. Safety concerns with respect to the proximity to the AMHS terminal.
4. Less clear on the remand justification for Site B.
5. Concern for safety during major rain events.
6. Lane closure coordination and coexistence with other existing uses.
7. Concerns about the value of the project for any bond or reclamation.
8. Concerns that the engineering and additional information should have been provided prior to the permit issuance rather than after approval.
9. This is appropriately a planning decision and the planning commission is best situated to rehear and make this decision.

<end quote>

The remand process in Assembly Member Schnabel's motion does not appear in Borough Code, but in taking this action, the Assembly was in fact ruling in the favor of the appellants and acknowledging the merits of their complaints, along with the shortcomings of the CUP permit application. The Assembly acted in good faith and was executing due process with respect to all parties.

To summarize the situation in terms that more closely follow those in the Borough Code: The Assembly found and officially recorded nine faults with CUP application #23-87, thus ruling that the previous PC was in error in its original decision to grant the permit on 10/23/23. To remedy this error, the Assembly ruled that the Planning Commission shall accept two new permit applications, one for Site A and one for Site B. These the Clerk and Planner then named #23-87A and #23-87B.

This left the original CUP #23-87 in effect until the Planning Commission hearing of the new application #23-87B on 3/14/24. The applicant elected not to submit an application for Site A (#23-87A).

At the 3/14/24 PC meeting, I made the following motion: "Vacate Conditional Use Permit #23-87 and accept in its place Conditional Use Permit application #23-87B."

I read into the record this justification:

"To acknowledge and carry out the will of the Assembly, including the Assembly's identification of at least nine shortcomings of the original permit #23-87. The Assembly moved to 'remand the permit to the Planning Commission with the requirement that Southeast Roadbuilders resubmit the permit application with different permits for Site A and Site B.' In addition to the concern about separating the two sites, the Assembly also listed in its minutes eight other concerns with CUP 23-87 that they wanted us to address. The applicant has now submitted a new permit application, and this motion vacates the original permit so that we can conduct new hearings on these new applications. It would be nonsensical to have two contradictory permits in effect for the same activity at the same time.

HBC 18.30.090 gives the Planning Commission authority to revoke a conditional use permit. In a normal event there would be a 20-day notice and a public

hearing. But, this is not the same as a typical permit revocation, because we are allowing a new permit application for the same activity to immediately take its place. The original permit 23-87 has been through three rounds of hearings already, and we are still in the hearing and appeal process, which has never ceased from the time that the appeal was filed until now. I view this motion as a housekeeping measure. The new application 23-87B differs significantly from the original. The original permit needs to be cleared out of the way, which will settle the outstanding appeals, and allow us to fairly consider the new application #23-87B on a clean slate.

And because this agenda item is confusing and was not posted clearly in the newspaper last week, I would ask that before voting on this the chair also allow the public to speak to the motion.”

Before taking a vote, PC Chair Patty Brown specifically asked the applicant’s representative, Mr. TJ Mason, if he would like to respond to this motion. Mr. Mason declined. The motion passed unanimously.

One of the appellants present at the meeting, Mr. Tim McDonough, then stood up and asked, “Does this settle the appeals?” I answered, “Yes.” If the PC had not taken this action, then the appeals may still be outstanding to this day, and the appellants denied their right to due process.

Both the applicant and the appellants were present and participated in the PC meeting on 3/14/24. Any could have protested, but all parties appeared to be satisfied with this final resolution of CUP #23-87.

The PC then conducted a brand new hearing on a new CUP application, #23-87B. I believe this hearing lasted about two hours. The Commissioners went through the usual process of hearing from the applicant and the public, and then reviewed the manager’s memo, and one-by-one considered the CUP criteria from the Code. An extremely brief summary of the results of these deliberations are included in the PC meeting minutes included in your packet.

This is the PC vote record for the eight approval criteria of HBC 18.50.040(A):

	1	2	3	4	5	6	7	8	
Brown	N	Y	Y	N	N	Y	N	Y	
Poinsette	N	Y	Y	N	N	N	N	Y	
Merklin	N	Y	Y	N	N	N	N	Y	
Saitzyk	Y	Y	Y	Y	N	Y	Y	Y	
Schultz	N	Y	Y	N	N	N	N	Y	
Sargent	Y	Y	Y	Y	N	Y	Y	Y	
Y/N	2/4	6/0	6/0	2/4	0/6	3/3	2/4	6/0	
RESULT	N	Y	Y	N	N	N	N	Y	3/5

In order for the PC to approve a CUP application, all eight criteria must each receive affirmation from the Commission. It's not optional; it's the law. As you can see, only three of the eight criteria gained sufficient votes for affirmation. And criteria number 5, "The granting of the conditional use will not be harmful to the public safety, health or welfare;" this criteria did not receive even one affirmative vote—a unanimous 'no'. For many diverse reasons that were recorded at that two-hour hearing, the Planning Commission very clearly determined that CUP application #23-87B did not fulfill the requirements of the Haines Borough Code for the granting of a conditional use permit.

I hope that I am also making the point that both the Assembly and the Planning Commission went to great lengths to ensure both due process and equality before the law, for all parties. CUP application #23-87 has been through five hearings now. Three citizen appeals were filed, heard, and settled. And many many hours have been spent deliberating over this issue--by both public officials and private citizens. Due process has been served.

Thank you all for your service to our community.

Derek Poinsette  
Deputy Chair  
Haines Borough Planning Commission