

From: Richard Clement 12/14/2023

To: Haines Borough Planning and Zoning Commissioners:

As a Haines Borough Planning and Zoning Commissioner during the October 23, 2023 meeting of that body, I read and listened to all input to the issue of Conditional Use Permit 23-87. Gershon Cohen also attended that meeting and spoke during the "Comment" portion. Here is what the minutes from that meeting list as his comment:

"Cohen – believes that the permit must be denied since there are several sites that have different functions; could have significant impact on public safety and welfare."

Gershon Cohen sent the "Request for Hearing" after the meeting; his email is listed below with my response to his statements.

Yellow highlighted text is directly from Mr. Cohen, added here for emphasis.

Italic, bolded text is my response to Mr. Cohen's statement(s) listed in statement above.

Below is Mr. Cohen's request for a hearing to review CUP 23-87 he sent to the Haines Borough:

11/7/23

To: Haines Borough Assembly and Mayor Morphet

From: Gershon Cohen

Re: Request for Hearing to Appeal CUP 23-87

[Cohen]: Dear Haines Borough Assembly

Members and Mayor Morphet, Please grant this request for a hearing to review the Planning Commission's decision of October 23rd on CUP 23-87.

Technical and procedural shortcomings should have precluded the CUP 23-87 application from being reviewed, let alone approved for the following reasons (this list is not exhaustive):

[Response]: There were no "Technical and procedural shortcomings" listed in the meeting minutes or experienced by me as a commissioner. Mr. Cohen is creating this issue for his own gain and to confuse those who did not attend. The meeting went smoothly and there were no "shortcomings".

[Cohen]: 1. The review of blasting/excavating a 30% slope "hazard area" (HBC 18.60.010 (T)) without a site-specific engineering design didn't adequately address public safety and welfare concerns (HBC 18.60.010), and

[Response]: HBC 18.60.010 (T) states: "Hazard Areas. Development which is not designed and engineered to mitigate the risk of loss of life or property is prohibited in the following hazard areas:"

“Slopes greater than 30 percent.” Is one of the conditions defining a “Hazard Area”. In Borough code. Please note what Mr. Cohen conveniently ignored the wording of Borough code, the word “Development”, which is defined by Borough code as:

- 1. Construction or reconstruction of, or addition to a structure;***
- 2. A preliminary plat, short plat, and/or final plat;***
- 3. Conduct of a home occupation;***
- 4. Change in the use of a lot, including any structure thereon;***
- 5. Installation or placement of a mobile or modular home;***
- 6. Construction or enlargement of a public or quasi-public facility or improvement;***
- 7. Dredge or fill activity in a wetland;***
- 8. Installation of a sign;***
- 9. Any site work in preparation or anticipation of the above, including clearing, leveling or filling and grading of any property;***
- 10. Erection of a fence on or near a lot line.***

[Response]: The applicant of CUP 23-87 did not identify any of the above 10 criteria defining “Development”. Mr. Cohen is incorrect in his statement, since there is no “Development” occurring on the site defined by the applicant.

[Cohen]: 2. The impacts on peak use, traffic patterns and other off-site uses of the area by commuters, tour operators and cyclists were inadequately considered (HBC 18.60.010 (E), (M), (N)), and

[Response]: All of these conditions were considered by the commissioners during discussion of the motion to approve CUP 23-87. Possibly Mr. Cohen left the meeting and did not hear the extensive discussion of these conditions, some of them were included in the motion or amendment(s) prior to the vote on the motion. Please read the permit to see these restrictions placed on the applicant. To say that these were “inadequately considered” is an opinion which Mr. Cohen is free to express.

[Cohen]: 3. A CUP should not be granted if it will create nuisance conditions (HBC 18.12.020 (B), (C)), and

[Response]: There is no Haines Borough code 18.12.020. Mr. Cohen would be well served by using a proofreader or editor to check his references. In this case, Mr. Cohen is referencing a non-existing Borough code.

[Cohen]: 4. Waterfront/Industrial zones should not allow resource extraction when the activity could compromise marine-related uses (HBC 18.70.030(A)(3)).

[Response]: Mr. Cohen’s interpretation of the description of the Waterfront Industrial Zone as listed in HBC 18.70.030(A)(3) is incorrect. There is no restriction of resource extraction listed in the definition of the Waterfront Industrial Zone. Code states: “Areas zoned as waterfront industrial should be located so that adjacent nonindustrial areas are buffered from the external effects common to heavy industry including noise, dust, vibration, glare, pollution, heavy traffic and unsightly uses or activities.”. Mr. Cohen states that this zoning “should not allow resource extraction when the activity could compromise marine-related uses”, yet there is no mention in the code of resource extraction. This zoning does mention the term “marine-related” only once in its’ first paragraph: “The intent of the waterfront industrial zone is to provide for and protect productive, marine-related heavy industries,...”. Mr. Cohens’ use of the term “should” is very telling – he is interjecting his interpretation and “putting words in the mouth” of Borough code where those words are not present.

[Cohen]: Based on the **inadequate review and potential violation** of these Code provisions and/or insufficient support from the applicant, a hearing on this permit is clearly justified.

[Response]: Mr. Cohen has a right to his opinion, and to say that there was “inadequate review” is just that – his opinion. As a commissioner, I do not believe the review was inadequate, each one of us read, studied and listened to all sides of this CUP. As for Mr. Cohen’s statement that there is a “potential violation”, he needs to state what code was violated. Instead, he just states that he thinks there is a “potential violation”, which is his opinion and is unsupported by the applicant, Borough administration and Borough Planning and Zoning Commissioners. Mr. Cohen needs to supply more facts to support this accusation of “potential violation”.

[Cohen]: Furthermore, prompted by the specifics of this particular application/review, two fundamental questions for the Assembly and the Planning Commission also need to be addressed:

1. How elected officials should approach land use decisions in the Borough when there is a potential conflict between private gain and the common good, and
2. At what point in the review process should the Borough have a full description of a developers’ intent, so permit decisions are based on a clear understanding of the downstream impacts from the activity?

[Response]: If Mr. Cohen believes that Borough code is deficient, he is free to petition the Assembly to change or augment Borough code. Mr. Cohen could become more involved in Haines Borough government as a Planning Commissioner or Assembly member and possibly create changes to code, he is free to become more active in local government, which would be welcomed – it’s the way our democracy works.

[Cohen]: The fact that we have planning and zoning rules and we can and do impose conditions on developments in the Borough demonstrates the right to make a profit does not automatically trump the needs and concerns of the greater community. Where the balance point might be in any specific case is up to you.

The applicant of CUP 23-87 wants to make a profit through resource extraction and claims there could be an additional benefit by reducing the risk from future landslides, which is not only unproven by their submission, the opposite may in fact be true. They assert having a gravel-producing operation near the dock will reduce truck traffic through town from their Chilkat River facility, but we have no reason to assume they won't operate both facilities if it is in their best interest, since both will be permitted. These benefits to the applicant need to be weighed in terms of the common good, and our Code provides the standards to do so.

[Response]: Please state which Haines Borough code states that “weighed in terms of the common good”, that would help clarify your goal of denying CUP 23-87.

Last spring the applicant requested the minimal Site Development Permit to remove vegetation and grade the parcel. They didn't mention future use, and the Borough didn't ask. Aside from their unpermitted activities and the Borough's acceptance of a **ridiculous value assessment** that limited the amount of fines for violating Code, are we supposed to believe the developer didn't already plan on the property becoming a gravel pit?

[Response]: “ridiculous value assessment” is a personal judgement on Mr. Cohens' part.

Defining activities as minimally as possible at each step so that each individual step is hard to oppose is a strategy used to generate momentum towards an internal goal. This strategy is known as “permit creep,” and **Congress passed a law** to address this problem over fifty years ago when federal permits are required.

[Response]: So, Congress intervened over fifty years ago and “permit creep” is addressed within the permitting process now. Why is “permit creep” still an issue then?

The National Environmental Policy Act (NEPA) requires the cumulative social, economic, and environmental impacts of related activities of a project to be considered up front. The Borough should incorporate the NEPA principle into its permit review processes so elected officials and the broader community go into permitting decisions with eyes wide open. The permitting of development activities can have significant consequences; it is your responsibility to adequately weigh these consequences in terms of the best interests of the community as a whole.

[Response]: Mr. Cohen has some objection to someone making a profit. There is no “us vs. them”, or “profiteers vs. the greater community”. Casting this issue in this way is a very effective method as a fundraising strategy, which Mr. Cohen is involved in through his associations with non-profit groups. The language Mr. Cohen uses reminds me of the scare tactics we see in the MAGA world and just adds to the divisiveness we see in Haines today.

Any activity that adds positive economic development such as river rafting, bicycle tours, eagle viewing, running a gravel pit, operating helicopters for recreational use (such as skiing) – you name it – has an impact on our infrastructure. I'm a cyclist and use the Haines Highway for training. The tour buses sometimes crowd the road – does that mean they should be eliminated?. No. Personally, I hope that Sockeye Cycles, for example, runs a profit, don't you? Yet there is something evil in Mr. Cohen's mind about the capitalist society that we live in

today. I just hope that those making a profit use their hard-earned money for the well-being of our community, but that's my personal opinion.

[Cohen]: Thank you for considering this request.

Gershon Cohen

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[Response]: Thank You, Mr. Cohen! I have enjoyed reviewing your interpretation of Haines Borough code, and I hope there is more to come in the future! Bring it on, and thanks again for your involvement in the messy process of democracy.