

**BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU**

KARLA HART,

Appellant,

v.

CITY AND BOROUGH OF JUNEAU  
PLANNING COMMISSION,

Appellee,

HUNA TOTEM CORPORATION,  
Intervenor Appellee.

Appeal Case No. APL2023-AA01

Appeal of:  
PC Case No. USE2023 0003  
Decision dated July 20, 2023

**ORDER RE MOTIONS TO SUPPLEMENT**

Two parties moved to supplement the record and a partial objection was filed. The motions are granted in part and denied in part.

The CBJ Planning Commission (PC) held a hearing on July 11, 2023, and ultimately issued a written decision a short time later.

To help frame this order, review of a PC decision is limited by CBJC 01.50.070 and governing law. For the PC's decision to be overturned in this appeal, Ms. Hart must establish one of the following (1) the decision is not supported by substantial evidence<sup>1</sup>, (2) the decision is not supported by adequate written findings<sup>2</sup>, (3) a material procedural violation

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<sup>1</sup> CBJC 01.50.070(a)(1); *Griswold v. City of Homer*, 55 P.3d 64, 67-68 (Alaska 2002) (defining substantial evidence as “what a reasonable mind might accept as adequate to support a conclusion.”).

<sup>2</sup> CBJC 01.50.070(a)(2); *Luper v. City of Wasilla*, 215 P.3d 342, 346 (Alaska 2009) (describing when a Planning Commission decision is supported by adequate findings).

occurred,<sup>3</sup> or (4) the decision conflicts with Title 49 or Alaska law.<sup>4</sup> The motions to supplement will be reviewed in light of those standards.

A motion to supplement the record is governed by CBJC 01.50.030(f) and the Prehearing Order, which requires satisfying one of three options: consent/estoppel<sup>5</sup>, newly discovered evidence, or fraud/misrepresentation:

*Scope of review.* The appeal will be heard on the record supplemented by such new information as the appeal agency or hearing officer finds relevant and admissible under section 01.50.110. "New information" means information that was not presented to the agency whose decision is being appealed and which the appeal agency finds could not have been so presented for reasons beyond the control of the party seeking to submit it to the appeal agency.<sup>6</sup>

Accordingly, CBJC 01.50.110(e) provides as follows:

(e)No issue, and no testimonial, physical or documentary evidence may be advanced or introduced at the hearing or included in the submission to the appeal agency or hearing officer which was not previously submitted to the agency whose decision is being appealed. The presiding officer or the

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<sup>3</sup> CBJC 01.50.070(a)(3); *S. Anchorage Concerned Coal., Inc. v. Municipality of Anchorage Bd. of Adjustment*, 172 P.3d 768 (Alaska 2007) (discussing procedural due process issues related to a land use decision); *Zenk v. City & Borough of Juneau*, No. S-16118, 2017 WL 2825797, at \*8 (Alaska June 28, 2017) (unreported) (concluding due process violation did not occur when the Planning Commission issued a conditional use permit).

<sup>4</sup> *E.g., Thane Neighborhood Association v CBJ*, 922 P.2d 901 (Alaska 1996) (partially superseded by State statute, but reversing a Planning Commission decision due to phased approval when it lacked information in the application to determine if the project would satisfy regulatory standards, including Title 49 requirements); *S. Anchorage Concerned Coal., Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993) (applying the local standards of review to an appeal of a Planning Commission decision).

<sup>5</sup> Prehearing Order at §5.

<sup>6</sup> CBJC 01.50.030(f).

hearing officer may waive this prohibition if the failure previously to submit or disclose was due to:

- (1) Newly discovered evidence which by due diligence could not have been discovered previously and disclosed during the prehearing process, and further could not have been submitted to the agency whose decision is being appealed; or
- (2) Fraud, misrepresentation, or other misconduct of an opposing party.

The Prehearing Order §5 established the timelines for supplementation of the record and also established supplementation in the absence of objection:

Appellant may file a Motion to Supplement the Record along with either the documents which Appellant desires to add to the Record or the document request for the documents in the possession of Appellee which Appellant desires to add to the record. Appellant's Motion to Supplement the Record shall be filed by November 9, 2023. If there is no objection the Appellee shall include those documents as a supplement to the Record. If there is an objection the Appellee shall file any Opposition by November 16, 2023, and Appellant may file any Reply by November 22, 2023.

While the Prehearing Order purportedly limited supplementation to Ms. Hart, CBJC 01.50.260 can be invoked to relax the supplementation rules in the interest of justice.<sup>7</sup>

Similarly, CBJC 01.50.260 can be invoked to relax the supplementation rules in light of Ms. Hart's otherwise deficient motion because she is unrepresented and this appeal is complex.

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<sup>7</sup> *S. Anchorage Concerned Coal., Inc. v. Municipality of Anchorage Bd. of Adjustment*, 172 P.3d 768, 773 (Alaska 2007) ("it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.").

The motions to supplement are reviewed for consistency with those authorities.

### **Hart Motion to Supplement**

Ms. Hart timely moved to supplement the record—without any proffered records or argument—but identified the following desired items:

- 1) A list of those to whom the public notice postcard referenced in Irene Gallion's June 8, 2023 email (page 1167 of the Record) was sent, including names and addresses;
- 2) Any staff notes, emails, drafts of a PSA, or other records relating to whether or not a PSA should be sent out on this project. A PSA is suggested in the June 19, 2023 email from Jill Maclean to Irene Gallion (page 1201 of the Record).

The PC amicably produced the records requested for supplementation in category #1, but opposed production and supplementation of any records in category #2.

The category #1 records could be relevant to the issue of compliance with Title 49 public notice requirements and are arguably admissible. Consistent with the consent/estoppel rule from the Prehearing Order, the records attached to the PC's partial opposition are ordered to be included in the record. Ms. Hart's motion regarding supplementation with category #1 records is granted.

Because Ms. Hart did not include the records requested for supplementation in category #2 and there is opposition, the Assembly is unable to determine whether such records would satisfy CBJC 01.50.030(f). Ms. Hart's motion regarding supplementation with category #2 records is denied.

Accordingly, Ms. Hart's motion to supplement is granted in part and denied in part.



## **Huna Totem Corp. Motion to Supplement**

Huna Totem Corp. (HTC) timely moved to supplement the record with public notices, social media posts, and media articles. HTC attached the proffered records and provided reasons why the records satisfy CBJC 01.50.030(f). No opposition was filed. The proffered records could be relevant to the issue of compliance with Title 49 public notice requirements and are arguably admissible. Consistent with the consent/estoppel rule from the Prehearing Order, the records attached to HTC motion to supplement are ordered to be included in the record. HTC's motion to supplement is granted.

IT IS SO ORDERED.

DATED November 30, 2023.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU



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By: Beth Weldon  
Mayor

