

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA
MINUTES**

August 3, 2015, 5:00 PM.
City Hall Assembly Chambers

Assembly Worksession - No Public Testimony

I. ROLL CALL

Deputy Mayor Mary Becker called the meeting to order at 5:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Karen Crane, Loren Jones, Jesse Kiehl, Jerry Nankervis, Merrill Sanford, Kate Troll and Debbie White.

Assemblymembers Absent: Maria Gladziszewski.

Staff present: Kim Kiefer, City Manager; Amy Mead, City Attorney, Rob Steedle, Deputy City Manager; Laurie Sica, Municipal Clerk; Hal Hart, Community Development Director; Laura Boyce, Senior Planner; Robert Palmer, Assistant Attorney.

II. APPROVAL OF AGENDA

Hearing no objection, the agenda was approved as presented.

III. APPROVAL OF MINUTES

A. July 27, 2015 Committee of the Whole Draft Minutes

Hearing no objection, the minutes of the July 27, 2015 Committee of the Whole meeting were approved.

IV. AGENDA TOPICS

A. Executive Session - Update from BRH Regarding Joint Commission Audit

MOTION, by Kiehl, to enter into executive session to discuss topics, the immediate knowledge of which could be harmful to the finances of the City and Borough of Juneau, specifically the Bartlett Regional Hospital Joint Commission Audit. Hearing no objection, the Assembly entered into executive session at 5:03 p.m. and returned to regular session at 5:31 p.m.

Mr. Kiehl said that during executive session, the committee heard a report from Bartlett Regional Hospital regarding its Joint Commission Audit and the staff, including Chuck Bill, CEO, and several BRH Board members present, answered questions.

B. Draft Letter to State Marijuana Control Board on Set 2, Proposed Regulations

Mr. Kiehl said the Marijuana Committee recommended the draft letter provided by Ms. Mead. The goal is greater local control and we are hoping this is reflected in the final state recommendations. The main points of the letter were to request that the State Marijuana Control Board leave the following issues to the municipalities to regulate: the setting of buffers, the size and location of signs advertising the establishment and the decision to permit, or not, consumption on licensed premises. The letter also requested the Board adopt a regulation that requires notice to the local

governing body of applications for licenses, and supported the deference to local government's expertise in the matter of a protest of a license.

Mr. Jones said he was appointed to the State Marijuana Control Board and he had some conversation regarding any potential conflict of interest regarding his position as an Assemblymember. He reviewed the matters with Ms. Mead and based on the discussion he believed he did not have a conflict of interest in his role as an Assemblymember, and would follow the advice of the CBJ attorney. Ms. Mead said for purposes of sitting on the Assembly there was no conflict. As far as sitting on the board as an Assemblymember, testifying as an Assemblymember - this is the issue the state attorney to the board is looking at. Mr. Jones said that the Assembly is different than a private organization. If there eventually is a review of a local marijuana license, as a member of the Marijuana Control Board, he would recuse himself locally.

Ms. Becker asked if the state board had made any recommendation regarding the decision to permit, or not, the consumption on licensed premises. Mr. Jones said no. The Board had until November 27 to adopt regulations in total, and he thought the Board would act November 20. Ms. Becker said she did not support consumption on licensed premises or smoking parlors for marijuana. If the state did not allow this but if the city wants to have the option, which would take precedence? Mr. Jones said the initiative did not specifically address or allow consumption on premises. Until a change in state statutes, the regulations were leaning against it. Ms. Mead said the initiative was silent on marijuana smoking clubs. A few clubs in Anchorage state they are private clubs, they do not sell marijuana, they sell private memberships, marijuana is free for the members and that members of the public are not allowed. The state has not taken a position regarding whether this is an establishment that is open to the public. The second set of regulations prohibit consumption at a retail store. Currently there is no license for a marijuana smoking facility and she did not know if the Board could regulate that without further direction from the legislature. Currently, the only way a local government could allow that would be in a private club setting, and this is something that the initiative contemplated it would be left to the municipalities to decide. Municipalities could not conflict with state law and if state law said there was no consumption on any licensed premise, that would not address the private smoking club, and would be left up to the locality to regulate. It would prohibit someone consuming on a licensed premise.

Ms. Becker asked how the current smoking ordinance interfaced. Ms. Mead said the CBJ smoking ordinance prohibited smoking in any establishment that was licensed to sell food or alcohol, and did not prohibit smoking in a private club where food and alcohol were not for sale. The private club could not have more than four employees. A smoking club was allowed currently under the ordinance, within those parameters.

MOTION, by Troll, to forward the letter to the Marijuana Control Board. Hearing no objection, it was so ordered.

C. Ordinance 2015-03 (b) - An Ordinance Amending the Land Use Code (related to Subdivisions)

Mr. Steedle said that many years of work had gone into this ordinance. Last Monday, we identified a major defect in the ordinance before the Assembly in that it doesn't allow access to new subdivisions through private easements and private streets. Staff appreciated that the Assembly was receptive to considering this and requesting input from the Planning Commission. He said it would best serve the public to adopt this ordinance and not wait the 2-4 months for the Planning Commission's recommendations on that topic as it could be amended in the future.

Mr. Jones said that CDD was currently processing subdivisions in that manner contrary to this proposed ordinance and current code. Mr. Steedle said CDD would not process that type of subdivision access until the code was changed.

Ms. Mead said staff had taken the direction from the Assembly to facilitate development and housing through a rather restrictive code, and one of the ways was through a broad reading of

variances. We have many land use decisions that don't necessarily read well together, where we have used variances to make things happen, but it makes it difficult to make consistent, defensible decisions. We use variances very frequently, when they are supposed to be the exception. A variance for design was allowed, but a variance to construction standards was not allowed, and the distinction between the two has not been clear. This proposed code include access and frontage to a right-of-way are considered design standards and not construction standards, and the Assembly needed to determine if this was the course it wished to take. She recommended that access and frontage should be construction standards and to accommodate development, the standards required should be made easier to accomplish to facilitate development. This would allow more consistent and reliable guidance to the public.

Ms. Mead said there were two main issues that the Assembly needed to address: frontage requirements on a right of way, and whether lots need direct and practical access to a street. Did the Assembly want the standards imposed to be minimum standards or to be able to be varied. The current record of decisions were not consistent and equal protection challenges could be based upon one permit.

Ms. White asked what type of variances would no longer allowed and Ms. Mead said a variance to construction standards, which included streets standards. Setbacks were design standards and could be varied. Construction standards were the improvements one put in to a subdivision. Currently lots must have frontage to a right-of-way, which was a construction standard. Parking requirements were a construction standard. Ms. Mead said that frontage and direct and practical access can be read together to facilitate development, or separately, and this is the main question - what are the minimum standards that you want to require.

Ms. Boyce explained a drawing Mr. Palmer's provided of the conflict of frontage and direct and practical access. Mr. Steedle said staff would like to propose construction standards that make sense and are clear. He referred to the "hockey stick" subdivision off of Mendenhall Loop Road to illustrate that the requirement for road frontage did not always make sense.

Ms. Mead said she believed the frontage and direct and practical access issues needed to be vetted before the Planning Commission. This ordinance has been under review for so long, and the staff has turned over, the goals of the Assembly have become clear for housing and development, and we can bring back this issue after adoption of this ordinance. One issue to resolve before leaving this meeting would be to get direction from the Assembly on the variance question - should frontage and right-of-way requirement be able to be varied or is right-of-way frontage required until a change to the code is made. This should be a change to the proposed ordinance - whether or not to move this out of the design section.

Ms. Troll said she preferred that the private maintenance of public roads should be the exception rather than the rule. Ms. Mead said that was a huge issue that staff had discussed. Does the Assembly want to allow privately maintained access roads or not or should this be worked on further? If the Assembly is comfortable with a broad interpretation of the code through variances, that could continue. Alternatively, the Assembly could say that right-of-way frontage and the requirement for direct and practical access via a street is required as a minimum construction standard that cannot be varied. This proposed ordinance could move forward with that decision and future amendments could be made.

Ms. White said she supported being as flexible as possible to allow development, until her other questions could be answered and addressed.

Mr. Kiehl said he shared Ms. White's concern because these issues were not part of his thinking. He wished to maintain status quo until further consideration could be made.

Ms. Mead said based on Ms. White's and Mr. Kiehl's statement, that would allow leaving the frontage and direct and practice requirements in the design section in the proposed code and allowing variances to those, which was a change to current code, but not to current practice.

Ms. Becker agreed with this approach.

MOTION, by Sanford, to direct staff, as a high priority, to return this issue to the Assembly as soon as possible, regarding frontage, direct and practical access and variances. Hearing no objection it was so ordered.

Mr. Steedle said he understood that if the Assembly chooses to adopt this ordinance, variances will work, because they are in a section called design, which is a change to current code, but not to current practice.

Mr. Nankervis expressed his frustration with the "rabbit hole" of this issue, and Ms. Mead said it was a product of the "patchwork quilt" nature of this ordinance.

Mr. Kiehl asked why it was a good idea in street standards to erase the inside and outside the urban service boundary. We have built to this designation to date and why is that a good change.

Ms. Boyce said the street standards proposed were based on traffic and the measure of average daily trips. When and if the urban service boundary line moves, then there were conflicts. Mr. Hart said the key of the urban service boundary is where we invest for sewer and water. Encouraging development in neighborhoods which already have sewer and water was a key policy.

Mr. Kiehl said the character and nature of neighborhoods could be defined by the development. We keep discussing the cost of development, and if it should be done up front, later, or much later. Erasing the boundary doesn't make sense. Within the urban service boundary, people want a safe community, a walkable community. Outside of the urban service boundary I don't hear those demands, I hear people say they want dark night skies.

MOTION, by Kiehl, to amend the proposed ordinance to require paving outside of the urban service boundary only when the ADT exceeds 500 ADT.

Following discussion, Mr. Nankervis objected.

Roll call:

Aye: Crane, Kiehl, White

Nay: Becker, Jones, Nankervis, Troll, Sanford

Motion failed, 3 ayes, 5 nays.

MOTION, by Kiehl, to permit unpaved privately maintained access roads only outside of the urban service boundary.

Mr. Kiehl said this gets to the question of how costs are born and how neighborhoods would look. When neighborhoods ask for LID's, CBJ used everyone's taxes to subsidize the inexpensive home the original buyer bought. CBJ was paying for the infrastructure that should have been constructed originally. He was willing to allow privately maintained gravel roads outside of the urban service boundary. Within the urban service boundary, the CBJ would continue to receive requests for services from homeowners. CBJ had tried to create neighborhoods and encourage people to live in the more dense areas where it has invested in services. He was not requiring a sidewalk on every street but was reducing the impact on the treasury is important.

Following discussion, Mayor Sanford objected because the Average Daily Trip standard was sufficient.

Roll call:

Aye: Crane, Jones, Kiehl, Troll, White

Nay: Becker, Nankervis, Sanford.

Motion passed, 5 ayes, 3 nays.

Following a recess in the meeting, Ms. White asked for clarification of the action taken by the last motion. Ms. Mead said that the committee added a requirement to the table on page 52 of the

proposed ordinance that privately maintained access roads would be allowed only outside of the urban service boundary. Ms. Mead said this would not change road standards in the valley, where gravel roads were not allowed due to air quality standards.

Mr. Steedle asked for clarification. He said he understood that when the Assembly passed the ordinance, 30 days after, those subdivisions which people sought variances for because they did not have direct and practical access would be allowed to move forward through the process. Parallel to that, the Planning Commission would take up a proposal from staff on how to move away from variances, toward having criteria under which subdivisions can be considered for lots which do not have direct and practical access. There was no objection to that from the Assembly.

Mr. Jones said given the significant changes and as people get used to the changes, he hoped part of the analysis of individual subdivisions would be review and approval by law. Ms. Mead said that the Law Department did not vet the subdivisions or any development permits now.

Mr. Nankervis expressed his appreciation of the work of staff and the Planning Commission and if this was passed there would be a number of reductions of issues that needed to go before the Planning Commission.

V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

None.

VI. ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 7:35 p.m.

Submitted by Laurie Sica, Municipal Clerk