

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

July 28, 2014, 6:00 PM.
Municipal Building - Assembly Chambers

Assembly Work Session

I. ROLL CALL

Mayor Sanford called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Karen Crane, Loren Jones, Jesse Kiehl, Jerry Nankervis (teleconference), Merrill Sanford, Kate Troll and Randy Wanamaker

Assemblymembers Absent: Mary Becker and Carlton Smith.

Staff Present: Kim Kiefer, City Manager; Rob Steedle, Deputy City Manager; Amy Mead, Municipal Attorney; Laurie Sica, Municipal Clerk; Hal Hart, Community Development Director; Eric Feldt, Planner and Bob Bartholomew, Finance Director.

II. APPROVAL OF AGENDA

None.

III. APPROVAL OF MINUTES

A. June 23, 2014 Assembly Committee of the Whole Draft Minutes

Hearing no objection, the minutes of the June 23, 2014 Assembly Committee of the Whole Meeting were approved.

IV. AGENDA TOPICS

A. Juneau Economic Development Plan Update

Jim Calvin and Barbara Sheinberg were present to discuss the economic development planning project.

Mr. Calvin distributed a packet of information outlining the draft plan table of contents, the vision and core economic development principles, foundational areas for economic development, 10-year economic development initiatives, and tools to assist with decision-making.

Ms. Sheinberg asked the Assembly to let them know if they were headed in the right direction. She said they had a tremendous amount of input and they attempted to articulate a vision statement reflecting core principles heard from the community. The draft vision statement was, "A vibrant, diversified, and stable economy built around a business climate that encourages entrepreneurship, investment, innovation, and job creation; and supports the environmental, cultural, and social values that make Juneau a great place to live and enjoyable place to visit."

Ms. Sheinberg read the core economic development principles. She said these reflected the common threads from comments they had heard in their communication with the community.

Mr. Calvin said the vision and principles were a work in progress and things that they thought the community could support. The basic, high level statements formed a basis for more specifics. Mr. Calvin reviewed the six foundational areas, including traditional pillar businesses, trending opportunities, regulation and business climate, infrastructure (transportation, communication,

housing, energy, etc.), human capital (talent) and neighborhood business hubs.

Mr. Wanamaker asked if the cost of energy and the effect on business was included and Mr. Calvin said yes, that need had been identified and included in infrastructure.

Ms. Sheinberg said they had the beginning of 30 "candidate areas" for initiatives, many ideas that Juneau could benefit from to create year round jobs. The Comprehensive Plan was comprehensive, but the Assembly asked for a strategic plan to direct results. Criteria to help set priorities and identify a limited number of initiatives may include: opportunity areas the economic baseline research has identified, repeated messages about barriers and obstacles from the public and businesses, opportunity areas identified by businesses, opportunity areas identified in economic development research or research into other community's successful economic programs, the Assembly's priorities, potential opportunity areas due to Juneau's position in the regional and broader economy, eliminating items that are realistically beyond our control, building on known and proven strengths, and capitalize on current Juneau demographic strengths and challenges.

Ms. Troll said the criteria were good tools for prioritization. The Assembly's priorities included items that were not economically development focused, so how would the Assembly's priorities be derived? Mr. Calvin said the last pages were a broad list of initiatives and he asked the Assembly to review how they had distilled the information they had heard and provide feedback in a few weeks. Ms. Sheinberg said after they have identified 10-12 strategic initiatives, a ten year initiative format was outlined for how a list of actions would be developed, with measures of progress. They will be ten year initiatives but putting the emphasis on the first few years as things change over time.

Mayor Sanford asked where the arts were addressed in the plan. Mr. Calvin said it was in foundational area 2.

Mr. Jones asked about the drafting of two documents - the business survey report and the revised household report with the on-line surveys. Mr. Calvin said those were pending and would be provided shortly.

Ms. Crane asked if the public would see enough detail to provide good comments. Mr. Calvin said that was the purpose of the meetings and they would be working hard to manage the best use of the public's time.

Ms. Kiefer said the next update was set for August 18 and Mr. Calvin would do his best to make that work.

Mr. Wanamaker asked if they have defined genuine disincentives to business development in Juneau. Mr. Calvin said much of their work was on breaking down those disincentives/barriers or taking advantage of an opportunity. Ms. Sheinberg said the business survey asked many of those questions and they were getting good information on barriers in the business community's perspective.

Mayor Sanford thanked Mr. Calvin and Ms. Sheinberg for their work and the presentation.

B. Ordinance 2014-14 An Ordinance Amending the Land Use Code Relating to Rezoning Procedures.

This ordinance was introduced on May 19 and referred to the Assembly Committee of the Whole on June 16. At that meeting, the Assembly Committee of the Whole discussed the matter in a joint meeting with the Planning Commission, and forwarded the matter to the Assembly for public hearing on June 30, 2014. At the June 30, 2014 Assembly meeting, the Assembly referred the matter back to the Committee of the Whole. Mayor Sanford stated that he anticipated the matter would be addressed at a public hearing at the August 11, 2014 regular Assembly meeting.

Ms. Mead said at the end of the June 30 meeting, there were discussions about what happened once

a decision on rezoning came to the Assembly on review. The ordinance was silent regarding that, because in drafting, she had referred back to past practice, because past practice was silent. She recommended that a process be codified for what happens when the rezone decision was made and there was a recommendation up or down from the Planning Commission. She said she distributed the Anchorage process for the Assembly's review by e-mail in early July and thought that process was well thought out.

Mayor Sanford said it was apparent more work was needed, in particular how to address the "no decisions" from the Planning Commission.

Ms. Crane said she did not see the Anchorage process and she wanted to know what the public process would be. Ms. Mead said in Anchorage, the "yes" recommendations work the same way as the Juneau code, and a rezone request comes to the Assembly as a recommended ordinance approving the rezone. A "no" decision works differently than the current Juneau code, in which a final decision of the Planning Commission is appealable to the Assembly. A "no" decision under the Anchorage model, the "no" decision rests with the Anchorage Planning Commission, unless the applicant requested that an ordinance be prepared and forwarded to the Assembly for consideration. The Anchorage code outlined the process before the Assembly. Ms. Mead said she would like to hear from the Assembly what it thought that process might be in Juneau in order to bring forward another version for Assembly consideration. She said it could be the normal ordinance public hearing process or a separate hearing, or some other review process. She said the process should be incorporated into this ordinance.

Ms. Crane asked how an applicant asked that an ordinance be prepared. Ms. Mead said that in Anchorage, a request was made to the Clerk's Office. A request to the Community Development Department made sense to Ms. Mead.

Mr. Jones said he was looking for a process that avoided giving the public only three minutes to speak to a contentious topic. He understood that the public testimony at a Planning Commission meeting could be provided. Perhaps a separate hearing would be in order. Ms. Mead said to clarify, when the Planning Commission recommended a yes, that was not appealable. The public could come before the Assembly to speak to the ordinance. When the applicant asked for a rezone and it was denied, that triggered an appeal from the applicant. She said she was hearing that the Assembly was interested in having a longer process for "both sides" when a rezoning ordinance was before the Assembly.

Ms. Crane said she wanted to be sure that the public felt they had adequate time if there was a no on an appeal and we have a process in place to allow the public to speak on that.

Mr. Kiehl said he was struggling with whether it was better to have a special process only for when the Planning Commission said "no," vs. "yes." If the Planning Commission approved a rezone, there could be an aggrieved neighborhood. He was reluctant to set up a different set of rules going forward. Reading an appeal file was extremely valuable, especially the written arguments. Mr. Kiehl said he wanted something like a written brief, but it would need to be determined who would write them. Ms. Mead said a rezoning by the Assembly was a legislative process vs. an appeal process.

Ms. Troll asked if the Planning Commission denial of a rezone request was based on lack of compliance with the Planning Commission. Ms. Mead said yes, generally, but there could also be a timing issue or lack of compliance with the code. Ms. Troll said she was interested in the Anchorage process for the "nos" and since Juneau was a smaller community, we want to ensure a thorough public process. It seemed like a good model.

Ms. Mead said yes, and answered that she had sufficient information to provide another draft.

MOTION, by Jones, to continue discussion on this ordinance in the committee of the whole, sometime after the August 18 meeting. Hearing no objection, it was so ordered.

C. Ordinance 2014-32(b) An Ordinance Amending the Land Use Code of the City and

Borough to Provide for the Regulation of Wireless Communication Facilities and Providing for a Penalty.

This ordinance was introduced on June 9, set for public hearing on June 30, and discussed by the Committee of the Whole in a joint worksession with the Planning Commission on June 16. Public testimony was heard at the June 30 Regular Assembly meeting and the Assembly action was to refer the ordinance to the Committee of the Whole. Version (b) is before the Assembly at this meeting for review.

Ms. Kiefer said staff was looking for direction on concerns raised about the ordinance regarding payment for public notice ads, waivers, balloon tests, and photo simulation. Mayor Sanford said he had a list of questions which could direct the review and others could ask their questions.

Ms. Mead asked if there were any questions regarding what CBJ was allowed to regulate. The one area not decided yet by the Federal courts, which could likely be decided in the next year or so, was how far CBJ could regulate the 6409 applications - the co-location and minor modification applications, in the first line of Table 1. It was likely that CBJ would be more limited to regulate those and it was an issue noted by both AT&T and Verizon.

Some issues discussed by the committee:

- Setting a date for existing facilities to come into compliance with the code.

Ms. Mead said if that was a requirement, a waiver process would be needed to allow applicants to show it was not possible to come into compliance. If required, theoretically CBJ could be sued under the takings doctrine. A suggestion she spoke about with the CBJ consultant, Cityscape, was requiring towers to come into compliance with respect to lighting. Getting a list of existing lighted towers that did not comply with FAA regulations might be one action CBJ could take as a de minimus action. Cityscape's recommendation was to wait it out as several issues could come into compliance on their own in 18 months or so. She recommended limiting the ordinance to what areas of compliance for the existing towers.

- Addressing compliance with lighted towers that were causing the most concerns with the public.

Ms. Mead said the ordinance required compliance with FAA regulations, and the FAA did not require mitigation measures such as baffles, shields and louvers, so those would be additional requirements placed upon a facility by the CBJ. Ms. Mead said the ordinance did say that the lights needed to be shielded as to not impact neighboring residents in 49.65.970(c)2(vi), but this did not include the lights required by FAA for navigation. All lit towers had to go through the special use permit process. Under the current ordinance, existing permits were not required to change their lighting.

- Investigating the changing of the light at the tower at Fish Creek to identify which the strobe light was removed.

- If there is an existing tower that doesn't require lighting, adding an ability to require that the lighting be removed with a reasonable amount of time for compliance.

- Obtaining a list of all towers in the community that were lit, whether they were wireless towers or another type of tower.

MOTION, by Wanamaker, to leave the issue of lighting as is in the ordinance, but new towers will need to meet the new city standard as long as it was in compliance with Federal standards.

MOTION, by Nankervis, to amend, to eliminate white strobe lights on any tower, unless the FAA or FCC required a white strobe.

Hearing no objection, the motion was tabled to the next appropriate meeting to allow Ms. Mead to

draft language to allow an operator of an existing cell tower to come into compliance with regard to lighting and if there were incentives for using baffles or shields. There was no objection to staff contacting the owners of the 2-3 towers that had been identified as problem towers to investigate if there were any resolution to be reached without making the ordinance retroactive.

The committee discussed the technical review by a third party expert and hearing no objections, the language was not changed, but it was indicated that following adoption, in the future, the section could be reviewed for efficacy and efficiencies.

Regarding structural reviews, Mr. Hart said that the Building Official had the ability to request a structural review from a building or facility owner at any time there was a concern that would warrant such a review.

- A public concern was expressed about setting differing standards by allowing non-concealed towers up to 120 ft. tall that could be within 1000 foot of a nearest dwelling in a rural reserve neighborhood.

Ms. Mead said there was nothing legally required in Table 1, except for the first line, and the Assembly was able to make any amendment. Ms. Mead said the Planning Commission had recommended that language to address "rim shots." Planning Commission staff was asked to review this requirement and make a recommendation if this was a reasonable approach.

- A change was agreed to on page 13, Line 15, to state that "Applicants shall disclose in writing the existence of any agreement..."

Ms. Mead said this was a change requested by industry and she would make the change.

- Balloon testing and / or photo simulation was discussed with conflicting opinions.

Ms. Mead would bring forward alternative language previously drafted and distributed to the next meeting for further review and discussion. This would be language for one, or the other, or both options simulateously. There was some discussion about a balloon test being required only during the day to the balloon would not need to be lighted.

- Public Notice mailing within three miles of the facility site should be drafted in a way to exempt mailing to those properties that are geographically blocked from having a view of the facility or "are not visually affected."

-Agreement to add notice to Neighborhood Associations listed with the Office of the Municipal Clerk, within three miles of the site.

Mr. Hart said that in general, he had the discretion to require additional notice beyond the standard 500 feet, however, notice had budget impacts and currently CDD paid for the notice. This ordinance required the applicant to pay for the notice and were also required to hang three signs instead of the standard one.

V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

Mr. Kiehl reminded members that a Special Human Resources Committee meeting was set for Thursday, July 31, at 4:45 p.m., prior to the Docks and Harbors Board, for a work session on the 2nd Hand Dealer Ordinance.

VI. ADJOURNMENT

There being no further business to come before the committee, the meeting adjourned at 8:30 p.m.

Submitted by
Laurie Sica, Municipal Clerk