

Agenda
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
August 28, 2018

I. ROLL CALL

Ben Haight, Chairman, called the regular meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:03 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Nathaniel Dye, Percy Frisby, Dan Hickok, Andrew Campbell, Carl Greene

Commissioners absent: Dan Miller, Michael LeVine

Staff present: Jill Maclean, CDD Director; Beth McKibben, Planning Manager; Laura Boyce, Senior Planner; Robert Palmer, Deputy Municipal Attorney

Assembly members: None

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA - None

III. APPROVAL OF MINUTES

A. July 10, 2018 Draft Minutes – Regular Planning Commission Meeting

MOTION: *by Mr. Dye, to approve the Planning Commission July 10, 2018, regular meeting minutes with any minor changes by staff or Commission member.*

The motion passed with no objection.

A. June 26, 2018 Draft Minutes – Regular Planning Commission Meeting

MOTION: by Mr. Dye, to approve the Planning Commission June 26, 2018, regular meeting minutes with any minor changes by staff or Commission member.

The motion passed with no objection.

IV. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** - None

V. **ITEMS FOR RECONSIDERATION** - None

VI. **CONSENT AGENDA** – None

VII. **UNFINISHED BUSINESS** - None

VIII. **REGULAR AGENDA**

~~APL2018 0001:~~ First Hearing of an appeal of a Director’s decision regarding BLD2018 0055

Applicant: City & Borough of Juneau

Location: Borough-wide

This case was withdrawn by the appellants prior to the meeting.

APL2018 0001: First Hearing of an appeal of the Director’s determination regarding USE2011 0015

Appellant: RH Development

Mr. Palmer told the Commission there are four specific questions the Planning Commission should address when considering the appeal:

1. Should the Commission hear the appeal
2. If the appeal is accepted, does the Commission intend to review the entire decision of the Director or a portion of that decision
3. Should the appeal be reviewed on the record or do Novo
4. Does the Commission want to appoint a presiding officer to deal with any procedural issues or does the Chairman want to step in and fulfill that role

According to Title 49, the department and any aggrieved person may appear at this meeting and explain why it should hear the appeal, said Mr. Palmer. Mr. Palmer told the Commission that the appeal should be accepted, unless it represents minor or routine issues.

Chairman Haight said the grounds for the appeal as stated by the appellant are that the new CDD director has wrongfully stopped a legally permitted condominium project midcourse, based on her misinterpretation of state and local code. The appellant also stated that the CDD director also failed to accept that the appellant's project is fully permitted, and has not followed CBJ requirements.

Mr. Hickok asked if the Commission denied hearing the appeal, if the director's decisions would stand.

Chairman Haight said if the Commission rejects the appeal it would not proceed further.

Mr. Dye asked if the Commission had the ability to hear an appeal about state law.

Mr. Palmer said the Commission has the ability to interpret the CBJ code, which in this instance is Title 49.

MOTION: by Mr. Campbell, to accept the appeal and to give the appellant the opportunity to present his case.

There was no objection to proceeding with the appeal.

Chairman Haight said the next action would be to decide the nature of the appeal.

MOTION: by Mr. Dye, to hear the appeal on record, and that a hearing officer be appointed.

Mr. Palmer said the property owner and any aggrieved person may appear at the meeting and explain to the Commission why it should hear the appeal. Mr. Palmer said since the Commission has already made the decision that it is going to hear the appeal, there is no right of the appellant to present his case at this point.

Mr. Hickok said he has known the appellant for a number of years and that in 2007 he did purchase some property from the appellant.

The Commission voiced no objection to Mr. Hickok remaining on the panel.

Mr. Campbell said that he has also had previous business dealings with the appellant but that at this time he has no business or personal relationships with the appellant.

The Commission voiced no objection to Mr. Campbell remaining on the panel.

Mr. Frisby said the first motion by Mr. Campbell, was that the appellant have his appeal heard by the Commission, and that the appellant be given the opportunity to present his case.

Mr. Palmer explained again that the threshold question is whether the Commission wanted to hear the appeal. The Commission accepted the appeal, said Mr. Palmer. At this juncture there is no need for the appellant to present his case since the appeal has been accepted, he said. During the appeal process both the appellant and the CDD staff will have the opportunity to present each side of their case, he said.

The appellant, Richard Harris, asked for the opportunity to comment on his appeal.

Mr. Voelckers said that Mr. Palmer has made it clear that the function of the Commission this evening is to decide whether to accept the appeal, not to go into the merits of the case at this time. He said he did not think it was appropriate to jump forward in the process until it was time for each party to present their case. He said he would like to hear Mr. Palmer's opinion on the subject.

Mr. Palmer said if the Commission wants to give Mr. Harris the opportunity to explain why he feels the Commission should hear his appeal, even though the Commission has already made that decision, that the Commission could potentially decide to hear the comments of Mr. Harris regardless, if that was the will of the Commission, he said.

Chairman Haight explained to Mr. Hickok that the role of the Commission this evening was restricted to whether it wanted to hear the appeal or not. Hearing the merits of the appeal would come at a later date, he explained.

Mr. Voelckers said the Commission has agreed this evening to hear the appeal. That decision triggers a very deliberative process with very specific legal steps. He said he felt the Commission should follow those steps. He said he saw no strategic advantage to jumping in to the next step of the process this evening.

Mr. Dye said he also spoke against opening up testimony at this time for the same reasons voiced by Mr. Voelckers. He said he she felt they should honor the process and wait until both sides are given the equal opportunity to present each side of their case at the appropriate time and in the appropriate manner.

Mr. Campbell said he felt that if the appellant's testimony was restricted to the four points addressed by the Commission this evening, and not a presentation of the case, that it would be reasonable to give the appellant the opportunity to speak.

Mr. Greene said he felt if Mr. Harris wanted to comment solely on how the Commission should hear the appeal, then in his opinion, that it would be relevant.

Roll Call Vote: (On whether the appellant should be given the opportunity to comment on how the appeal should be heard.)

Yeas: Hickok, Campbell, Frisby, Greene, Haight

Nays: Dye, Voelckers

The motion passed.

Mr. Dye asked for clarification on the minimum vote required for reopening public testimony.

Mr. Palmer said this is not quite public testimony. There is a slightly different provision in the code for this circumstance under the appellate rules, he said. He said it appears to him that the Commission wants to follow appellate rule 49.20.110 (a) to give the appellant the limited opportunity to explain to the Commission why it should hear the appeal.

Mr. Harris said he would like to ask one question. He asked if the Title 49 Committee directed the CDD Director to file the violation against his project.

Chairman Haight said he did not think the Commission could answer that question.

Mr. Harris then started to present the merits of his case before the Commission. He said he would appreciate the appeal being decided as soon as possible because this hold-up in his project is very damaging. He said he would like to hear the case heard de novo. He said he felt that deciding the case do Novo would be a more direct path to resolving the case. He said he would like the Commission to accept the appeal and to *move it to the Assembly* [sic].

Mr. Dye asked Mr. Harris if he was referring to the Title 49 subcommittee of the Planning Commission.

Mr. Harris said that is correct. He said it was after attending a meeting of the Title 49 Committee, that he received a notice of violation from the Director.

Chairman Haight said now the Commission needs to decide what exactly will be included in the nature of the appeal.

Mr. Frisby asked if it was correct that once the Commission made a decision on the appeal that it then went to the Assembly.

Chairman Haight said that is not correct. The Commission is the final arbiter on this appeal.

In answer to a question by Mr. Voelckers, Mr. Palmer said the best course of action is to construe all the points on appeal and all the facts on appeal in favor of protecting Mr. Harris and his development so that all of his rights are preserved and that through the appeal process the parties can present their cases on both issues.

MOTION: *by Mr. Voelckers, that the Commission accept all of the issues raised in the appeal.*

Mr. Campbell said he wanted to clarify for the record that there were five points to be addressed by the Commission, not four points.

The motion passed with no objection.

Chairman Haight said the next decision for the Commission is whether to hear the appeal on the record or do Novo.

Mr. Palmer explained that an on the record review is the traditional approach where the Commission would review everything the Director had and only what the Director had. If the Commission heard the appeal de Novo it would be a trial-like setting with the Commission deciding issues of fact that the Director has already decided.

Mr. Campbell asked for the speed of the process of one approach compared to the other.

Mr. Palmer said either approach could be as fast or as slow as the Commission and the parties wanted it to be.

MOTION: *by Mr. Voelckers, to hear the appeal on the record.*

Speaking in favor of the motion, Mr. Dye said he would prefer the information be presented in written form and have time to review and digest the information.

Mr. Campbell said he is not opposed to hearing the appeal on the record. He stated he would like to see that the process is accomplished as quickly as possible. He said he respects the appellant's desire to resolve this issue quickly.

The motion passed with no objection.

Chairman Haight appointed Mr. LeVine as hearing officer for this appeal.

IX. BOARD OF ADJUSTMENT - None

X. OTHER BUSINESS - None

XI. STAFF REPORTS

Ms. Maclean told the Commission that the Capital Brew Appeal was withdrawn. They were able to reach agreement between the appellants and the owners of Capital Brew, said Ms. Maclean. Most of the concerns of the appellants were addressed and those that cannot be addressed are outside the scope of Capital Brew's responsibility, she said. They agreed to installing a stop sign at the alley and glacier Avenue and installing arrows directing people to use the correct side of the alley, since it is a two-way alley, she said. The Capital Brew owners also agreed to announce when school was starting on the coffee wrappers and to remind their customers to drive safely in the area, said Ms. Maclean. Public Works is also considering the moving of the bus stop which is currently situated in front of Capital Brew, said Ms. Maclean. They have also limited the loading zone in front of Harri's Plumbing to 30 minutes, she said. The police department has also agreed to do direct enforcement in the area, she said.

The other appeal regarding Green Market has also been settled, said Ms. Maclean. The staff realized that their analysis was not complete, said Ms. Maclean. They allowed the owner to move ahead with his building permit and not have to provide parking at this time, she said. They missed that opportunity back in 2014, said Ms. Maclean. Any future expansion of the building or infill development would trigger the need for additional parking, she noted.

At the Assembly Committee of the Whole meeting slated for August 29, they will be hearing the Comprehensive Plan update from the ad hoc committee, which is recommending that they undertake a new Comprehensive Plan, said Ms. Maclean.

The evening of August 30 is the kickoff meeting at the JAHc for the downtown area plan, said Ms. Maclean.

On September 11, (2018) the Commission will be attending a meeting on Auke Bay preceding its regular Planning Commission meeting, said Ms. Maclean. At the regular meeting they will also have a presentation from a representative of the Parks and Recreation master plan, she said. They will be looking for feedback from the Commission as it may become part of the Comprehensive Plan, said Ms. Maclean.

On September 25, (2018) preceding the regular Commission meeting, there will be a meeting of the Committee of the Whole during which there will be a presentation on the Preservation Plan. They also hope to have ready for presenting to the Commission the alternative residential subdivision ordinance, accessory apartments, and there will be one USE case on the agenda that evening as well, said Ms. Maclean.

XII. COMMITTEE REPORTS

Title 49 Committee

Mr. Dye said they have had three Title 49 committee meetings since the Commission last met. They twice discussed alternative residential subdivisions and they also discussed accessory apartments and common wall structures, he reported.

Auke Bay Implementation Committee

Mr. Voelckers said they are making progress on Auke Bay. They have had a couple of meetings and they are focusing on creating a potential new zoning district above the Department of Transportation Highway, and they are thinking of combining residential and commercial activities in the same buildings and to make this incentive-based so that height and density could be expanded for excellent projects.

Lands Committee

Mr. Voelckers reported that there was some interest on the lands committee in a proposal to consider the pocket park located at Front and Franklin for use of some of the food carts which may be displaced from current locations near the library.

XIII. LIAISON REPORTS - None

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS

Mr. Dye said he had a question about the letter received yesterday from R and S Construction.

Ms. Maclean said R and S Construction has questioned what the intent of the Commission was at the meeting where their permit was approved. The staff has reviewed the minutes numerous times and listened to the recording. The conditions are correct per the Commission's motions that evening, said Ms. Maclean. The applicant had 20 days to appeal the decision of the Commission, said Ms. Maclean. They can apply for a modification to the Conditional Use Permit if they did not agree with a condition, said Ms. Maclean. They sent the letter yesterday requesting that it be sent to the Commission, said Ms. Maclean.

Mr. Voelckers said on August 30, (2018) beginning at 6:30 p.m. there will be the meeting at the JAHC called Blueprint Downtown. It will be a focus session where the participants will break into six or seven topic tables on various issues such as housing in the town area and neighborhoods, traffic etc. There will be enough time for participants to attend several of the different topic tables, said Mr. Voelckers.

XVI. EXECUTIVE SESSION - None

XVII. ADJOURNMENT

The meeting was adjourned at 7:58 p.m.