Agenda
Planning Commission
Committee of the Whole
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
June 11, 2019

I. ROLL CALL

Ben Haight, Chairman, called the Committee of the Whole Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:50 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman; Michael LeVine, Nathaniel Dye, Shannon Crossley, Dan Hickok, Travis Arndt

Commissioners absent: Ken Alper, Andrew Campbell

Staff present: Jill Maclean, CDD Director; Jane Mores, CBJ Attorney

Assembly members: Wade Bryson

II. REGULAR AGENDA

A. Discussion on continued revisions/updates to the Planning Commission's Rules of Order

Chairman Haight invited Ms. Maclean to orient the Commissioners about the history of the Rules of Order, which has been a work in progress and predates her tenure. Director Steedle started working with the Commission on updating these rules, and the most recent version was adopted in early 2018.

The main changes suggested as a result of the most recent review include:

- A change in title to "Governance" instead of "Rules".
- Reorganization of some rules, especially those that are very lengthy and could be easier to interpret and follow if broken up more clearly.
- A revision to the section regarding participation by the Commissioners and staff, including a limit on the length of presentations.
- Clarification on submittals to the Planning Commission regarding cases. Part of this has to do with security for the computers at CBJ and the possibility of corruption with

thumb drives coming from the outside. Mat-Su Borough had a big breach a few years ago which has triggered other municipalities to review their policies.

Commissioners' packets include a memo to this effect, a copy of the rules with tracked changes and a clean version of the proposed revised rules. The Rules Committee consisted of Commissioners Levine, Dye, Voelckers, and Alper. Commissioner Haight was also at most of the meetings, she said.

Mr. Levine offered more context and said that a number of years ago Commissioners received a lengthy submission delivered at a meeting. It was 100 pages of analysis about property value and there was no mechanism to address the information. It seemed inequitable to not have time to consider the material and to make a decision on something that they did not have enough time to review. In that instance the additional material did not cause any problem with the substance, but the Commission recognized that it could, in the future, and there was not mechanism as a commission to address that problem.

The Rules Committee was formed for the purpose of figuring out how to better handle public submissions. At that time, the Committee limited its amendments to the previous rule. Two things were changed:

1. Time limits for submissions resulting in deadlines in place for publication of staff reports and deadlines for submission of written material followed by rules regarding late-submitted material so that members of the public could provide a few pages at the meetings.
2. An implementation of a preferred time limit for public testimony as a way of providing a benchmark.

Mr. Levine said that was what was done the last time the rules were amended. The Commission refrained from doing a comprehensive revisit of all the rules at the request of the city attorney. This time, he said, it seemed there was some value further clarifying rules of participation. There were 10 rules, 9 of which fit on 9 pages and one of which took up the other 9 pages. It seemed to make sense to streamline the rules and do the thing that was not done the last time, which was to look through rules from beginning to end.

The Committee met two times. Mr. Levine said that he recalled the biggest changes being suggested relate to the manner in which the Commission accepts comment from the public, the applicant, and staff. There are suggested time limits for public comment, the applicant presentation, and for staff presentations. The Committee has proposed having a sign-in sheet in the back the public come up in the manner they use at Assembly meetings in order to streamline time. Also, previously the rules disallowed testimony on behalf of other people but the Committee proposes a mechanism where one person could speak on behalf of others who all share same comments as long as those other people were in the audience. That one person could then get an extended period of time to speak on behalf of the group.

The Committee made changes to the conduct provisions. There were various rules concerning Commission conduct and the Committee put all these rules together into one rule and added a provision concerning conduct expected from the audience. Members of the public should not be applauding or booing and should not direct comments directly to Commissioners or to people at the podium. The Committee suggests putting an abbreviated version of the conduct rules in the back of Chambers to allow the public to see what is expected of them.

Mr. Voelckers said the Committee also clarified what happens when meetings run late and what the procedures are for stopping meetings at a reasonably rational time. There are added provisions that even if all Commissioners agreed to keep the meeting going, but it goes past 11:30, that can automatically open up the case for reconsideration.

Mr. Dye added to the background about deadlines and said that these shifted partly to help give the public and the applicants time to digest staff's recommendations and findings. By stepping out the process, there is more time for everyone to comprehend what staff is recommending and to have time for rebuttals and comments to get to the Commissioners so that they can review these comments the weekend prior to a Planning Commission meeting.

Mr. Levine said that the Committee also clarified that rule that described liaisons to other committees; as it stands, it is incorrect. The liaisons to the Wetland Review Board are actual members of the board per its charter but other liaisons to other committees are not members. The Rules Committee fixed that. In addition, he said, part of the reason for changing the name from "rules" to "governance" has to do with what is hoped the Committee will be able to do going forward. There was a situation several years ago where the Assembly reached down and removed the chair of the Planning Commission. Had things been stated differently, the Commission might have been able to address the problem in a way that would not have resulted in the Assembly's action. There would have been value in having a forum for that kind of a conversation. It is his hope, he said, that having a Governance Committee can provide for an appropriate forum to have those kinds of conversations. If a situation should arise as happened in the past, this could be referred to the Governance Committee to recommend a path forward. This is not a power grab for the committee but rather a forum for conversations about governance of the Planning Commission.

Ms. Maclean said that another good example is the Subdivision Review Committee (SRC), which has not met in several years, and there is a recommendation in the revised rules concerning this committee. In 2015, there was an update to the rules and regulations for subdivisions. Minor subdivisions up to 13 lots are approved now by the CDD director. Anything more than 13 lots goes to the Planning Commission for approval. Prior to 2015, there were not many subdivision applications that the director was approving. Now there are two concerns about the SRC meeting with these new rules. For minor subdivisions, if an applicant comes before the SRC, the committee might find one way and the director might disagree but, ultimately, it is the director's decision to make so this situation could pit the committee against the director. For major subdivisions, the concern raised is that if the SRC gave input or findings before the case is brought to the full commission, it is only a subset of the Planning Commission. An applicant might move forward investing a lot of time and money making their plans after meeting with the SRC only to find that when the case comes to the public hearing before the full Commission, there could be different findings making the applicant's work and investment moot or in the wrong direction, which can be very costly. Therefore, it is recommended that the SRC be removed as a committee of the Commission.

Mr. Voelckers said that he thought the SRC was also referenced in Code 65 and the Commission did not have the sole authority to remove it without a parallel tooth extraction elsewhere in code, and he wondered how to go about this removal. Ms. Mores said a change in the ordinance would be the place to start, as this is one of the Planning Commission's committees that is stated in code, 49.10.400. Mr. Levine recalled suggesting that this change be sent to the Title 49 Committee to work through the process.

Ms. Mores said that she has not reviewed the proposed changes to the rules, but she recommended legal review in terms of code consistency. After this review, she would provide another draft for the Commission's consideration. Mr. Levine said that he would appreciate that review. He suggested that the Commissioners should go through the current draft to identify any other questions from those not on the Rule Committee and Ms. Mores could flag the places that she sees might be an issue. He also suggested a process check to determine where the document should go next – Rules Committee, Committee of the Whole, etc.

Mr. Haight suggested the Commission go through the document one page at a time.

Page 1 - Rules 1 & 2
Mr. Voelckers said that he agreed with striking out the intent language in the introduction and just saying what the Commission is doing.

Mr. Dye said there was quite a bit of discussion amongst the Rule Committee regarding the time of adjournment. He wanted to clarify for the Commissioners what he thought and make sure everyone was on the same page regarding Rule 2. He said he does not feel okay with the unanimous vote; he thought that should stay as a simple or super majority because of the attempt to add the line that follows, "Any action taken after 11:30 p.m. will be treated as if reconsideration has been noticed". He understood that reconsideration is given as a notice, and then at the next meeting, according to Roberts Rules of Order the Commission has to make the motion and then have the vote. Ms. Mores said that was correct and she had a comment about that particular provision. Mr. Dye said he would assume that this provision would mean that notice is automatically given, but a Commissioner would still have to make the motion in order for the vote to occur. Ms. Mores said that at the next meeting, someone would have to make the motion or else it dies.

Ms. Mores said that having the word “automatic” in this rule might lead to unintended consequences. One consequence is that a permittee could be held in limbo between meetings. The preferred course, she said, would be for the Commission to decide when and if to continue something or not. There may be times when there is a simple issue about which the Commissioners feel comfortable taking action, but there would be an automatic provision to wait two weeks to make a motion. Therefore, she suggested moving to continue an issue if it is felt there needs to be more time for deliberation.

Mr. Levine added that by definition there would not be anything simple taken up after 11:30 because no new business is taken up after 10:30, so this proposed language would only apply to something that is complicated. This issue arose due to some action that was taken up late at night, and there is a concern about individual Commissioner’s capacity at a late hour.

Mr. Arndt said he had a similar thought as Ms. Mores. He liked the part about no new topics taken up after 10:30 but suggested putting a hard 11:00 or 11:30 pm time limit after which a case is automatically continued.

Mr. Voelckers said he agreed about the uncertainty being a problem, especially for issues that are time-critical. However, he felt that there was some redundancy in the language. He suggested dropping the sentence, “Any action taken after 11:30 p.m. will be treated as if reconsideration” and would leave the requirement for unanimity in order to go past 11:30. At some point, late at night, he said he felt the Commission owed the process the care of being able to have a single member bring it to an end.

Ms. Crossley said that she worried that for people who want to be heard, the requirement that after 11:30 a case is automatically extended might make people might not testify because they do not want the case to be continued to another 2 weeks.

Mr. Levine said that there have been fewer than five meetings in the past five years that have gone past 11:30. None of them, to his recollection, had public testimony going past 10:30. Generally, the lateness of a meeting is due to the Planning Commission deliberating on things. Sometimes it is not disagreement about outcome but the discussion is about wording and the conditions. His experience is that by 11:30, public comment has been completed or by 10:15, and the Commission knows there is no way they will get through the process in a timely manner.

Mr. Haight said that a danger is the risk of trying to get something done before midnight and members might no longer be thinking objectively about the comments being made and the deliberations. He said he felt that this was something the Commission would have to determine judicially during the process. If at 11:00 the Commissioners are still listening to the applicant and have not gotten to public testimony, he felt a case should be continued to the next meeting. That is more of a management issue that needs to be recognized as an option. However, if into deliberations, there is danger in doing so late at night unless it is so obvious that the Commission has a good direction.

Mr. Voelckers asked a procedural question regarding how to handle conduct at this meeting. Should there be a series of micro-votes on changes in language, he wondered?

Mr. Dye followed up on Mr. Arndt's point about timeliness and leaving an applicant in limbo. He said he had concerns about fairness to the public and the applicant. He said it was his fourth year on the Commission and only stayed late once when writing code for marijuana under pressure to get that completed. He said he felt the need to be careful about putting in place a hard and fast a rule. He was intrigued by the idea of an automatic notice of reconsideration. The same amount of time is lost by continuing to the next meeting but the advantage is if there is consensus, the developer could run the risk of whatever s/he deems appropriate based on what was experienced at the meeting. This could be compared to the risk assessment of the time between the issuance of a decision and the end of the 30-day appeal period. In addition, he said, at some of the late meetings there have been members of the public present who want to see the deliberations. Just because public testimony has ended does not mean the room is vacated. He said he respected the fact that people take time out of their schedule to be present. He would like to be very careful regarding a hard and fast end time. He said he thought there should be more flexibility for the body to decide how to proceed.

Mr. Levine said that he felt Mr. Voelckers was on to something with redundancy. He said he wanted to make sure that there is some provision that allows for even one commissioner to halt the process or recuse himself or herself if they feel they cannot effectively participate fully or there is a mechanism for it to be reconsidered at the next meeting when everyone is fresh. He said he was inclined to strike "reconsideration" and leave that a meeting can only be extended by unanimous vote, past 11:30.

Mr. Dye offed a counter point and said that Commissioners do not always agree. He felt leery of over empowering one Commissioner to stop everything for two weeks. This could be a game changer and could be abused.

Mr. Voelckers said that the Commission is a cordial, deliberative body, and he is not concerned that one Commissioner would use the opportunity to act on his/her private agenda, but he has experienced times when he has been so tired that he could not even think how to form a motion. He suggested that the Commission could be open to an appeal if someone is not able to be effective and therefore the body might fall below the threshold of doing due diligence. Is it okay to plow ahead if one or more members feel they cannot be effective, he asked? Ms. More said an option could be a super majority instead of unanimous. She said she could come up with other options to suggest during her review of the document. It is good for all to function well, and she thought there could be a number of ways to handle this.

Mr. Levine wondered if the Assembly had a mechanism for this situation. Another possibility could be to force proactively a motion to continue because there would have to be a vote. He pointed out that amongst the body at this time, there was not agreement about the best way to put in language regarding the time of adjournment.

Mr. Arndt suggested that Ms. Mores give options that would fit with dealing with extending the time of the meeting.

Page 2 – Rules 3, 4, 5, 6
Ms. More said that the Assembly rules state, "meetings will adjourn 11:30 pm unless extended by a vote of at least 6 members", which is a super majority.

Page 3 – Rules 6 & 7
Mr. Voelckers said that at the top of the page the words 'if absent" were incorrect and needed to be struck because they make the sentence nonsensical. Mr. Levine said that was not accurate, and the words were needed. The only time the chair does not count is if he is not present. If he is there, he counts as a member to establish a quorum. A committee of four only has four members, which does not include the chair of the Commission; however, the chair can count towards quorum for the committee if s/he is present. Mr. Haight said that is the definition of "ex officio".

Page 4 – Rules 7 & 8
No comments.

Page 5 – Rules 8 & 9
Mr. Levine pointed out that for Rule 8-D1 some of these six-vote motions have been moved to Rule 12H so this should be stricken. Conversely, the language could say that public participation can only be reopened pursuant to Rule 12. Mr. Haight concurred.

Page 6 – Rule 9
Mr. Voelckers said that in Item 3 there was a word missing. After "representative individual will present on their ____" it should say "behalf".

Page 7 – Rule 9
Mr. Levine pointed out that the committee had a conversation was about pages versus pieces of paper. It was determined that two pages was the front and back of one piece of paper.

Mr. Arndt said that it is nice to have examples like graphics. He wondered if the intent was only in regards to two pages of text, not to include pages of graphics. Yes, said Mr. Levine.

Mr. Dye said that for 9B4, “written comments must be signed”, he wanted to include language regarding the inclusion of an address with a name and signature. If this is required of people speaking publically, why is it not required on written comments. Mr. Levine wondered why it is required of people who testify. It seemed sufficient to know the city of residence only. Ms. Mores said that knowing a speaker’s proximity to a project could be helpful. The Assembly practices to always get name and address of people who are testifying, but she is not sure if it is a rule for written comments. Mr. Levine suggested that addresses either be required in both places or not. Mr. Arndt asked what if someone does not include the address in an email. Ms. Maclean said that staff would reply back to obtain an address if needed. Mr. Levine said that the rule does not say that written comments not meeting this requirement will be disregarded.

Mr. Hickok asked about people who submit via email and then testify in person reading from that email - can this be prevented. Mr. Voelckers said that this becomes a chair management issue to admonish the public to say something only once. Mr. Dye said the Rules Committee talked about how best to encourage only new material being presented in testimony. Mr. Levine talked about when the chair delivers information to the public about time limits, s/he could include a sentence to the effect that the public should assume that Commissioners have read all the written comments that have been submitted. However, he believed that people could not be prevented from doing with their time what they want as long as it is germane to the process. Ms. Maclean added that she empathized with people who are not comfortable with speaking publically to the Commission and so they might read directly from their email. Mr. Levine said that part of the impetus behind allowing a representative speaker who can have more time on behalf of others is to diminish the amount of time for restating the same thing or otherwise to help with this issue. Ms. Crossley clarified that people have to be present even if allowing a representative to speak on their behalf. Yes, said Mr. Levine.

Page 8
None

Page 9
None

Page 10
None

Page 11
Mr. Levine returned to the process question. The global attorney review needed to happen and the question of the end time needed to be addressed. His suggestion was that the revised rules do not need to come back to a Rules Committee or Committee of the Whole meeting unless Ms. Mores finds some giant legal problem that has been created. Otherwise, subject to that, the rules could come back to the Commission for adoption. Mr. Dye said he felt uncertain about

consensus about the hard and fast stop time. Mr. Voelckers said that he agreed with Mr. Levine and that the Commission can debate the one item about stopping the meeting at a public meeting.

Mr. Levine disagreed saying he felt that conversation about when and under what situation the Commission feels competent to make decisions is more appropriate for a Committee of the Whole or a Rules Committee meeting. There can be more free conversation in those settings. He would like Ms. Mores to make a suggestion about how to proceed. Mr. Voelckers wondered how Commissioners would know if they liked the suggestion. Mr. Haight suggested bringing this topic back to a Committee of the Whole meeting. He felt it would not take long to complete the discussion, and there could be another topic on the agenda to make it worth the Commissioners' time. Otherwise, he suggested taking the draft back to the Governance Committee for review. Mr. Dye pointed out that any Planning Commissioner can go to any committee meeting.

Ms. Maclean said that public comment was received from a member of the public who wants to submit written comments concerning the rules, because no testimony is taken at committee meetings. The advice she gave was that they are welcome to submit written comments to the committee and/or they are welcome to speak on non-agenda items during a regular meeting.

Ms. Crossley asked if the Committee would like the thoughts of those not on the committee. Mr. Haight said that the Governance Committee would be open to that. Personally, she said, she does not have a problem with late nights but understands that others may.

III. OTHER BUSINESS - none

IV. REPORT OF REGULAR AND SPECIAL COMMITTEES - none

V. ADJOURNMENT

The meeting was adjourned at 6:41 pm.