

Agenda
Planning Commission
Committee of the Whole
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
January 8, 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 5:37 p.m.

Commissioners present: Ben Haight, Chairman; Nathaniel Dye, Kenneth Alper (new member), Shannon Crossley (new member), Dan Hickok, Andrew Campbell

Commissioners absent: Paul Voelckers, Michael LeVine

Staff present: Jill Maclean, CDD Director; Laura Boyce, Senior Planner; Jane Mores, Assistant City Attorney

Assembly members: Wade Bryson, Liaison to the Planning Commission

Travis Arndt, newly appointed to the Planning Commission, observed the meetings, without participating, since he has yet to make a decision as to whether he can accept his appointment by the Assembly. He said he might have too many projects that would keep him from participating in meetings due to a conflict of interest.

II. Planning Commissioner Training

Ms. Maclean told the Commission that their role as a planning Commissioner breaks down into three different subsets: regulatory, where the Commission administers the local land-use regulations through Title 49, which is the code dictating the range of the Commission; in an advisory role to the Assembly on issues and activities related to planning, and in its procedural role, to conduct fair and transparent meetings and to make fair and equitable decisions.

The Commission's duties as defined by Title 49 are:

- ✓ Oversee the Comprehensive Plan
- ✓ Capital Improvement Program (CIP)
- ✓ City land acquisitions, disposals and projects

- ✓ Land use regulations
- ✓ Rezones
- ✓ Platting
- ✓ Conditional use permits
- ✓ Special permits
- ✓ Appeals of administrative decisions and variances in its role as the Board of Adjustment

The Community Development Department has a building division, which includes building inspectors and a code compliance officer, and a planning division with seven planners on staff, who present different cases before the Commission, said Ms. Maclean. They also have a GIS (Geographic Information System) analyst and administrative staff that the Commission members interact with frequently. The permit center issues building permits, some of the general engineering permits and other permits which do not need to come before the Planning Commission.

Planning Commission members participate in various committees and ad hoc committees, and are represented on the Commission of Sustainability, the Historic Resource Advisory Committee, and the Building Code Advisory Board, said Ms. Maclean. The Commission hears variances and other special permits sitting as the Board of Adjustment, said Ms. Maclean.

The staff administers land use regulations and posts meeting notices, and interprets the laws and ordinances for the public, said Ms. Maclean. The staff conducts area planning initiatives. Currently Blueprint Downtown is underway. The staff researches topics, land use issues, and advises the Commission and its committees, said Ms. Maclean. The staff also educates and assists the public and negotiates with agencies and developers, she added.

The staff identifies how the community wants to grow and also works at problem-solving, said Ms. Maclean. They work at balancing competing points of view, as does the Commission, said Ms. Maclean.

The Commission is to be fair, even and consistent in its application of the law, without personal gain or representation of special interests, said Ms. Maclean. It is also charged with protecting the health, safety and welfare of the populace, she added.

They have a variety of plans with the Comprehensive Plan being the overarching document, said Ms. Maclean. This is basically the guiding document for the Borough and its development, she said. This usually covers a 20 to 30-year time frame, said Ms. Maclean. It has been decided by committee to undertake a new Comprehensive Plan for the Borough rather than update the existing document, said Ms. Maclean. This will be in the budget for the upcoming fiscal year. The current plan is to hire consultants to help accomplish this task, said Ms. Maclean.

Rezones are a big component which the Commission will deal with within the Comprehensive Plan and the land use map designations, said Ms. Maclean. Each area within the Borough has a specific designation such as Industrial or various levels of residential and commercial

designations, said Ms. Maclean. The Land Use Maps guide how particular areas should be developed, she said. Multiple zones of a certain type fit within the various land use designations, she said.

There are also land use plans and various neighborhood plans, said Ms. Maclean. The Auke Bay Area Plan was developed in 2015, and the Lemon Creek Area Plan was adopted last year, she said. Currently the staff is working on Blueprint Downtown Juneau which is its area plan, she said. They will also be developing an area plan for Douglas once the downtown Juneau plan is complete, said Ms. Maclean. Next month the Commission will be reviewing the Capital Improvement Plan, she said. Ms. Boyce and her team are reviewing 26 plans which are in some way connected with the downtown plan, said Ms. Maclean. The Historic Preservation Plan should be adopted this forthcoming spring and summer, she added. The Commission will review this plan and provide a recommendation to the Assembly for adoption of the plan, she said. The long-range waterfront plan is still in effect and that plan is generally overseen by the Docks and Harbor Department, she said.

The staff is working on a new Wetlands Management Plan which they hope to have completed this spring, said Ms. Maclean. There is also a Wireless Telecommunication Master Plan, the Economic Plan and the Housing Action Plan, said Ms. Maclean.

Components of these plans include zoning and or subdivision regulations, floodplain regulations, land management, parks and open space and transportation, explained Ms. Maclean.

The Commission approves:

- ✓ All main subdivisions
- ✓ Conditional uses
- ✓ Planned Unit Developments
- ✓ Variances in the Commission's role as Board of Adjustment
- ✓ The Alternative Development Overlay District (ADOD)
- ✓ Alternative Residential Subdivisions
- ✓ Parking waivers (for a major development)
- ✓ Accessory apartments

Commission Comments and Questions

Mr. Alper asked if there is a definition for a major subdivision compared to a minor subdivision.

A major subdivision is for 14 lots and above and a minor subdivision is for one to 13 lots, answered Ms. Maclean. The staff deals with typical minor subdivision applications. Major subdivision requests must come before the Commission, said Ms. Maclean.

Most of the applications coming before the Commission are for Conditional Use Permits, said Ms. Maclean. The primary purpose of a Conditional Use Permit before the Commission is to give abutters the opportunity to comment on this proposed change within their neighborhood,

said Ms. Maclean. This also gives the Planning Commission the opportunity to mitigate impacts to the neighborhood, she explained. Typical impacts reviewed for these permits are for:

- ✓ Traffic
- ✓ Visual impacts
- ✓ Environmental impacts
- ✓ Potential Nuisance
- ✓ Privacy
- ✓ Safety
- ✓ Welfare

The staff attempts to be consistent with the conditions reviewed from application to application, said Ms. Maclean. There are unique circumstances when other conditions may need to be applied, she added. Conditional Use Permits can also be too burdensome and overloaded with conditions such as the Marijuana Conditional Use Permits, said Ms. Maclean. They have since narrowed the focus of those conditions, with the conditions required by the state not a part of the city application process.

Variances have undergone a lot of revision recently, said Ms. Maclean. After a previous variance application was appealed by the applicant, said Ms. Maclean, the variance language has been tightened. The language is clearer and the meaning more specific, she said. A variance should be an extraordinary request for extraordinary circumstances and it should be necessary under only limited circumstances, said Ms. Maclean. The property perhaps is unique such as with challenging topography, said Ms. Maclean.

If a variance is denied at the staff level, it goes before the Commission in its role as the Board of Adjustment, said Ms. Maclean. Commission variance decisions can be appealed to the Assembly, and Assembly variance decisions can be appealed to the courts, she said. The same appeal process is followed for Conditional Use Permits, said Ms. Maclean. A self-created hardship should not be a basis for a variance, she added.

The staff and Commission have worked over the past five years to improve Title 49 when there are many similar variances for similar circumstances, she said. They have overhauled the variance section of the code itself as well as the development of Alternative Development Overlay Districts for both downtown Juneau and Douglas. These districts allow for a different procedure other than a variance for applicants to apply for setback reductions, lot coverage and vegetative coverage, said Ms. Maclean. They have two years to develop the zoning for the downtown area and three years to develop zoning for the town of Douglas, said Ms. Maclean. They need to develop different zoning for these urban communities because their structure is much different than zones for the more suburban areas, said Ms. Maclean. Parking waivers are also available for these two urban areas, she added.

The Director can approve a minor subdivision, said Ms. Maclean. It is a two-step process involving a preliminary and a final plat, she said. Public notice is also required for a minor

subdivision, she said. For a major subdivision the public can testify at the hearing, she said. For a minor subdivision, abutters are notified of the application. The staff would accept comments from the public on the variance request, she said.

A major subdivision requires the approval of the Planning Commission. Prior to going to the Commission there will be a meeting with the staff, and various staff members would attend that meeting depending on the type of variance being requested, said Ms. Maclean. The applicant needs to show a sketch plat of the property, and if there is additional contiguous property not currently being developed by the applicant, they need to inform the staff of their plans for that additional property, said Ms. Maclean.

The idea of a phased development means that the applicant must show plans for the full buildout, not just for the first phase of the development, said Ms. Maclean. This encourages the applicant to look at their project holistically, she said.

Recent Title 49 updates include the Alternative Residential Subdivisions (ARS), the Alternative Development Overlay Districts (ADODS), a minor change to mining and an update to panhandle's and parking waivers. There is also a setback reduction for energy efficiency improvements. This helps those in the ADODS to be able to add insulation to the outer walls without being out of compliance with the zoning district, she said. Improvements have also been made to shared access which enables developers of four lots or less to not have to develop the roads up to CBJ standards, said Ms. Maclean.

Other Title 49 updates currently in progress are stub streets and temporary cul-de-sacs, which is before the Assembly, and nonconforming lots, said Ms. Maclean. They are rewriting the entire section of code pertaining to nonconforming lots, she added. They are also working on streamside buffers, urban agriculture, updates to accessory apartments and the common wall portion of the code, said Ms. Maclean. They are also proposing new zoning districts, she said. They are working on new zoning districts for Auke Bay, and possibly downtown Juneau, with downtown Douglas zoning to be updated in 2020, said Ms. Maclean. The Assembly has requested that the planning department look at industrial zoning district uses, she said. The Assembly has also requested that they look at more land for industrial zoning, said Ms. Maclean.

Legal Aspects Pertaining to the Planning Commission

Police Powers

The Planning Commission is charged to protect the health, safety and general welfare of the community, said Ms. Mores. This gives the government the right to regulate personal conduct and use of land, she said.

Rules of Order

These rules provide the basic mechanics stipulating the time of meetings and the structure of the committees, for example, said Ms. Mores. The Planning Commission has liaisons on two

separate committees that constitute the Lands Committee and the Public Works and Facilities Committee, said Ms. Mores. The Commission also has two representatives on the Wetlands Review Board and one Commission member serving on the Juneau Commission on Sustainability, said Ms. Mores.

There are certain situations that require a two-thirds vote of the Commission rather than a five-member vote, said Ms. Mores. Reopening public debate would require a two-thirds vote, for example, she said. That would also require an immediate vote for reconsideration at the same meeting.

Open Meetings Act

All Planning Commission meetings are public, which includes allowing public participation at every meeting, said Ms. Mores. A meeting of the Planning Commission is defined as more than three Commission members. Three members can talk, said Ms. Mores, but four people cannot. An exception would be a work session where public comment could be disallowed, she said. The executive session rules are provided in the Open Meetings Act and they are outlined in Title 44, said Ms. Mores.

Executive Session

An Executive session can be called when public knowledge would clearly have an adverse effect on the finances of the CBJ, for example, said Ms. Mores. When the Commission is involved in a quasi-judicial and adjudicatory proceeding/appeal, it has the ability to go into executive session, said Ms. Mores. It may be used if public discourse would defame or prejudice the reputation or character of a person. The executive session must be noticed as a topic in the agenda. A motion must be made to move into executive session, and the public has a right to object, said Ms. Mores. Deliberation can be made in an executive session, but the Commission must come back to the public meeting in order to take action on those items discussed during the executive session, said Ms. Mores, when the factual findings and reasons for its decision are announced. The Commission could go into executive session if the Director's decision had been appealed, for example, said Ms. Mores, to have more deliberations that are candid without creating an awkward circumstance debating this issue in public, said Ms. Mores.

Serial Meetings

Avoid using "reply all" in an email, said Ms. Mores. She could send an email to all Commission members, said Ms. Mores, but Commission members cannot reply to that message to everyone on the Commission, she said. That could be construed as a meeting, said Ms. Mores. Under the public records act all email text documents, even if on a Commissioner's personal device, can be accessed for the public record, said Ms. Mores.

Conflict of Interest

This is addressed under CBJ 01.45, said Ms. Mores. Impartiality and transparency are the critical pieces of this portion of the code, said Ms. Mores. It prescribes these standards and penalties:

- ✓ Misuse of official position
- ✓ Gifts
- ✓ Improper use or disclosure of information
- ✓ Improper representation
- ✓ Violations are generally “B” misdemeanors
- ✓ Complaint and investigatory process

Each Commission member as a public officer holds the public trust, said Ms. Mores. The standards of ethical conduct require Commission members to distinguish between inconsequential conflicts and those that are substantial and material, she said. The Commission member may not vote or deliberate if he or she has a personal or financial interest in the item, said Ms. Mores. The code defines both financial interest and personal interest, said Ms. Mores.

Financial interest is defined as:

Any interest, other than securities traded on a national exchange, held by the municipal officer or an immediate family member, including involvement or ownership of an interest in a business, property, or a professional or private relationship, from which the person has received within three years or expects to receive compensation.

Personal interest is defined as: “an interest other than a financial interest, and includes any material advantage in the form of a promise, service, privilege, exemption, patronage, or advancement.”

Immediate family member is defined as: a municipal officer’s spouse, minor children and dependence, or a regular member of the officer’s household.”

Ms. Mores encouraged Commission members to call her if they have a question as to whether they have a conflict of interest or not. A Commission member may also declare a possible conflict of interest and let the Chair, the public, or the Commission decide if there is a conflict of interest. When in doubt it is best to recuse oneself, said Ms. Mores.

Commission Comments and Questions

Ms. Crossley asked if as an employee of an architectural firm, if she is not working on one of the firm’s projects which is before the Commission, if she would still need to declare a conflict of interest.

Ms. Mores said that it would be a good idea to recuse oneself in that circumstance. A municipal officer may not represent, advise, or assist another person in any matter pending before the agency in which the officer serves if the representation, advice, or assistance is for compensation, said Ms. Mores.

A Commission member may work on a project before the Planning Commission as long as the member recuses himself or herself, she said.

Mr. Dye asked if there is a potential conflict and a member follows the advice given by the attorney, and it turns out in future proceedings that there is a conflict of interest that since the member had followed the attorney's advice if they were protected from being charged with a misdemeanor.

Ms. Mores said this is true.

Ms. Crossley noted that a member of the planning staff is her first cousin. She asked what she should do under that circumstance.

Ms. Mores said under that circumstance each time her first cousin presents before the Commission, that she declares the relationship and leaves it up to the Commission, the Chair and the public to decide.

Quasi-Judicial/Appeals Process

When it sits as a quasi-judicial body, the Commission must be fair to both sides of the issue, said Ms. Mores. If someone from the public wants to discuss an issue with a Commission member, which could potentially come before the Commission, then the member should not discuss that issue with the member of the public, said Ms. Mores. If a Commission member receives an email that looks like it could be a project it is best not to respond to that email. It could be forwarded to the CDD staff to get their opinion on the matter.

Ms. Maclean told the Commission to keep in mind that it is not just the applications that a Commission member may be hearing, but that it could be a minor development permit that could potentially end up before the Commission as an appeal.

Ms. Mores said the ex parte' communication does not just apply to the applicant but to the staff and director as well. Commission members need to wait and hear what is presented at the meeting in public with everyone else, she said.

Ms. Mores clarified for Mr. Campbell that the Commission is also sitting as a quasi-judicial body when it makes decisions on permits such as a Conditional Use Permit, not just when it sits as a body to hear an appeal of the Director's decision.

Mr. Campbell asked if there were situations in which a Commission member would be able to discuss projects with a member of the public.

Ms. Mores said perhaps the Commission member could discuss the project with a member of the public before it was ever submitted to the department.

Ms. Mores said she wanted to emphasize for the Commission how important it was to create a record. She said the Commission needs to be very clear in its motions and statement of facts, and be very specific in the reasons that it is acting in the way that it is. This will create a good record should that item ever come up for an appeal.

Mr. Dye said in the past a Commission member could ask a clarifying question of the Director or staff member and the answer would be sent to all Commission members. He asked if this is a practice which they can continue.

Ms. Mores said that circumstance would not create an ex parte' problem.

Ms. Mores said the Law Department is not a subject matter expert. The Law Department exists to advise the Commission on procedural issues and questions of legality.

Mr. Campbell asked if when he is functioning as a liaison for the Planning Commission on a board such as the Wetlands Review Board if he is a voting member of that board.

A liaison would typically not be a voting member of a board, said Ms. Mores. She said the term "liaison" is not applicable to that circumstance, as there are two Commission members appointed to serve on that board. She said she thought Commission members would also be a voting member on the Commission of Sustainability.

Mr. Hickok asked if explaining to a potential applicant the possible procedures which could ensue would be an ex parte' communication.

Ms. Mores said in that situation it is always a good idea to refer that individual to the staff to answer their questions.

III. REPORT OF REGULAR AND SPECIAL COMMITTEES

IV. ADJOURNMENT

The meeting was adjourned at 6:48 p.m.