

MINUTES
Planning Commission
Committee of the Whole
CITY AND BOROUGH OF JUNEAU
Ben Haight, Chairman
May 24, 2016

I. Roll Call

Ben Haight, Chairman, called the Committee of the Whole (COW) Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:41 p.m.

Commissioners present: Ben Haight, Chairman; Paul Voelckers, Vice Chairman;
Bill Peters, Michael LeVine, Percy Frisby, Nathaniel Dye,
Matthew Bell, Kirsten Shelton-Walker, Carl Greene

Commissioners absent:

Staff present: Rob Steedle, CDD Director; Beth McKibben, Planning Manager;
Chrissy Steadman, Planner II; Amy Mead, Municipal Attorney;
Robert Palmer, Assistant Municipal Attorney II

Assembly members: Debbie White, Loren Jones

Regular Agenda

Purpose of the Planning Commission

The overall goal of the Commission is to make Juneau a better place, said Ms. McKibben. The challenge of the Commission, she said, is that Planning Commission members need to be knowledgeable on a diverse range of complicated information such as different permit types, complicated codes, and zoning regulations. The Commission also needs to have a vision for the community, anticipating and helping to decide what directions the community will take in its development, she added.

Open Meetings Act

Commission meetings are open to the public, said Ms. Mead, dictated both by state law and municipal charter, which requires all government entities of the municipality to hold their meetings in public. The other important concept is that members of the public are to be provided a reasonable opportunity to be heard, said Ms. Mead. This means that Commission

meetings must be accessible to the public, she said, and this means those meetings can be accessed by handicapped individuals as well.

What Constitutes a Meeting

Ms. Mead said a meeting is defined by a meeting of more than three or a majority of the Commission members, whichever is less. It must be a matter upon which the body is empowered to act or consider, she added. A subcommittee is also included if it consists of two or more members, she said. This can include serial communications such as email or phone calls and chance meetings, said Ms. Mead.

The entire decision-making process must be in public and be transparent, said Ms. Mead. She provided several examples from within the State of the Open Meetings Act being interpreted by the courts of Alaska. One case involved a site visit by Commission members which was challenged as being noncompliant with the Open Meetings Act. The defense was that the members were not meeting to make any decisions, said Ms. Mead. In this instance the court ruled that the proper question to ask under the Open Meetings Act (OMA) is whether the members of the governmental body collectively considered a matter upon which they were empowered to act at that site visit. Since the Commission was visiting property which involved a variance request it was considered an open meeting, said Ms. Mead, and thus constituted a violation of the Open Meetings Act.

She cited another example provided by an Anchorage case. In this case there was a quorum of the Assembly that met with a private developer whose recent application had been denied by the Anchorage Planning Commission. The quorum of the Anchorage assembly members met with the private developer in his office and at a subsequent meeting approved the rezone, said Ms. Mead. Even though the result was approved in public, the meeting with the contractor was not a public meeting, said Ms. Mead. The Anchorage Assembly said their meeting with the private developer was simply fact gathering, said Ms. Mead, with their action on the rezone taking place in public. The Alaska Superior Court agreed with the Anchorage Assembly, said Ms. Mead. However, the Alaska Supreme Court disagreed. It said a meeting includes every step of the deliberative and decision making process when a governmental unit needs to transact public business, said Ms. Mead. The Supreme Court's decision was based upon a California case, said Ms. Mead. It defined deliberation as connoting not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision, she said. The California court also stated that an informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance, said Ms. Mead.

The cure of an OMA violation is not to simply redo the action in public, said Ms. Mead. The cure has to be a de novo review of the facts, and a full discussion of the analysis which had been engaged in order to reach a full decision, because they must be making a clear record for the public which may want to challenge those decisions, said Ms. Mead.

Forms of a Meeting

Serial Meeting

A serial meeting is anything that happens in a consecutive manner, said Ms. Mead. This could take the form of an email sent out to all of the Commission members, and it is a reply all response, said Ms. Mead. This could also take the form of serial telephone conversations or communications, she added. If the court views the serial communication as an attempt to circumvent the Open Meetings Act, then an OMA violation is likely to be found, said Ms. Mead. In these circumstances quorum does not matter, said Ms. Mead. Talking to members one at a time about an issue the Commission is empowered to act upon would be a violation of the Open Meetings Act if the court found that the communication was to effect an ultimate decision, said Ms. Mead.

A member can call two people on the Commission to discuss issues, but a member cannot call four people, noted Ms. Mead. Deliberation should be saved for the public forum, she added. A chance meeting of four Commission members who talk about issues other than Commission business is not a problem, said Ms. Mead. A chance meeting of four Commission members cannot result in conversation about Commission business, said Ms. Mead.

Conflict of Interest

The conflict of interest policies are the same as the Open Meetings Act policies, said Ms. Mead. Anyone who sits on a government body must be open and transparent in all government business, said Ms. Mead. If a Commission member or a family member has a personal or financial interest on a matter before the Commission, they may not take part in the business on that issue, said Ms. Mead. They cannot have received compensation on the pertinent issue over the past three years, nor can they expect compensation in the future, said Ms. Mead. This includes the spouse, minor children, any other dependents or a regular member of the household, said Ms. Mead. A personal interest would be anything other than a financial interest when the member was exchanging something for a promise, patronage, privilege or advancement, said Ms. Mead.

If a Commission member contacts a municipal attorney for an opinion on whether there is a conflict of interest or not, if they act upon the advice of the municipal attorney they are protected if they follow that advice, said Ms. Mead. The other way to protect oneself from a conflict of interest issue is to disclose the potential conflict before the Commission in public. The Chair would make a recommendation and the Commission would vote on whether there was a perceived conflict, said Ms. Mead. That would cure the conflict, said Ms. Mead.

Commission Comments and Questions

Mr. Greene asked if there could be a potential conflict of interest acting as a liaison on a committee. The safest course of action would be to disclose any potential conflict, said Ms. Mead. However, she said, if the liaison was not participating in the discussion and not voting on

any issues, disclosure would not be necessary. If the liaison was to participate in the discussion the safest course would be to disclose any potential conflict at that time, said Ms. Mead.

Mr. Frisby asked if there could be a conflict if a voting member was a shareholder of a corporation. That could possibly result in a potential conflict, said Ms. Mead. It would be important to disclose the potential conflict if the Commission member was a shareholder of an entity which had business before the Commission, said Ms. Mead.

Mr. Voelckers asked if a conflict could come into play if a Commission member had contributed information many years ago to an issue which was then before the Commission. Ms. Mead said she did not see this as a conflict of interest issue. The best course of action would be to let the Commission know that the individual had participated in some of the information before it years ago but that there were no financial or personal interests involved.

Role and Duties of the Commission

Planning and land use regulation is a police power, said Ms. McKibben. It is important that the actions of the Commission be reasonable and fair, she said. The Planning Commission has three primary roles, said Ms. McKibben: advise the Assembly on issues such as planning, land use regulations and community development.

Title 49 lays out the Planning Commission role, said Ms. McKibben. The Commission helps adopt the Comprehensive Plan and makes its recommendations on the Plan to the Assembly, said Ms. McKibben. Towards this end the Commission develops and amends land-use regulations and zoning map changes among other duties, said Ms. McKibben. The Commission reviews and makes recommendations on the Capital Improvement Program, land acquisitions and disposals, and land use designations with rezones and platting, said Ms. McKibben. The Commission also makes decisions and considers variances as the Board of Adjustment, said Ms. McKibben.

For the Comprehensive Plan the Commission is primarily recommending actions to the Assembly for capital improvements, land acquisitions, land-use designations and rezones, said Ms. McKibben. The Commission has decision-making authority over platting, Conditional Use Permits, appeals of administrative decisions and variances, she said.

Another overarching theme regarding the performance of a planning Commissioner is to keep in mind the common good of the community, said Ms. McKibben. This is articulated by the goals and the policies of the Comprehensive Plan, she said. The Commission must be fair and consistent in its application of the law, said Ms. McKibben. Commission decisions should be based upon the public health, safety and welfare of the community, noted Ms. McKibben. The staff administers the land use regulations, so that anything that does not come to the Planning Commission for a decision is something that has been decided administratively, she said.

The staff interprets the laws and ordinances in its support of the Commission, said Ms. McKibben. It makes sure that meetings are properly noticed, they assist with community planning, they advise the Commission and educate the public and negotiate with different groups, organizations and developers, said Ms. McKibben. They enact enforcement and provide continuity, said Ms. McKibben.

The planning process can enhance the quality of life, and be a device for problem-solving, said Ms. McKibben. The planning process can promote development, conserve resources and balance competing points of view, said Ms. McKibben. One of the primary goals is to establish a degree of predictability and certainty over patterns and costs of development, noted Ms. McKibben. The creation of land-use regulations and the consistent application of those regulations creates a predictability for the developer as well as the residents of the community, said Ms. McKibben.

There are a variety of different kinds of plans such as:

- ✓ Comprehensive Plan
- ✓ Neighborhood plans, such as the Auke Bay Plan and the Lemon Creek Plan
- ✓ Draft Housing Plan
- ✓ Capital improvement plans
- ✓ Transportation plan
- ✓ Economic Development Plan
- ✓ Action plans
- ✓ Waterfront Development Plan

The Comprehensive Plan provides the framework for decision-making in the form of policy statements, goals and standards, said Ms. McKibben. The staff bases its findings for conditional uses upon the policies and goals of the Comprehensive Plan, said Ms. McKibben. In Juneau's Comprehensive Plan there is a chapter on sustainability, said Ms. McKibben, a chapter on energy, and a chapter on cultural resources which includes resources such as education and the libraries.

The Comprehensive Plan is implemented by a variety of tools, said Ms. McKibben, such as:

- ✓ Zoning regulations
- ✓ Subdivision regulations
- ✓ Capital improvement plan
- ✓ Floodplain regulations
- ✓ Land Management Plan

Conditional Use Permits

One of the permits the Planning Commission has decision-making authority over are conditional uses, said Ms. McKibben. This is a use that may or may not be appropriate in a particular zoning district according to the character and intensity or size of the surrounding uses, said Ms. McKibben. This is intended to afford the flexibility to the Commission to make determinations appropriate to individual sites, and to attach conditions necessary to mitigate external adverse impacts, said Ms. McKibben. If the Commission determines that conditions may not be satisfactorily overcome, then the permit must be denied, she said.

The concept is that the things that are committed outright in the table are determined to always be compatible, and to have a similar level of impact such as height, or traffic, said Ms. McKibben. There is the list of conditional uses which have a greater or different impact than the principal uses, she said.

Some of the things to keep in mind when contemplating conditions are the building size; is the size appropriate and in harmony with the surrounding neighborhood? Is it properly oriented so it is not creating undue impacts with noise or light? The site features must also be considered, she added.

Variances

Variances are for those situations where hardship and practical difficulties resulting from an extraordinary situation or unique physical feature affects only a specific parcel or property structure as lawfully existing and render it difficult to carry out the provisions of the Title. The Board of Adjustment may grant a variance in harmony with the general purpose and intent of the Title, said Ms. McKibben.

A key point to keep in mind when considering a variance means that without the variance the property owner is deprived of all beneficial use of the land, she said. Without a variance nothing can be built on the property in question, said Ms. McKibben.

Variance Concepts (why variances are so hard)

Mr. Palmer said a Conditional Use Permit is set up as an explicit use that is allowed.

Variances, by contrast, he said, if allowed, mean that the Commission is giving the applicant permission to violate the law, said Mr. Palmer. That is why variances are so difficult to achieve, he added. When someone's property is physically unique or has some extraordinary circumstance that causes a hardship or practical difficulty, a variance may be considered, said Mr. Palmer. If the Commission finds that someone's property does warrant the consideration of the variance, it then has six criteria which must be met for that variance to be issued, said Mr. Palmer.

The variance is the tool that preserves the constitutionality of Title 49, said Mr. Palmer.

If the variance is denied, said Mr. Palmer, the applicant could comply with Title 49. Alternatively, the Planning Commission, CDD, the Assembly or the applicant after the fact could petition to have Title 49 amended so that the application could proceed. The two questions which would need to be answered said Mr. Palmer are:

- ❖ Is Title 49 too restrictive?
- ❖ Should there be some type of substantive mitigation in the area the applicant is asking for and is that the appropriate way to get around the variance concept?

De minimis Setback Variance

A de minimis setback variance is a decision made by the CDD Director, said Mr. Palmer. This is defined as an after-the-fact administrative variance for a de minimis setback, he explained. Every other variance application must come before the Commission, said Mr. Palmer. When deciding a variance, said Mr. Palmer, it is very important that it have a unique feature or extraordinary circumstance which allows the variance to be considered.

Commission Comments and Questions

Mr. Voelckers asked if the unusual circumstance would be limited to the property or if it could be applied to the situation of the applicant as well.

Generally a building on the property either constructed by a current or former owner is not construed as a unique and unusual circumstance, said Mr. Palmer. That would be a self-created hardship, he said, not a situation calling for a variance, he said.

The alternative, said Mr. Palmer, would be to look to Title 49 and see if an amendment to the Title was necessary. A good test, said Mr. Palmer, is if the municipality is granting a large number of variances the code should probably be assessed to see if it is too restrictive or if there is a need for substantive mitigation.

If a property owner or the predecessor of that property owner builds a house incorrectly using the wrong measurements deep into the setback, that would be deemed a self-created hardship not unique to the property, said Mr. Palmer. The general rule he said, is that the variance request would probably need to be denied because there was nothing unique about the property, it was a self-created hardship.

It is difficult when someone comes into the office and says that they had built incorrectly but thought they were following the correct rules, said Mr. Palmer. This would not generally be a criteria for a variance, said Mr. Palmer. Ignorance of the law, good faith and being a subsequent buyer is generally not a basis for the granting of a variance, said Mr. Palmer.

Wanting to develop the economic potential of the property could be considered as one of the six factors needed to be approved in order to grant a variance, said Mr. Palmer.

Commission Comments and Questions

Mr. Voelckers asked if Mr. Palmer could speak on the concept of “equivalency” when considering the granting of a variance.

Mr. Palmer emphasized that when contemplating whether a variance should be considered the property could first be assessed to see if it had any unusual features. The initial threshold earlier described must first be considered, said Mr. Palmer. There needs to be something unique and extraordinary about that piece of property, he said, before a variance could be considered.

Subdivision Regulations

Subdivision regulations are important, and they shape the community, said Ms. McKibben. Juneau heavily regulates its subdivisions, said Ms. McKibben. These regulations decide how big the streets need to be per development, whether sidewalks are required and where, the dimensions of the lot and how many lots need to form the subdivision to trigger certain types of streets, said Ms. McKibben.

There are major subdivisions and minor subdivisions, said Ms. McKibben. Major subdivisions come to the Planning Commission as a two-step process for first a preliminary plat and then a final plat, she said. According to the new code, 14 or more lots constitutes a major subdivision, she said. The Commission approves or disapproves the general layout of the subdivision with the preliminary plat, said Ms. McKibben. At this juncture the Commission may recommend conditions. For the final plat to be approved it would need to be shown that all conditions had been met, said Ms. McKibben.

Pre-application conferences are required for major subdivisions, said Ms. McKibben. Sketch plats are required at that time, she said. Public notices are required, she said.

A minor subdivision is for developments up to 13 lots, said Ms. McKibben. It used to be four lots, she said. Those are approved administratively, she said. The minor subdivision application is also a two-step process with a preliminary plat and a final plat, said Ms. McKibben.

There is a Notice of Decision issued now after the preliminary plat which articulates the items anticipated to be completed in order for the final plat to be granted, said Ms. McKibben. The pre-application conference is new as is the required notice to adjacent property owners, said Ms. McKibben.

Cumulative Impacts Need to be Analyzed

If the project is going to be developed in phases or in parts, said Mr. Palmer, all of the adverse impacts of the entire project need to be considered at the initial phase, he said.

II. Other Business - None

III. Report of Regular and Special Committees - None

IV. Adjournment

The meeting was adjourned at 6:51 p.m.