

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

September 22, 2014, 6:00 PM.
Municipal Building - Assembly Chambers

Worksession - No public testimony will be taken.

I. ROLL CALL

Chair Mary Becker called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Karen Crane, Loren Jones (teleconference), Jesse Kiehl, Jerry Nankervis (teleconference), Merrill Sanford, Carlton Smith, and Randy Wanamaker .

Assemblymembers Absent: Kate Troll.

Staff present: Amy Mead, Municipal Attorney, Rob Steedle, Deputy City Manager; Laurie Sica, Municipal Clerk; Hal Hart, Community Development Director; Travis Goddard, Planning Manager; Eric Feldt, Planner; Bob Bartholomew, Finance Director; Patti DeLaBruere, Airport Manager.

II. APPROVAL OF AGENDA

Hearing no objection, the agenda was approved.

III. APPROVAL OF MINUTES

A. August 18, 2014 Assembly Committee of the Whole Minutes

Hearing no objection, the minutes of the August 18, 2014 Assembly Committee of the Whole meeting were approved with grammatical corrections.

IV. AGENDA TOPICS

A. Economic Development Plan Update

Jim Calvin and Barbara Sheinberg were present to speak to the committee. The project is on track. The initiatives being pursued have been defined and developed through the household survey, the business survey, the public meetings and stakeholder meetings, the feedback from the Assembly and the planners analysis.

Seven initiatives are works in progress, not in any order, have overlap, but are top priorities:

- 1) Capital City - preserving the Capital Economy,
- 2) Housing - breakdown the housing barriers that are dampening growth, workforce and seasonal housing needs, senior housing needs and starter homes/young family housing;
- 3) Seniors - build the senior economy - aging in place, continuing to contribute;
- 4) Federal government - Reversing the trend in job loss in that sector, increasing research opportunities (forestry, fisheries);
- 5) Workforce - Attracting the next generation workforce to Juneau - making Juneau an attractive place for young professionals to live and work (housing, education, childcare, quality of life amenities);

6) Business support -build on our advantages through business support and branding (supporting what we do well, growing and strengthening it - build on success as regional hub, creative economy, arts, food, and working with existing businesses to support, innovate and brand);

7) Linking community, neighborhood and economy - communities are competing for talent, all facing silver tsunamai, economic vitality, linked to downtown livability, transit, tight neighborhoods, reduced crime, increased market for neighborhood businesses.

The Assembly asked questions and provided feedback to the consultants.

B. Juneau Economic Indicators - Presentation by Juneau Economic Development Council

Brian Holst and Eva Bornstein of the Juneau Economic Development Council (JEDC) were present and distributed copies of the 2014 Juneau and Southeast Alaska Economic Indicators and Outlook. Ms. Bornstein was the lead researcher on the project. Mr. Holst noted the mission and focus of JEDC printed on the back of the report. He invited the Assembly to an event the following evening in the KTOO 360 North studio hosted by JEDC for its 43 investors at which a more intensive presentation would take place.

Ms. Bornstein presented a power point presentation, which was made part of the meeting packet, to the Assembly. She said she was happy to contribute the information to the dialogue for the Economic Development Planning effort. The slides focused on statistics on employment and earnings, demographics, education, construction and housing, business and industry and the cost of living in Juneau and Southeast Alaska.

Ms. Becker thanked JEDC for the significant information.

C. Ordinance 2014-14(b) 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. The Committee of the Whole considered the ordinance at its July 28, 2014 meeting and decided to continue its discussion to the September 22, 2014 Committee of the Whole meeting.

Mr. Wanamaker said he believed Ordinance 2014-14(b) was tabled to the next Committee of the Whole meeting and that meeting had already taken place and it was not brought back in a timely way. He questioned the legality of working on this ordinance. Ms. Mead said it was heard at the end of July, and it was slated to the next meeting but she asked that it be moved to after August 18 due to her vacation plans. Both this and the cell tower ordinance were moved to this meeting. She did not believe it was illegal to work on this ordinance. Hearing no further objection, Ms. Becker opened the discussion.

Mr. Kiehl asked how the Assembly would handle placing conditions on a rezone and said there was no process for handling the PC recommendations for conditions by the Assembly. Ms. Mead said this was not new language and this ordinance only changed the process. Mr. Kiehl said this was a substantive change to the process and placed the Assembly in the position where the PC had been. In this draft, if the PC decides the rezone complies with the comp plan with certain changes it would come before the Assembly as an ordinance. If the PC said that the rezone did not comply with the comp plan, there was no recommendations if it was brought forward anyway, stating "it might be made better if..." Ms. Mead said this process, with the exception of allowing for a protest, was the process that had been in place for a significant time, it was changed in 2013, and she was recommending returning it to the former process. She said at one time the Assembly had held longer hearings with significant testimony on zoning ordinances. Ms. Mead said the PC issued a written

recommendation and the reasons for support or denial would be in that document. She said a zoning ordinance used the legislative process similar to other ordinances. Ms. Mead said any conditions, whether they were provided by the PC, through a protest or drafted by the Assembly, had to be contained within the zoning ordinance.

The Assembly discussed the process used in appeals, the limits on communication with parties, the extensive record that was built and the standard of review that was outlined. Ms. Mead said this ordinance would change all of that and a zoning ordinance would be a legislative matter, communication would be encouraged, public testimony would be taken in any manner the Assembly determined. The grounds for decision making were having a rationale basis for a legislative decision.

Mr. Kiehl said he wants a basis for making conditions when a rezoning ordinance is brought forward by protest. He said that in the Anchorage ordinance on zoning the consent of the applicant was necessary in the case that the Assembly modified or placed special conditions on a proposed ordinance. Ms. Mead said that was possible to add to this ordinance.

Ms. Mead said she wanted to clarify there was no requirement to return changes to an ordinance that comes from the PC back to the PC for another review. At the introduction of the zoning ordinance, the Assembly would decide what to do with a protest. The assembly had the discretion to hold a hearing at a regular meeting or at a separate public hearing.

MOTION, by Jones, to amend on Page 1, Line 22/23, after the words, "The commission shall prepare written findings in support of its recommendation," the words, "...within 20 days of the Commission vote."

Since the applicant and the public had a deadline to file a protest, he asked for a deadline for the PC to issue their written findings.

Discussion continued on how the public and applicant was made aware of a decision and Ms. Mead said PC decisions were published on the internet. Mr. Hart spoke about the department process for issuing the recommendations. Ms. Sica explained filing dates and deadlines currently in place for appeals and how the time was counted.

There was discussion about the length of time and Ms. Mead suggested the deadline should be based on the time required to publish the findings on the CDD website, perhaps in ten days. Mr. Jones supported that as an amendment to his motion. Hearing no objection, it was so ordered.

Mr. Nankervis asked if it was true that anyone could protest a rezoning decision by the PC. Ms. Mead said yes, that let the Assembly know how much interest there was and determine how to proceed with the legislation.

MOTION by Smith, to move Ordinance 2014-14(b) forward with the changes.

Mr. Kiehl objected and said he was concerned that there was no process outlined for the hearings.

Mayor Sanford said if a rezoning ordinance was controversial his interest would be to maximize the public's ability to provide their comments and the time frame for the meetings and the testimony could be based on the level of interest in the topic.

Mr. Kiehl asked if the Assembly would have the access to the significant work and information done by the PC upon which to base a decision. Mr. Jones said he thought the Assembly would have the information from the PC and from any protest filed, and could request additional information on the legislative matter.

Mr. Wanamaker said the committee tabled this ordinance to a time certain and this time certain had come and gone. The Committee was taking this up too late and not following its own procedures.

Hearing no objection, the committee took a short recess at 7:55 p.m. and returned to regular session at 8:00 p.m.

Ms. Mead said Mr. Wanamaker was correct that if a motion was laid on the table for a specific time and the time was past, the motion would die, however, that was not the action taken in this case. At the request of the chair, the Clerk read from the meeting minutes of the Committee of the Whole on July 28, 2014, "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." Ms. Mead said the matter was appropriately before the committee.

Ms. Sica asked for clarification on the requested changes. Ms. Mead said they included the addition to section (a) regarding setting a specific timeline for the posting the recommendation on the CDD website, and adding a requirement that in the case of an applicant's protest that if the Assembly was going to approve the application with modifications that the applicant must consent prior to the ordinance becoming effective. There was no objection to Ms. Mead's summary of the changes as recommended by the committee.

Roll call:

Aye: Becker, Jones, Nankervis, Smith, Sanford

Nay: Crane, Kiehl, Wanamaker

Motion passed, 5 ayes, 3 nays.

D. Spuhn Island Cell Tower Update

Mr. Steedle explained how the Spuhn Island Cell Tower came to be lit in its current configuration and it was timely to discuss given the discussion on Ordinance 2014-32. He invited Mr. Doug Wahto, the Safety Team Program Manager for the Federal Aviation Administration (FAA) Flight Standards Office in Juneau to brief the committee on why he and other FAA staff worked to require that the tower be lit as it is.

Mr. Steedle said that on October of 2012, the Planning Commission approved a Conditional Use permit for this tower and the staff report recommended five conditions, the fifth of which was "The tower shall be lighted with dual lighting, with red medium intensity flashing white system as described in FAA AC70/7460 Chapter 8." That configuration was recommended to the CBJ by the FAA Flight Standards Office. Unfortunately, the preceeding narrative in the staff report conflicts with the stated condition. It describes the lighting as "a medium intensity white flashing strobe light during the day, and a red steady light at night, in accordance with the same circular." However, that configuration is no where in the circular. The lighting in the circular is white flashing by day and red flashing by night. It is important to know that the tower was built, and lit, as required by the approved condition. It is not clear to all why that condition was placed on the permit, after all, in February, 2012, Robert van Haastert, a supervisor in the obstruction evaluation group, made the determination that lighting the tower was unnecessary. Mr. van Haastert told Mr. Steedle that he applied the FAA national standards and by those standards a tower of that height in that location relative to the airport did not need to be lit. He said the standards in Juneau were the same as the standards in Kansas and there was no localization for ground conditions. He said the the Flight Standards office disagreed with his determination and worked with the FCC to ensure that the tower was lit. He said that if the community wanted to change or eliminate the tower lighting he could do that. If the tower owner filed FAA Form 7460-1 requesting a lighting change, he will cause it to be changed in the FCC database in just a few days. Mr. Steedle said he spoke with Mike Bowers who works in the FAA Flight Standards Office. He explained there was no breakdown of communication or process within the FAA. The FAA uses an automated system to determine how applications are processed. In this case there was no way for the system to recognize that the proposed tower was in a flightway used by small aircraft, and that is why he intervened. Mr. Steedle also spoke to Mr. Whato and invited him to speak to the Assembly.

Mr. Doug Wahto said this was a long process and Mr. van Haastert had been less than forthcoming in some of his actions. His guidance strictly was related to instrument approaches and departures at

any airport and was limited to a corridor over Coughlin Island and over Engineer's Cut off and extended into the GPS procedures for Alaska Airlines. It did not take into consideration any visual flight rules (VFR) that constitute in traffic numbers, commercially over 50% of the traffic moving in and out of Juneau. Flight Standards spent a lot of time trying to reverse Mr. van Haastert's decision. The bottom line was that all of us recognize the safety implications that tower would constitute as far as VFR. There was a large volume of traffic that flew in that direction. The location of the tower was very unfortunate. From strictly a safety perspective, if the tower is there, it has to be lit. There was significant public record and testimony in USE2012-0006, and specifically on page 8 - 9 on Aviation Standards. His responsibility was ensuring flight safety. This summer was a very difficult summer for VFR due to the poor weather conditions. VFR minimums are 1000 feet and 3 mile visibility. The tower sits on the edge of the five mile radius from the traffic zone and there must be clearance. It sat in a flight path so that when the Mendenhall Peninsula was blocked, the traffic flew right over Spuhn Island. There were proposals to shade the Spuhn Island tower light, but since aircraft could approach from any direction, that was not possible. He spoke about his experience with accident investigations and said that his co-workers would not allow a lower standard based on that experience. He strongly recommended that CBJ create an ordinance that would, in the future, address these issues prior to them becoming emotional and economic issues.

Ms. Crane asked how the community was able to get the lighting changed at the Fish Creek tower. Mr. Steedle said that the tower was permitted without any conditions for lighting, but helicopter companies were concerned about flying sling loads in the area and asked for the lights to be installed. The tower owner was happy to put a flashing white strobe on top of it. Frank Rue worked with the aviation community to see what would be acceptable to them, and, in the end, they landed on a flashing red light. The avenue for doing that was that the tower was not permitted to have any lighting, the white strobe was put on without any process, so we could force them to change that.

Mr. Kiehl said he understood the need for the tower to be lit during the day for VFR traffic, but he did not understand why it was needed at night. Mr. Wahto said he could not answer that. For most of the aviation community it was not an issue. There were night vision flight rules. The commercial traffic that transits that area at night is not significant but there are rules allowing day and night VFR flying. In some ways it is probably more imperative to have lights on at night. He could not speak to the FCC requirements and there never used to be strobes - they were slow red lights. The day lighting is very important and the night lighting is less so but he could not speak to requirements for any modification.

Ms. Becker asked who had the highest authority. Mr. Wahto said that Mr. van Haastert looks for obstructions in an instrument flight path. FAA set up lines of business directly to Washington D.C. and they are not very good at talking with each other. Flight standards was shielded from these decisions and we did not know about this situation until after the fact. Several towers had gone up that they were not aware of and common sense had required several to be lit after the fact. You assume a certain liability when you place an obstruction and liability in modifications.

The committee thanked Mr. Wahto for his comments.

E. Ordinance 2014-32(d) 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 on July 28, 2014. At the July 28, 2014 meeting, the Committee of the Whole moved to continue its consideration of the ordinance to the September 22, 2014 meeting.

Version (d) contains all of the changes requested at the July 28, 2014 meeting, a section on photosimulation testing and a section on balloon testing. The new language appears in bold.

Mr. Wanamaker said his understanding was that the ordinance had been tabled to a time certain and that time had come and gone and there was no mention of the proposals made in the committee in this version of the ordinance. This ordinance was not what this community needs and this was the wrong approach. This ordinance was focused on Spuhn Island and was not a comprehensive plan for this community. The statement that the Spuhn Island Tower should not have been constructed in that location was telling.

At the request of the Chair, the Clerk read the minutes of the August 18, "Hearing no objection, the motions were 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 use of baffles and shields. There was no objection to staff contacting the owners of the two to three 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 a 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, this section could be reviewed for efficacy and efficiencies."

Ms. Sica said there was no mention in the minutes of tabling the issue to a specific time. Ms. Mead said it was appropriate to discuss the ordinance. Ms. Sica distributed copies of the August 18 COW meeting minutes to the committee.

MOTION, by Sanford, to discuss Ordinance 2014-32(d).

Mayor Sanford asked about CBJ's ability to effect the amendment on Page 5, Line 21, "the lights shall be shielded, oriented, or otherwise design..." Ms. Mead said that the qualifier was that if the FAA would allow shielding or baffling of the light, then it could be requested. FAA requirements needed to be met. Mayor Sanford asked about that phrase on Page 16, line 11. Ms. Mead said it referred to the requirement for FAA approval in 49.65.930(d).

Mr. Jones asked if the amendment on Page 16, Line 25, was referring to providing notification to FAA or notice to seek approval to fly the balloon test. Ms. Mead said she was asked to modify the balloon test so it did not trigger FAA requirements, but that was not possible. The size of the balloon, the amount of gas and the height of the balloon were clarified but there was no way for an applicant to get around the requirement of the applicant to seek FAA approval to fly the balloon. There was discussion about the time needed to conduct the test and the possibility of delay and inability to meet the time frame for review of the application.

Mr. Kiehl suggested that the ordinance should be worded to that it was clear that the applicant should provide notice to the FAA. Ms. Mead suggested, "The applicant shall notify the Federal Aviation Administration if required and follow any recommendations." There was no objection to that change.

MOTION, by Becker, to require only the pictorial representation and not a balloon test.

Mr. Keihl objected and said the two sections served different purposes and both were worthy. The balloon test provided notice to the community that something was proposed to be at that height and the pictorial representations provided more complete information.

Mr. Sanford supported an amendment to remove all references to the balloon test.

Mr. Jones said he was torn as the balloon test only provided 72 hours of notice, but it would point to a pictorial representation that would become a permanent part of the record.

Mr. Nankervis said he was not interested in keeping the balloon test in the ordinance and said the public notice in the newspaper and on the website was sufficient.

Mr. Sanford said the CDD director could provide additional public notice at his discretion.

Roll Call:

Aye: Becker, Nankervis, Smith, Wanamaker, Sanford

Nay: Crane, Jones, Kiehl.

Motion passed, 5 ayes, 3 nays.

Mr. Kiehl said that regarding the pictorial representations, the ordinance needed to provide the Director the ability to specify what areas / views needed to be represented. There was no objection to having Ms. Mead draft that change.

Mayor Sanford asked about the scenic corridors and viewsheds mentioned on page 18, Lines 18 - 25. Mr. Goddard said a map in the Comprehensive Plan identified the points where the views could be seen from and a view corridor was specified from North Douglas to the Mendenhall Glacier.

Ms. Crane expressed her concern about towers in neighborhoods in the Rural Reserve zoning area and that those neighborhoods were not provided the same protections as neighborhoods in the D-1 to D18 zoning districts.

Mr. Smith said there were more activities that could take place in a Rural Reserve zoning district. Mr. Feldt spoke about natural resource extraction activities that could be permitted, in addition to very low density residential.

Ms. Crane said Tee Harbor, Andreanoff, Randall Road, and Cohen Drive were some recognized neighborhoods in the Rural Reserve area. The neighborhoods in the RR should have the same protections as other residential zoning districts.

Mr. Feldt said the Assembly could choose to lower the maximum height or do something that triggered the tower would exceed the limits of Table 1, thus requiring a higher level of review, so the neighborhoods would be contacted.

9:00 p.m.

Mr. Feldt explained the outline of Table 1 that showed which towers would be allowed to be constructed through the building permit process only and which would require the special use permits.

Mr. Kiehl said it appeared from the chart that there were only two places a stand alone non-concealed stand alone tower without a special use permit - in rural reserve or industrial zoning districts. There was some value in protection of established neighborhoods in rural reserve for those types of installations.

MOTION, by Kiehl, to change on line 24/25 of page 9, to read "RR, except established neighborhoods." Mr. Kiehl said in those neighborhoods, a special use permit would be required to establish a freestanding non-concealed tower.

Ms. Crane supported that motion.

Mr. Smith asked for a definition of "established neighborhoods." Mr. Feldt referenced CBJ Code section 11.35 "Neighborhood Associations" and said neighborhoods could register with the Municipal Clerk to receive public notice. Mr. Kiehl said that definition would be sufficient for his motion.

Mr. Jones said that on page 18, line 4, there was a reference to "neighbor associations listed with the municipal clerk" and suggested amending the motion to include that phrase instead for consistency. Mr. Kiehl said he was amenable to allowing the city attorney leeway in drafting the language.

Roll call:

Aye: Becker, Crane, Jones, Kiehl, Smith
Nay: Nankervis, Wanamaker, Sanford
Motion passed, 5 aye, 3 nay.

Mayor Sanford said he would like to see the requirements for public notice be made consistent throughout Title 49 and be placed in the "General Requirements" section so that the public would understand all of the requirements to be met. This was an important part of the Title 49 update work. He said there were different requirements in different sections of the code which caused confusion. Other members of the committee were in general agreement with standardizing and consolidating the public notice requirements.

Mr. Nankervis said he did not like the ordinance and would not support it.

MOTION, by Smith, to move the ordinance forward to the Assembly, as amended.

Mr. Wanamaker objected said the Assembly had violated its own rules and all the work done on the amendments had been done since 9 p.m. when the meeting was noticed to end. The work done was improper. This ordinance should be dead and the staff should redo this ordinance the right way. The information received from Mr. Wahto at the meeting could change the drafting of this ordinance.

Roll call:

Aye: Becker, Crane, Jones, Kiehl, Smith, Sanford
Nay: Nankervis, Wanamaker
Motion passed, 6 ayes, 2 nays.

Mr. Wanamaker questioned that the Assembly was in legal session. Ms. Mead said the Clerk only noticed the start time and not the end time of the meeting. Mr. Wanamaker said the city calendar says the meeting was scheduled from 6 p.m. to 9 p.m. Ms. Sica said that was an estimated time for meeting room use, and went to check the doors to the building. She returned to the meeting and announced that the doors had locked at 9 p.m. Ms. Mead said that if people had been barred from entering the meeting after 9 p.m., that portion of the meeting would be a violation of the open meetings act. Ms. Becker stated that the vote was therefore not legal. Mayor Sanford asked Ms. Mead to clarify her statement. Ms. Mead said the fact did not "kill the ordinance" but would void the last motion and the discussion could continue to the next regularly scheduled meeting on Monday.

Ms. Becker said that there was no public testimony to be taken and this was an Assembly worksession. Mr. Wanamaker said the meeting was legally improper after 9 pm and any action thereafter was improper. He suggested adjournment. Ms. Mead suggested that this issue be continued to Monday, September 22. The committee directed Ms. Sica to open the door in order to adjourn the meeting, and she did so.

Mr. Kiehl said there was agreement that the record be examined and anything after 9 p.m. was not "done," the door would be open, the meeting would adjourn, and for legal purposes, when the matter was taken up again, it would be as it was at 8:59 p.m. Ms. Mead said she could still return an ordinance with the suggested changes from the Assembly to be discussed in Public Hearing and this version and a revised version could be presented and debated. The Open Meetings Act said that any action taken in violation of the OMA was voidable.

V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

None.

VI. ADJOURNMENT

There being no further business to come before the committee, the meeting adjourned at 9:25 p.m.

Submitted by Laurie Sica, Municipal Clerk