

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

June 16 2014, 6:00 PM.  
Municipal Building - Assembly Chambers

Assembly Worksession with the Planning Commission

**I. ROLL CALL**

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

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

Assemblymembers Absent: None.

Planning Commissioners Present: Ben Haight, Karen Lawfer, Bill Peters, Michael Satre (Chair), Paul Voelckers, Dennis Watson.

Planning Commissioners Absent: Nicole Grewe, Gordon Jackson, Dan Miller.

Staff Present: Kim Kiefer, City Manager; Amy Mead, Municipal Attorney; Rob Steedle, Deputy City Manager; Carl Uchytel, Port Director; Hal Hart, Community Development Director; Eric Feldt, Planner; Laurie Sica, Municipal Clerk.

**II. APPROVAL OF AGENDA**

Hearing no objection, the agenda was approved as presented.

**III. APPROVAL OF MINUTES**

A. April 14, 2014 Assembly Committee of the Whole Meeting

Hearing no objection, the minutes of the April 14, 2014 Assembly Committee of the Whole meeting were approved.

B. May 5, 2014 Assembly Committee of the Whole Meeting

Hearing no objection, the minutes of the May 5, 2014 Committee of the Whole meeting were approved with minor corrections.

**IV. AGENDA TOPICS**

A. Ordinance 2014-32 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.

Mr. Satre spoke on behalf of the Planning Commission. Earlier this year there was a moratorium placed on all wireless facilities until an ordinance could be completed. The Planning Commission (PC) made recommendations for amending Title 49. They were concerned with the short time frame and to the credit of the PC, they worked hard in reviewing this ordinance, proposing changes, working with staff and the Law Department. They did not make the original deadline, but the product before the Assembly was good, given the time allowed. They tried to create a framework to push applicants for any new wireless facility into a community preferred solution for the facilities. Public input showed there were concerns about lighting, public notice, and an interest in limiting the number of facilities and co-locating facilities on existing towers where possible. There was a desire for camouflage, and to reduce the impact of the facilities on neighborhoods. The result of the work was a new chapter in

Title 49 and a new permitting pathway. This provided an outline of how to apply and the information needed to get to a community preferred solution for a facility. He explained that the promoters in "Table 1" of the ordinance outlined the type of facility which could be permitted by the CDD Director. If a facility was outside of those parameters, then a greater review process was needed with PC approval. No guy wires were allowed with the ordinance. He spoke about engineer certifications and setbacks that needed to be met. He said basically the ordinance provided an "easy way" and a "hard way" to permitting a wireless facility. Mr. Satre said that all of the PC's work was reflected in the final ordinance before the Assembly.

Ms. Lawfer said on page 23 there was information on old towers and abandonment, and how those could be removed.

Mr. Peters said he struggled with public notice, and said that notice of land owners within three miles of the site was pretty strict. Outside of this ordinance, the PC needed to address public notice in general.

Mr. Voelckers said on page 3 there was a parallel issue of creating a hierarchy of preference, reflected in Table 1. There was some evaluative ability on the part of the staff with this.

Mr. Watson said he agreed with Mr. Peter's comments on the three mile notification and the requirement for three public notice signs and a declaration of where the signs would be located exceeded the requirements for any other process through the PC. We may be opening a "Pandora's Box" with these requirement. The 500 foot notification and the current notification process, which included newspaper ads, neighborhood association notification and one sign seemed sufficient to him. He spoke about the balloon test and checked with commercial balloon companies and said that the ordinance specification of a 3 foot balloon would not be able to be seen at a distance from the proposed tower location. He said there were many federal regulations with limitations on how balloons may be flown and asked about any conflict in the direction of the ordinance to require flying a balloon for 72 consecutive hours. He asked about a consultant fee charged to an applicant that was \$4,000. He said landscaping was a good idea, but asked whose responsibility it was to maintain it, the property owner or tower owner. He said this ordinance sends out a signal that it will be tough to get a cell tower built in this town, so it might be good not to try.

Mr. Haight said the PC also reviewed the master plan that accompanied the ordinance and provided a lot of good background information about towers and the industry. The PC based much of the ordinance on the policies in the plan.

Mr. Satre said this was a long and complex process and he encouraged the Assembly to read the minutes of the last two PC meetings. He said to Mr. Watson that there had been a large fee charged to the applicant for a consultant review, but that was changed to reflect the actual cost. The PC would take up the issue about public notice for all permits in future meetings. The PC discussed how to encourage bringing existing facility owners into compliance but could not arrive at a solution, so left this for the Assembly.

Mayor Sanford asked for a staff report on the letter of May 20. Mr. Satre said that letter was addressed by the PC and all items were addressed.

Mr. Jones referred to a letter from Verizon's attorney questioning the ordinance and their stand on the legality of the ordinance. Ms. Mead introduced Anthony Lepore, Director Regulatory Affairs, CityScape Consultants, Inc., who was present to answer any questions. Ms. Mead said a similar letter from AT&T went to the Planning Commission. The letter's interpretation of the current status of the law was what they hoped or wished the current status of the law was, but the Federal law was not clear on the extent of CBJ's ability to regulate. There were various cases that showed that CBJ could regulate applications for towers, even though that are eligible under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. We are regulating to the current extent allowed by law.

Mr. Jones asked about the 3 mile public notice requirement. Ms. Mead said that was the call of the Assembly. Mr. Lapore said that was the broadest requirement that he had seen, however, Juneau had some unique environmental consideration. Typically he saw a 500 - 1000 foot, occasionally a 5000 foot distance. Ms. Becker said one of the complaints from Verizon was the cost of the notice at that distance.

Mr. Jones asked about the technical review by a third party expert that could be required by the department director at the applicant's expense, and the requirement for the permits to be reviewed in a 90 - 150 day time frame. He asked if there was any guarantee that the review could be done in a timely manner.

Ms. Mead said the industry was objecting to the third party consultant, but that was allowed by Federal law. The use of a technical consultant would be beneficial in that CBJ has not issued these type of permits and the consultants that would perform such a review were familiar with the timeliness of the industry. The technical review was a review of the application for compliance with the law, and was for the benefit of CBJ, not the applicant, and Federal law the applicant was required to pay for the review.

Ms. Mead explained the time frames for review of applications, lighting, guy wires, and breakpoints. Mr. Jones pointed out a need to remove a reference to guy wires in the ordinance and Ms. Mead said she would make that correction. Mr. Jones had questions about break point technology and structural assessments and Ms. Mead said she would fix the reference in the ordinance for clarity.

Mayor Sanford suggested in Table 1 that the code should read "500 feet TO the nearest dwelling, not "OF," and asked about the greater distance of towers from residences in the rural reserve zone than in other zones. Mr. Satre said that responded to concerns raised at public meetings that rural reserve areas contained neighborhoods and we wanted to put a distance from existing homes, as the original ordinance was "X" distance from a zoning district.

Mr. Jones asked about time frames for temporary permits and Ms. Mead said the code provided a hammer to remove the facilities after an event.

The committee discussed the requirement for a pre-application meeting and Mr. Lapore said industry typically wants to participate in this type of meeting as they are eager to explain their project.

Mr. Jones discussed the requirements for the cost of public notice, the time that the public notice signs were to be kept up and the need to define "search ring."

Mr. Watson said the community needed to identify who owned the towers and to somehow keep track of who was the responsible party.

Ms. Crane asked if it was possible for CBJ to state that it does not want towers in air navigation areas in order to avoid the lighting issue. Ms. Mead said no and Mr. Lapore cited language stating that would be an unreasonable prohibition.

Mr. Kiehl asked about the application of the 3 mile notice and the balloon test and Ms. Mead said that was only for those not within the parameters of Table 1.

The committee discussed the issues of "break points" and radio frequency testing.

Ms. Troll asked for advice on bringing existing towers in to compliance. Mr. Lapore said there were "grandfather issues" but technology changed and CBJ was encouraging co-location so that could address some older towers.

Mr. Smith asked about scenic corridors and view sheds and Mr. Satre explained how those were identified in the Comprehensive Plan maps.

Mr. Watson asked if it was the responsibility/liability of the tower owner or the property owner upon which the tower is located, to address issues regarding removal of a tower. Ms. Mead said CBJ could take down a tower at the expense of the tower owner, but currently the property owner was not liable.

Mr. Nankervis thanked the PC for their extensive work on this issue.

Mr. Satre recommended people read the wireless master plan and the minutes, so the Assembly does not have to reinvent the wheel - it should make the deliberations more efficient.

Ms. Mead said the 3 mile area notification came as a staff recommendation and it could be discussed.

Ms. Mead asked Mr. Lapore to review the ordinance in comparison to ordinances from other communities on this topic. Mr. Lapore said that Juneau had taken a balanced approach to protect the areas which Juneau had a right to protect as well as providing an impetus for the industry to cite facilities in the direction that Juneau found desirable in the community. The industry has customers that want their service and Table 1 in particular gave an administrative path and encouraged the type of development Juneau wanted for the community. Mr. Lapore stressed that industry was more concerned with the speed to get their product to market than the cost of installation. Mr. Lapore said the letters from Verizon and AT&T are almost a form letter to each community considering regulation.

Mr. Voelckers asked Mr. Lapore if the height cited in the ordinance was reasonable for towers and Mr. Lapore said yes.

Mr. Jones said he would like to understand the legality of the balloon test. Mr. Lapore described two methods for providing the public with information on a potential tower installation - a balloon test (flown at the height of the tower from the proposed location) and/or photo simulations with views from all four compass directions of the potential tower. He said communities used both methods - with about a 50/50 split.

Mr. Watson shared his doubts about the effectiveness of the balloon test.

Mayor Sanford asked Ms. Mead to draft requirements for photo simulations for the Assembly's consideration.

Ms. Lawfer said a concern expressed public testimony was that photo simulation had been used in the past and that the exhibits did not match the real world outcome. A balloon test also assisted with public notice.

Mr. Kiehl said that the two served different purposes. Photo simulations were helpful once a person was aware that there was a proposal pending and he thought the balloon test seemed reasonable. He was concerned about the cost of a three mile mailout and asked if it would be possible to just send notice to those within the zone of visibility, with a cap on a three mile distance.

Ms. Becker said this ordinance was scheduled for the June 30 Assembly Meeting for public hearing. Ms. Mead said she would bring a revised version with the corrections noted.

**B. Ordinance 2014-14 An Ordinance Amending the Land Use Code Relating to Rezoning Procedures.**

Mr. Satre spoke about the concern about a PC decision on a rezone. If approved by the PC a rezone request went as a recommendation to Assembly for adoption of an ordinance. If denied, the application would follow the same path. This was changed recently to if the PC approved, it was a recommendation, but if it was denied, it was a final decision, that was appealable to the Assembly. In discussion with Ms. Mead, The PC had some concerns. The proposed ordinance set the process

back to the way it was - a rezone application is still a path to the assembly instead of two tiers of decisions.

Ms. Mead said rezoning decisions by law were legislative decisions and not quasi-judicial proceedings. The Assembly exercised its power and adoption of an ordinance or failure to adopt an ordinance was not appealable. The recent ordinance change made the entire issue appealable - from PC to Assembly to court. As a judicial decision - this was difficult. There is no matter of right to a rezone. If it went to the court, there was nothing for the court to do, there was no remedy. To be consistent with the law, and every other community, this change in code was needed. If in the adoption of a rezone ordinance the Assembly committed fraud or was found to be acting arbitrarily, such as in the case of "spot zoning," there could be an issue that was reviewable by the court. The charter required the assembly to make the legislative decisions - and a rezone was a legislative decision and without a charter amendment, doing anything different was not possible.

The Assembly asked questions of Ms. Mead and expressed concern that the usual public hearing process for ordinance adoption could be insufficient when considering a rezone. Ms. Mead said the Assembly could determine the process it wished to follow.

There was discussion about the role of the PC in zoning decisions and Ms. Mead said most communities consider the review of the application to rezone to be the role of the PC, with the legislative decision being made by the Assembly. Mr. Satre said the current code had only been in place for two years, and until 2012, the PC forwarded both approval and denials of zoning applications forward to the Assembly as a recommendation. He did not see that process as limiting the PC's role or authority. The PC carefully reviewed zoning applications and put the facts of the matter into the record.

Mr. Jones requested that the minutes from Assembly meetings at which Ordinance 2012-11 was discussed be forwarded to the Assembly.

#### C. Seawalk 1% for Art

Mr. Uchytel provided a power point presentation in response to the discussion that arose at the joint meeting of the Assembly with the Docks and Harbors Board about unifying the effort to establish art cohesively along the seawalk projects, including the pending work of the 1% for art committee for the Dock Project 16b. There is an interest in avoiding a random scattering of art along the seawalk. He explained the 1% for Art process and said the art is recommended by the seated panel and chosen by the Assembly. The departments manage the process but do not select the art. He showed a map of the projects recently done and to be done. He showed some of the art created to date. He showed the project area of the new berths and said he would like to see art soften the hard lines of that project. Docks and Harbors had no position on the seawalk art development and said that the Parks and Recreation Department was the benefiting department of future seawalk projects. The Long Range Waterfront Plan of 2005 provided guidance on intent of the seawalk and themes for the areas. The 2008 Waterfront Design Report standardized guard rail, benches, and wayfinding signs.

Ms. Crane said when she spoke at the last meeting, she had just wanted to initiate a discussion or community conversation on the topic of Seawalk art. She was not aware of the themes designated for the various segments of the seawalk and did not think they necessarily had to be linked to the artwork.

Mr. Kiehl agreed and said he liked the themes but they were not guiding the art that had been or was currently being installed. It is a conversation worth having to see if we can do more than a hodge podge.

Ms. Becker said these themes in the waterfront plan came from a public process and could provide direction.

Mr. Smith asked about the creation of the panel. Mr. Uchytel said that CBJ code outlines how the

panel was created. Mr. Smith said there needed to be more diversity on this panel. Mr. Uchytel said the committee was formed of the people who had applied to serve.

Mr. Wanamaker supported the idea of a unified art theme, and reminded the committee of the "Cultural Gateway" project that had been proposed in the "deckover" of Marine Park that had languished.

The committee continued discussion and approved the addition of Kate Walters as a representative of the Parks and Recreation Advisory Committee and Michele Elfers as a staff liaison from the Engineering Department to serve on the 1% for Art Committee for Dock Project 16b. The committee directed the manager to ask the Filipino & Alaskan Native communities if they would like to participate in the selection panel and for suggestions for representation. There was general agreement that the 1% for Art Committee should move forward with its scheduled meeting for the following evening.

#### **V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS**

Chair Becker reminded the Assembly that the next COW meeting was set for Monday, June 23, at 6 p.m. in the Assembly Chambers and would include discussion of the economic development plan, the e-cigarette ordinance and the election code ordinance.

Mr. Kiehl gave notice that the Assembly Human Resources Committee agenda was full and he had changed the time of the meeting to begin at 5:30 p.m. on Monday, June 23.

#### **VI. ADJOURNMENT**

Hearing no objection, the meeting adjourned at 8:44 p.m.

Submitted by Laurie Sica, Municipal Clerk