Meeting Agenda of the
City and Borough of Juneau
Title 49 Committee of the Planning Commission

Wednesday, June 28, 2017
Community Development Department, Large Conference Room
3:15 p.m. to 4:30 p.m.

Members Present:
Dan Miller, Carl Greene, Paul Voelckers, Dan Hickok (Alternate)

Members Absent:
Kirsten Shelton-Walker

Staff Present:
Laura Boyce (CDD), Jill Maclean (CDD), Beth McKibben (CDD), Marjorie Hamburger (CDD)

Public Present:

I) Call to Order
Meeting called to order at 3:15 pm.

II) Approval of Minutes
April 26, 2017 Draft Minutes

MOTION: *by Mr. Voelckers to approve the April 26, 2017 minutes.*

The motion passed with no objection.

III) New Business
a) Non conforming code

This was a follow up from the previous night's Planning Commission meeting where the Director's report included a review of Title 49's nonconforming development policies. Ms. McKibben asked if the committee wanted to incorporate this topic into the Title 49 Committee's workload or establish an ad hoc committee to address the topic. Discussion ensued about what the committee currently has on its plate or anticipates addressing the near future.

Mr. Voelckers suggested that the committee start work on the third Wednesday of July and then determine if additional meetings might be needed. Members checked their calendars and determined that Mr. Miller, Mr. Greene and Mr. Voelckers will be in attendance then, also it is likely that Mr. Hickok will be able to attend as well..

Ms. McKibben had some policy questions to bring to the committee and said there is a need to look at the issue in light of what financing institutions are doing or not doing when nonconforming property is being sold. What is new, asked Mr. Voelckers, in this respect? We need to figure out if the financial institutions need some particular language from the city to support the lending of mortgage money, said Ms. McKibben.

At a conceptual level, said Mr. Voelckers, it is easy to add density but what if it is an "icky" use that we don't want to roll into perpetuity. It is our job to monitor use and qualities of a neighborhood, he said. How do we decide when something is on the bad side of the ledger? Other communities ask this question too, said Ms. McKibben. It is a key thing to focus on,

she said. Mr. Miller said a working on nonconforming development policies is a piece of the puzzle that fits with the recently created overlay districts and builds in flexibility and relief value when every house in an area is nonconforming.

Ms. McKibben said it is necessary to break the task into three categories: lots, structures and uses. The uses will be the hardest to deal with, she said. CBJ code does not do a good job of separating these categories.

b) Panhandle Code Changes

Committee Members received a memo on the topic of the proposed changes to city code governing panhandle lots. Ms. McKibben summarized by saying that staff looked at amending the panhandle section to create more flexibility and options for subdivision development. Key concepts are in indicated with italics in the memo. There is a buffet menu of development options. Lot areas are reduced and meet minimum dimensions, she said.

Mr. Voelckers said that some funky old language in the code is begging to be corrected. When subdivision rules were changed, the code was shed of minimum rectangle rules. So this needs to be applied to smaller lots around town, he said.

Ms. McKibben led the Committee through a number of points outlined in the memo:

- The flagpole stem is reduced from 30 to 20 feet. There was discussion about the driveway grade. Language has been modified as required by the fire code; the Fire Marshall can have flexibility to set this.

- Page 9 of the panhandle memo, Lot size and marine outfall: Current code requires a 36,000 sq. ft. lot. This is a hold out from when the Department of Environmental Conservation (DEC) maintained minimum lot sizes, however DEC has suggested that this requirement be removed. Based on this conversation, it is recommended that paragraph A2 be amended as described in the memo.

- Illustrations: Staff likes including illustrations in the code for circumstances such as panhandles. Ms. McKibben wants to find examples to use for these sorts of things. Mr. Voelckers and Mr. Greene said they were in favor of such an addition.

- Page 3 of the panhandle memo, Setbacks: Staff met with Law and they recommended that the setback for front lots be consistent with private shared access. Ms. McKibben wondered why this is treated differently from corner lots. Mr. Palmer thought this was a good question and suggested amending private shared access in this way. Ms. McKibben stated that there is not yet draft language for the committee, but if the concept is deemed a good one, staff will continue to work on the draft. Ms. McKibben drew pictures for the Committee to illustrate how this would work for panhandles.

- Ms. McKibben had concept maps from Quinn Tracy (CDD cartographer) about how it would look if these concepts were applied to a panhandle. Mr. Voelckers requested that the committee receive some more information and drawings from staff, then that they respond if they think the committee needs more time with the revisions or if they are ready for the Committee of the Whole.

- There is another section of code that will need to be linked between the two sections, regarding a 30 feet setback. Ms. Boyce is familiar with this and took note of this task.

- Specifying how many lots: If you put in that language it is not going to prohibit pairs of panhandle lots existing side by side. Also include language about shared driveways. Staff reports will indicate the intent.

Is keeping in two acceptable, asked Ms. McKibben? Mr. Voelckers thought that with shared access, this language should be acceptable.

- Driveways: Allow the director the discretion to approve driveways; however Law said that the City is at risk for takings if this is done.

- The Committee directed Ms. McKibben to work on language and schedule a time to come before the Committee again. It is important to talk about the why of these revisions such as presenting options for infill development and for other subdivision development. These revisions can implement policies for housing from the Comprehensive Plan.

- Text question in the draft ordinance, item (E) *In a D-1 zoning district, 30 feet of the width of the panhandle of the rear lot may be used in determining the width of the front lot*: Why is there something specific about D-1, asked Mr. Voelkers? This is old language because we used to require a larger lot size. It was added in specifically for some lots in N. Douglas. Why not apply to any of the lots, asked Mr. Voelckers? This needs to be looked at to determine if it should stay in. It seems "precious", said Mr. Voelckers. There is not yet consensus about keeping it in or not, said Ms. McKibben.

- Page 21, item (I) *The portion of the driveway in the right of way or the first 20 feet from the edge of the public roadway shall be paved, whichever length is greater:* Mr. Voelckers asked if this was consistent with private easement access. Yes, said Ms. McKibben, the Assembly did this.

c) <u>Proposed minor change to privately maintained access roads in public rights-of-way</u>

Ms. Boyce stated that the proposed code change to Privately Maintained Access Roads (PMAs) is a minor change with a big impact. This concept was proposed along with the subdivision rewrite. When the rewrite was presented to the Assembly, they talked about gravel roads not being an urban amenity and they made a change. Since then, the Assembly has reconsidered and they want the Planning Commission to add language saying that gravel PMAs are permissible in the urban service area. If the Committee approves this, it will move on to the full Planning Commission so that they may make a recommendation to the Assembly, said Ms. Boyce.

Mr. Voelckers had question about 49.35.273(b)(5). He said that it seems to say that privately maintained access is required in order to be consistent with fire code.

d) <u>Variances</u>

Mr. Miller requested consideration of this topic. The new interpretation of how variances are applied is a change from case law, he said. At the previous night's Planning Commission meeting, he said he asked Mr. Palmer questions pertaining to the Olmo decision. Mr. Palmer indicated that it only references court cases from 1979. Is this what he is hanging his hat on, asked Mr. Miller? Yes, replied Mr. Palmer. That was 38 years ago, said Mr. Miller. In 1995 another Planning Commission revised the variance criteria with the benefit of the court case to make that revision. Title 49 states clearly that it is the Board of Adjustment's (BOA) job to interpret the text of code. Mr. Miller's opinion is that it is the 6 criteria that the BOA must apply that define a unique circumstance, rather than determining the unique circumstance first and then applying the six criteria.

Mr. Voelckers said he essentially agrees. The key point is the Assembly appeal of Olmo was that you had to meet the first threshold about a unique circumstance before proceeding. These are our new marching orders, as relayed to the commissioners, said Mr. Voelkers.

Ms. Maclean said she thinks it best to move forward as suggested by Mr. Levine. Fix the variance section to read the way we want it to read instead of fighting a battle with law or case law. Mr. Voelckers said that last year the Title 49 Committee had simplified the criteria to 5 elements and discussion ensued about continuing work to rephrase the unique criteria. Would law support this, asked Mr. Voelckers? Ms. Boyce said that the final draft would need to be submitted to Law for review.

Mr. Voelckers said that previous language concerning variances has been awkward but has the potential to be cleaned up. Mr. Miller said that the drive at present is a response to what the applicant at last night's Planning Commission meeting said – variances are impossible to get so they had to ask for the rezone. That is worrisome, said Mr. Miller. They need two variances for their project, that should be easy to give, said Mr. Greene, because the property is completely non-conforming plus they could claim financial hardship. Mr. Greene said if the case had been heard by the Board of Adjustment last night, it would have been approved.

The city could be vulnerable, said Mr. Voelckers, due to inconsistency. Mr. Miller agreed it was worrisome and said he though Ms. Maclean's advice was sound. He suggested the Planning Commission redouble their efforts to get this moving forward. Get rid of criteria No. 2, he said. No one has ever met this criteria in the history of variances, said Mr. Miller.

The Title 49 Committee requests a Committee of the Whole meeting for July 25 to look at variances. ***(Ed note – later this was put on the schedule to take place on August 8.)*** Mr. Voelckers pushed for new variance language using the word "compelling" rather than "unique" circumstances. He said that revising the language now also points to all the research that has been done based on the Olmo decision and other actual situations in the recent past. This will allow for common sense to enter into the decision, he said. Mr. Voelckers brought up the Tyler rental case as an example of something the commissioners wanted to approve. There were unique features in that location and for that use like the size of the equipment.

VI. Next Meeting

Wednesday, July 19, 3:15 pm

VII. Adjournment

The meeting adjourned at 4: 23pm.