

# Agenda

## Committee of the Whole

City and Borough of Juneau

Ben Haight, Chair

January 8, 2019

Assembly Chambers

5:30 PM

I. ROLL CALL

II. REGULAR AGENDA

A. Planning Commissioner Training

III. OTHER BUSINESS

IV. REPORT OF REGULAR AND SPECIAL COMMITTEES

V. ADJOURNMENT



## 2019 Planning Commission Training

Jill Maclean, AICP, Director of Community Development  
Jane Mores, Law Department

### Planning Commission Role

- **Regulatory Role** - Administers local land use regulations including zoning and subdivision ordinances.
- **Advisory Role** - Advises the Assembly on issues/activities related to planning, platting land use regulation and community development.
- **Procedural Role** - Conducts fair meetings and makes fair decisions.



## Planning Commission Duties

(49.10.170)

- Comprehensive Plan
- Capital Improvement Program
- City Land Acquisitions, Disposals and Projects
- Land Use Regulations
- Rezones
- Platting
- Conditional Use Permits
- Special Permits
- Appeals of Administrative Decisions
- Variances - As Board of Adjustment

## Common Good

A critical concept to understand is the protecting and promoting of the “common good” and what it means for the Planning Commission’s purpose, roles, and duties as articulated by the goals and policies of the Comprehensive Plan.

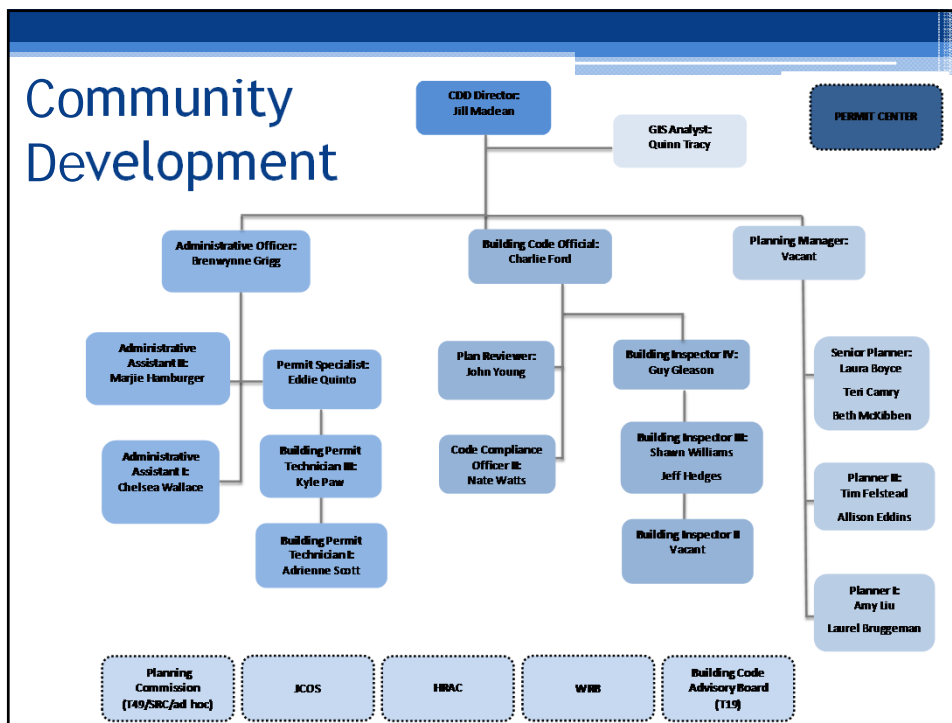
- Fair, even, and consistent application of the law
- Contrast: Personal gain or benefit to a small number of people with no benefit for the community at large
- Public Health, Safety and Welfare

## Public

Public involvement gives the Commission opportunity to educate, build support, and encourage ownership.

- Improves trust in government
- Taps local knowledge and talent
- Creates sense of ownership in plan and regulations
- Creates a constituency in planning
- Ensures plan remains intact over time

## Community Development



## Planning Division Staff

Planning staff play a critical role in the planning process and effectiveness of the Planning Commission.

- Administers land use regulations
- Prepares reports and posts meeting notices
- Understands and explains laws and ordinances
- Conducts community and area planning initiatives
- Researches planning topics and land use issues
- Advises Commission
- Educates and assists the public
- Negotiates with agencies, developers, and public
- Enforces code and conditions of approval
- Provides continuity

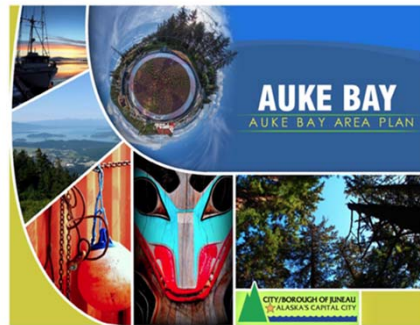
## Planning May...

- Maintain/enhance quality of life (public health, safety and welfare)
- Identify how a community wants to grow
- Be a device for problem solving
- Promote economic development
- Conserve resources
- Balance competing points of view
- Establish a degree of predictability & certainty over patterns and costs of development

## Types of Community Plans

Plans serve as a guide for community decision-making and provide a blueprint for the future local development.

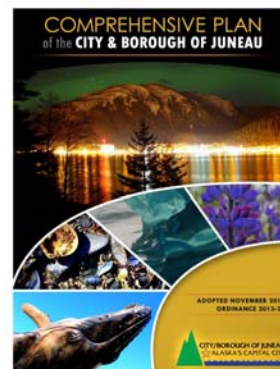
- Comprehensive Plans
- Land Use Plans
- Area / Neighborhood Plans
- Capital Improvement Plans
- Transportation Plans
- Economic Development Plans
- Community Action Plans



## Comprehensive Plan

Provides the framework for decision-making in the form of policy statements, goals, and standards regarding the many facets of a community including:

- Population/demographics
- Land use
- Environment
- Transportation
- Housing
- Public facilities
- Economic development

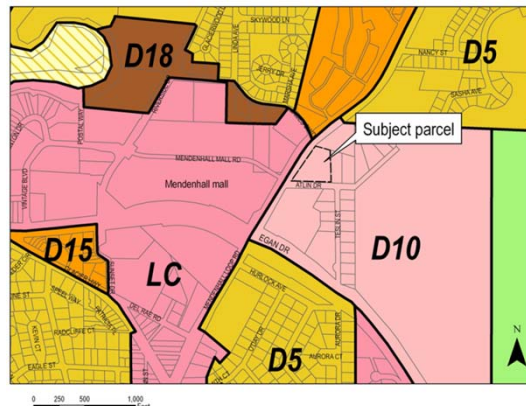


## Sample of Adopted Plans...

- The Downtown Historic District Development Plan, dated December 1981
  - Update: Historic and Cultural Preservation Plan is on track for adoption this spring/summer
- The Long Range Waterfront Plan for the City and Borough of Juneau, dated January 22, 2004, as amended
- The Juneau Coastal Management Program, Volumes 1 and 2, dated February, 2008
- Juneau Non-Motorized Transportation Plan, dated November 2009
- 2010 Downtown Parking Management Plan
- Chapter 5 of the Willoughby District Land Use Plan, dated March 2012
- Wireless Telecommunication Master Plan, dated May 2014
- Juneau Economic Development Plan, dated January 28, 2015
- Auke Bay Area Plan, dated March 16, 2015
- Housing Action Plan, dated 2016
- Lemon Creek Area Plan, dated January 8, 2018
- Blueprint Downtown, currently underway

## Plan Implementation

- Zoning Regulations
- Subdivision Regulations
- Capital Improvement Program
- Floodplain Regulations
- Land Management Plan
- Parks & Open Space
- Transportation



## Sampling of Applications...

- Major Subdivisions
- Conditional Uses
- Planned Unit Developments (PUDs)
- Variances
- ADODs
- Alternative Residential Subdivisions (ARS)
- Parking Waivers
- Accessory Apartments

## Conditional Uses

(49.15.330)

- A use that may or may not be appropriate in a particular zoning district according to the character, intensity, or size of that or surrounding uses.
- Procedure is intended to afford the Commission the flexibility necessary to make determinations appropriate to individual sites.
- The Commission may attach to the permit those conditions necessary to mitigate external adverse impacts.
- If the Commission determines that these impacts cannot be satisfactorily overcome, the permit shall be denied.



## Identify the potential impacts

### Traffic Impacts

- Congestion
- Safety loss or reduction
- Noise
- Glare from vehicles

### Visual Impacts

- Viewshed obstruction
- Lack of/substandard landscaping
- Unattractive/noncontextual buildings

### Environmental Impacts

- Air and water pollution
- Loss or reduction of habitat
- Loss or reduction of natural resources, including sensitive areas (e.g., wetlands)

### Nuisance Impacts

- Noise
- Glare (vehicles, parking lots, building lights, parking lot security lights, etc.)
- Odor
- Vibration
- Electronic interference

### Privacy Impacts

- Tall building encroachment
- Poorly placed buildings
- Poorly sited outdoor gathering places (especially associated with recreation)
- Density and intensity of use increases

### Safety and Welfare Impacts

- Exposure to fire, flooding, or natural disasters

Then impose conditions to mitigate them.

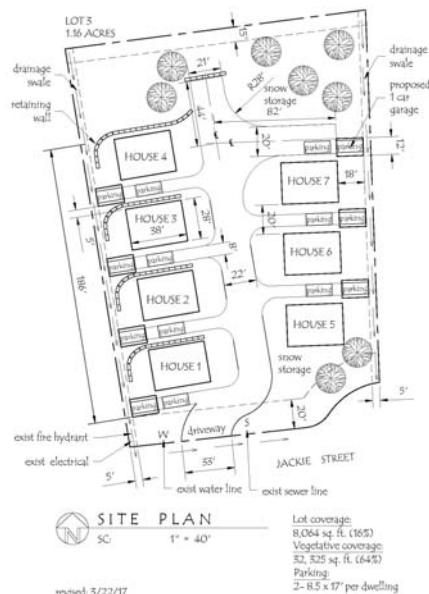
Just be aware that at some point,  
enough is enough.

## USE2017-0005

### 'Jackie Street Cottages'

#### Notice of Decision Conditions:

1. Emergency Access must be signed as such with a "No Parking – Fire Lane" sign.
2. Provide lighting on the individual dwellings and light posts at the end of the individual driveways.
3. A central water meter is required.
4. The wastewater system will have a single connection to the main with cleanouts installed at the ROW, every one hundred feet, at the terminus of the "joint use" main and at each dwelling within 5 feet of the foundation.
5. Juneau Housing Trust must provide copies of the leases/covenants that provide for maintenance of utilities and utility payment for water/wastewater, snow removal, and joint access maintenance.



## Variances

(49.20.200)

Pursuant to this article, a variance may be granted to provide an applicant relief from the requirements of this title. A variance is prohibited from varying any requirement or regulation of this title concerning the use of land or structures, housing density, lot area, requirements in chapter 49.35, or requirements in chapter 49.65. Applications for prohibited variances shall not be accepted for filing or shall be rejected by the director.

### (49.20.250 Variance standards.)

#### (a) Administrative variances.

(1) An administrative variance may be granted to allow projections not to exceed 25 percent of the yard setback requirements of this title or two feet, whichever is less, upon the director determining the following:

- (A) Enforcement of the setback ordinance would result in an unreasonable hardship;
- (B) The grant of the variance is not detrimental to public health, safety, or welfare; and
- (C) The grant of the variance is narrowly tailored to relieve the hardship.

(2) An administrative variance decision by the director may be appealed if a notice of appeal is filed within 20 days of the date the decision is signed by the director, in accordance with section 49.15.239.

### (49.20.250 Variance standards.)

#### (b) Non-administrative variances.

(1) A variance may be granted to provide an applicant relief from requirements of this title after the prescribed hearing and after the board of adjustment has determined that:

- (A) Enforcement of the ordinance would create an undue hardship resulting from the unusual or special conditions of the property;
- (B) The unusual or special conditions of the property are not caused by the person seeking the variance;
- (C) The grant of the variance is not detrimental to public health, safety, or welfare; and
- (D) The grant of the variance is narrowly tailored to relieve the hardship.

## Overarching Concepts

### 49.20.250(b)

Variance = Permission to violate the law (Title 49)

Variance is an extraordinary request

Variance necessary in only limited circumstances

- Property is physically unique/extraordinary
- Causes hardship and practical difficulties
- Minimum necessary for health/safety/welfare

Variance preserves constitutionality of Title 49

## Options if Variance Denied

### Applicant:

- Comply with Title 49
- Appeal PC decision to the Assembly; appeal Assembly decision to the court system

### CBJ:

- Review Title 49 for potential revisions / updates

## Examples of Reasons Stated for Variance Application

### Artificial or self-created hardship

- Inaccurate measurement = an addition constructed in a setback
- No basis for variance. *Place* (NJ), *E&F* (Conn.)

### Equitable plea

- Ignorance of law, good faith, subsequent buyer
- No basis for variance. *Fields* (AK), *Barnes* (NJ)

### More profitable use of land

- No basis for variance. *CBJ v Thibodeau* (AK)

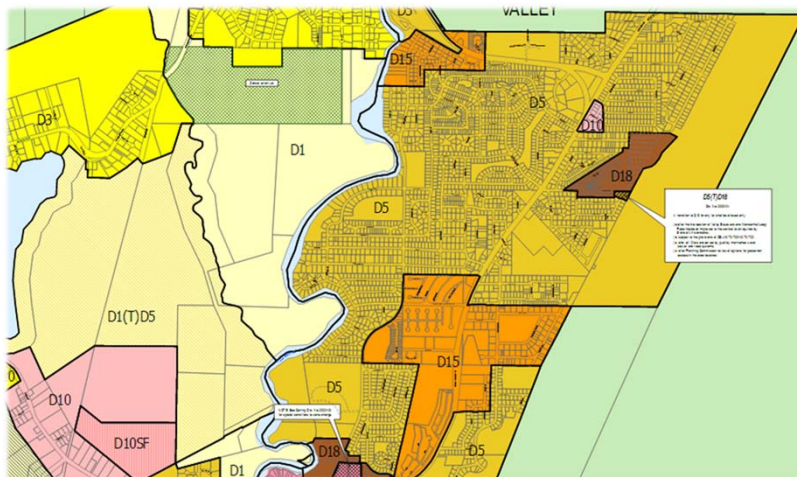
## Outcomes of Variance Approvals

Precedent: Unless property is unique, then approval can erode Title 49 provision and constrain future legislation

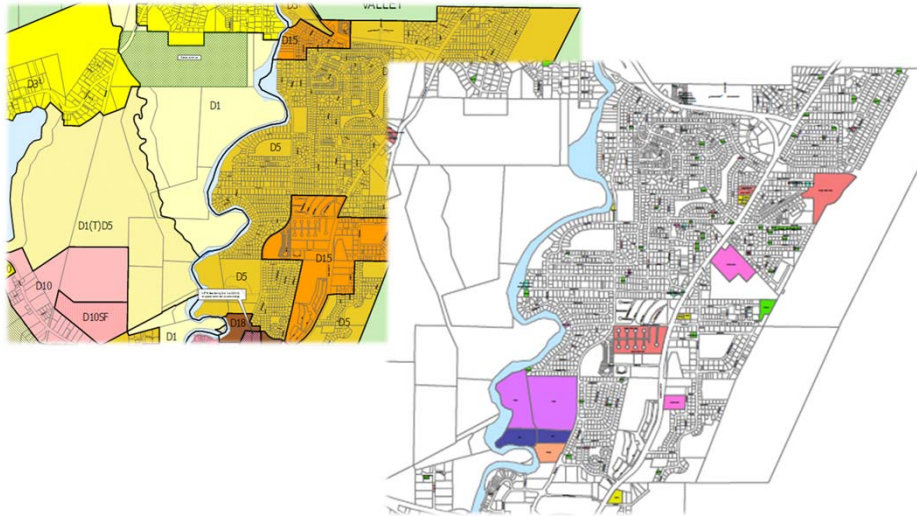
CBJ: Continuous variance approval may be an indication that Title 49 should be reviewed for deficiencies or updates

- Alternative Development Overlay Districts (ADODs) (49.70.1200)
- Downtown zoning for Juneau and Douglas
- Parking Waivers

## Zoning and Subdivision Regulations Shape Communities



## Subdivision Regulations...variances



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## Subdivision Regulations Shape Communities...



## Minor Subdivision

- Up to 13 lots
- Director approval
- Two-step process – preliminary & final plat
- Notice of Decision issued after preliminary plat
- Pre-application meeting required
- Public Notice required



## Major Subdivision

- 14 or more lots
- Planning Commission approval
- Two-step process – preliminary and final plat
- Pre-application required
- Sketch plat required
- No longer reviewed like a conditional use permit
- Public notice required

## Phased Permitting

**General Rule:** The cumulative impacts of an entire project need to be considered and not just impacts caused by individual phases.

*Thane Neighborhood Association v. CBJ*, 922 P.2d 901 (AK 1996) reversed PC decision on a mining permit because the PC did not adequately consider cumulative impacts of all phases

### Example:

Developer proposes a 150 unit subdivision in phases

- PC needs to analyze impacts of entire project
- PC may then consider individual phases of subdivision

## Recent Title 49 Updates...

- Alternative Residential Subdivision (ARS)
- Alternative Development Overlay Districts (ADODs)
- Mining
- Panhandles
- Parking Waivers
- Setback Reductions for Energy Efficiency Improvements
- Shared Access
- Variances

## Title 49 Updates in Progress...

- Stub Streets and Temporary Cul-de-sacs
- Non-conforming
- Streamside Buffers
- Urban Agriculture
- Accessory Apartments
- Common Walls

## Proposed Zoning Districts in Progress...

- Auke Bay
  - Downtown Juneau (ADOD)
    - Potential others in conjunction with Blueprint Downtown
  - Downtown Douglas (ADOD)
- ❖ Industrial Zoning District Uses & Designation of Land

## Questions?



# City and Borough of Juneau Boards & Committees



## TRAINING

CBJ Law Department

# Discussion Topics



- Police powers
- Conflict of Interest
- Planning Commission
- Quasi-Judicial Process
- CBJ Title 49: Land Use Code
- Role of the Law Dept.
- PC Rules of Order (2018)
- Open Meetings Act
- Public Records Act

## Police Powers to Protect Public Health, Safety & General Welfare



The Alaska Constitution and Alaska State Statutes provide maximum jurisdiction to municipalities to adopt and implement planning and zoning powers to protect public health, safety, and general welfare.

## Police Powers



- The right of government to regulate personal conduct and use of land in order **to protect public “health, safety, and welfare”**.
- Planning and land use regulation is the lawful exercise of police power.
- **The use of police power must be reasonable and fair.**

## Planning Commission

<http://www.juneau.org/plancomm/>



- Establishment of duties set out in CBJ 49.10:
  - Review Comprehensive Plan
  - Review Capital Improvement Plan
  - Review CBJ land acquisitions and disposals
  - Review Title 49 amendments
  - Review proposed rezoning requests
  - Decide major development permits
  - Hear appeals of Director Decisions
  - Serve as Board of Adjustment

## CBJ Title 49 – Land Use Code

[https://library.municode.com/ak/juneau/codes/code\\_of\\_ordinances](https://library.municode.com/ak/juneau/codes/code_of_ordinances)



- Chapters
  - 49.05 Establishment
  - 49.10 Administration & Compliance
  - 49.15 Permits
  - 49.20 Appeals, Variances & Interpretations
  - 49.25 Zoning Districts
  - 49.30 Nonconforming Development
  - 49.35 Public & Private Developments
  - 49.40 Parking & Traffic
  - 49.45 Signs

## CBJ Title 49 *(cont'd)*



- 49.50 Parking & Traffic
- 49.55 Financial Responsibility
- 49.60 Bonus Procedures & Policies
- 49.65 Specified Use Provisions
- 49.70 Specified Area Provisions
- 49.75 Rezoning, Special Standards, Regulations & Text Amendments
- 49.80 Definitions
- 49.85 Fees for Land Use Actions

## PC Rules of Order

<http://www.juneau.org/plancom/documents/RulesOfOrder.pdf>



- Effective January 29, 2018; 9 pages
- Rules & mechanics of Planning Commission
  - Structure, committees & liaisons (Rules 1, 6)
  - Meetings - 7pm, 2<sup>nd</sup> & 4<sup>th</sup> Tues Assembly Chambers Rule 2)
  - Meeting notice, agenda, protocol, motions, votes required, reconsideration & public participation(Rules 3-5, 7-8, 10-12)

## Planning Commission Rules of Order Highlights



- Debate: Ask questions, don't argue (Rule 7)
- Public Participation - agenda items except informational & non-agenda items (R. 5, 7, 11)
- Robert's Rules, 10<sup>th</sup> Edition (R. 14)
  - Motions: no seconds (Rule ???)
  - Vote: 5 except 6, i.e. reopen public participation, rescind or immediate reconsideration (Rule 10)
- Telephonic participation, members only (Rule 16)

## Open Meetings Act



- ☞ AS 29.20.020, AS 44.02.310, and Chapter 3.12(d)
  - All meetings to be public.
  - Public have an opportunity to comment at regular and special meetings.
  - Executive sessions (see below – limited purposes to deliberate, but action taken in public).



## OMA: What is a meeting?



### ✧ Decision-making or Policy-making board

- (a) When more than 3 members or a majority, whichever is less, are present; and
- (b) For the purpose of considering a topic that the board is empowered to act upon.

### ✧ Advisory-only board (i.e. subcommittee)

- (a) When more than 3 members or a majority, whichever is less, are at a prearranged gathering of board members; and
- (b) For the purpose of considering a topic that the body is empowered to act upon.

## OMA: Executive Session Substance



Closed-door deliberation permissible for

- Immediate knowledge of which would clearly have adverse affect on finances of CBJ
- Defame or prejudice reputation/character of person
- Quasi-judicial adjudicatory proceeding/appeal

## OMA: Executive Session Process



- Notice of topic in agenda
- Motion to move into executive session
- Public right to object
- If personnel matter, subject person veto right
- Deliberation in executive session
- Return to public meeting to take action

## OMA: Best Practices



- OMA purpose is to ensure deliberations of a board are done in public.
- Minimize private board member discussions.
- “Serial” meetings: avoid using “reply all” in email.
- Reasonable notice of meeting.
  - 24 hrs. minimum, more notice for complex issues.
- Make sure agendas include location and time.
- Cure by completely redoing illegal action.

## Public Records Act



- A.S. 40.25.110, Charter 15.7, CBJ 01.70
- Two big rules:
  - 1) Every person has the right to inspect public record unless an exception applies.
  - 2) Strong presumption in favor of disclosure
- Applies to email, texts, documents, even if on your personal devices
- Best Practice: Keep work at work, keep work on work devices, and don't use text messages for substance

## Conflict of Interest

CBJ 01.45



- Concepts: Impartiality and Transparency
- Required by AS 29.20.010 and Charter 15.1.
- CBJ 01.45 prescribes standards and penalties:
  - Misuse of official position
  - Gifts
  - Improper use/disclosure of information
  - Improper representation
  - Violations are generally B misdemeanors
  - Complaint and investigatory process

## Conflict of Interest *(cont.)*



As a municipal officer, you are prohibited from using your position to:

- Gain a benefit or secure an unwarranted benefit, treatment, or advantage to any person;
- Secure employment or contracts;
- Take or withhold action if you have P/F interest;
- Use CBJ time or equipment for P/F interest;
- Vote or deliberate if you have a P/F interest.

## Conflict of Interest: Definitions



**Financial interest** is defined as:

Any interest, other than securities traded on a national exchange, held by a 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 3yrs) or expects to receive compensation.

## Conflict of Interest: Definitions *(cont.)*



### **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.

## Conflict of Interest: Definitions *(cont.)*



### **Immediate family member** is defined as:

A municipal officer's spouse, minor children and dependents, or a regular member of the officer's household.

## Conflict of Interest: Examples



- x Municipal officer uses a CBJ phone for a call to make sure kids made it home from school.
- x Developer with projects coming up for review gives board member free season Seahawks tickets.
- x Board deliberates on permit application for project that Board member A's spouse worked on for applicant. Board member A participates.

## Conflict of Interest: Best Practices



- If in doubt, contact your attorney (in advance, when possible)
  - ❖ **Shield:** If you act consistent with attorney advice, then you are immune from personal liability
- Close calls, disclose in meeting
- Compliance with conflict of interest rules is required by law and essential for public trust

## Quasi-Judicial/Appeals Process



- No ex-parte contact with parties
  - When sitting as a judge, you cannot discuss matter with one side without the other side.
  - Grocery store, school events, etc.
- Create clear record that articulates reasons for decision
- PC board decisions can be appealed to the Assembly

## Resources



- **City Clerk**
  - Beth McEwen - 586-0203
- **Manager's Office**
  - Rorie Watt & Mila Cosgrove - 586-5240
- **Law Department**
  - Jane Mores - 586-0273
  - Rob Palmer - 586-0909

