

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

January 29, 2018, 6:00 PM.

Municipal Building - Assembly Chambers

Assembly Worksession - No Public Testimony

I. ROLL CALL

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

Assemblymembers Present: Mary Becker, Rob Edwardson, Maria Gladziszewski, Norton Gregory, Loren Jones, Jesse Kiehl, Ken Koelsch, Jerry Nankervis, and Beth Weldon.

Assemblymembers Absent: None.

Staff present: Rorie Watt, City Manager; Amy Mead, Municipal Attorney, Mila Cosgrove, Deputy City Manager; Laurie Sica, Municipal Clerk; Bob Bartholomew, Finance Director; Rob Steedle, Community Development Director; Roger Healy, Engineering and Public Works Director; Beth McKibben, Planning Manager; Michele Elfers, Chief Landscape Architect.

II. APPROVAL OF AGENDA

Hearing no objection, the agenda was approved as presented.

III. APPROVAL OF MINUTES

A. January 3, 2018 Committee of the Whole Minutes

Hearing no objection, the minutes of the January 3, 2018 Committee of the Whole meeting were approved.

B. January 18, 2018 Committee of the Whole

Hearing no objection, the minutes of the January 18, 2018 Committee of the Whole meeting were approved with minor corrections.

IV. AGENDA TOPICS

A. RecycleWorks Update

Michele Elfers said the Planning Commission reviewed and recommended the sale of the CBJ parcels and the purchase of property in Lemon Creek to facilitate the RecycleWorks project. The Notice of Recommendation from the Planning Commission was provided as additional material to the packet. She will be returning with more information for the Assembly at a future meeting.

B. Energy Strategy

Duff Mitchell, Chair of the Juneau Commission on Sustainability (JCOS), provided a presentation to the Assembly. He quoted from CBJ Resolution 2528, "A sustainable community seeks to advance the economic, social, environmental and governmental well-being of the community without compromising

the of life of future generations."

He thanked people who have been involved with the project, including Beth McKibben and Tim Felstad on the CBJ staff, and JCOS members Amy Skilbred, Ben Haight, Bob Deering, Clint Gundlefinger, Daryle Weatherall, John Smith, Greg Smith, Kate Bevigny, Sara Truitt, Ed King, Myrna Gardner, Percy Frisby, Mike Levine, Maria Gladziszewski, Kate Troll and Jerry Nankervis.

The JCOS asked the Assembly to adopt the Renewable Energy Strategy by resolution. Juneau is blessed with renewable energy resources, a supportive community and intelligent leaders, and can be a sustainable energy world leader. The strategy is a direction document. A strategy is overarching, and is not a tactical step-by-step plan. Because things change so quickly, we don't want the plan to be too detailed.

Steve Behnke, former Chair of the JCOS, provided an outline of the strategy, which considers the current situation in Juneau, and a direction and guide to achieve goals. He was thankful for the 100's of volunteer hours by commissioners, staff and the public in the involvement through the multi-year process of developing the Climate Action Plan, adopted in 2011, and which continued in 2015 when Stantec was hired as a consultant. A draft energy plan was released in July 2016, followed by 7 public meetings and 120 public comment. The efforts have culminated to this meeting tonight. Statistics on energy use are included in the strategy. Currently electricity makes up 20% and wood makes up 3% of Juneau's energy sources, which are considered renewable. The balance is comprised of a variety of fossil fuels. The strategy envisions a goal of achieving 80% renewable energy use by 2045. The room was full of citizens bearing stickers with the statement "80% Renewable." Renewables have been proven to maintain stable costs over time. Solar and wind in the lower 48 are reducing costs. The goal does not impose requirements upon people but is a direction, a community statement of interest. It is intended to open up policies. He outlined four priority strategies: implement a CBJ energy management plan, reduce dependence on fossil fuels for space heating, reduce dependence on fossil fuels for transportation and support new renewable energy suppliers for Juneau.

Ms. Weldon supported the strategy and expressed concerns about a lack of cost / benefit analysis. Mr. Behnke said the study effort of JCOS did not provide the time or funds for detailed cost analysis, but provided starting points for government, businesses and public private partnerships to use to implement the four strategies. CBJ staff and JCOS can use these for taking further action to provide budget numbers to the Assembly for implementation. Further detailed work could be done with the Assembly's support.

Mr. Kiehl said that one of the criteria for evaluating possible actions was "significant energy savings" and he asked what the threshold for determination was. Mr. Mitchell said there is some subjectivity between reviewers and the committee met with staff to make the determinations. Things evolve, costs and issues change and technology changes, so all will eventually take an updated review. There must be a cost benefit for all decisions.

Mr. Edwardson said this is aspirational and is a collection of practical ideas that may or may not apply depending on the project. The strategy is not binding.

Mayor Koelsch said he would like the resolution to reflect the current baseline and to acknowledge the work currently being done on renewable energy implementation.

Ms. Weldon said she believes in the goal of 80%, expressed concern that some changes to the building code recommended to improve energy usage could tip the balance for what is determined to be "affordable housing." Mr. Behnke said that some building code changes may tip either way - add costs or save people money. Any code changes would be reviewed by the Building Code Advisory Committee and the Assembly.

Ms. Weldon said her only recommended change to the resolution would be to emphasize that the strategy is a guide and is not binding without the provision of cost analysis. Ms. Mead said resolutions

are policy documents and there is nothing in the plans that are automatically implemented, all actions have subsequent deliberations before actions are made.

Mr. Nankervis thanked Mr. Mitchell and Mr. Behnke for the presentation, and thanked the public for their comments on this topic.

Mr. Watt said that this statement moves to a stronger position for reduced and renewable energy use. Facilities, fleet, building construction and buying vehicles are under CBJ control. The second step is encouraging energy behavior in private use. The third item is the energy capacity that we have. CBJ has made significant strides and he listed several accomplishments, including the adoption of the LEED ordinance, the ground source heat pump installations, purchase of electric vehicles in the city fleet and the purchase of an electric bus. Every city manager does a balancing act on the costs of providing the programs and services in a monetarily efficient manner. The strategy asks the Assembly to push the needle for renewables through the budget process, through facility upgrades, code updates, and other tools at the Assembly's disposal. The plan is before you and your strength is through passing the budget and ordinances.

***MOTION**, by Koelsch, to direct the Municipal Attorney to draft a resolution to adopt the Juneau Renewable Energy Plan.* Hearing no objection, it was so ordered.

C. Meander Way - Mendenhall River Bank Stabilization

Roger Healy spoke to his memo updating the status of the Meander Bend project, which outlines some issues that have arisen from the NRCS. The NRCS is anxious for a local commitment on this project. They have not identified a funding commitment from Congress but once that is achieved there is a 220 day time frame to complete a project. They wanted a response from Juneau by January 19 and staff requested and received a three week extension. The current FEMA maps were produced in 2015, based on information from 2003, and do not include information gained from the jökulhlaups, which have created a base flood elevation rise on the Mendenhall of 1.4 feet. In addition, through the design process, the NRCS predicted a rise in base flood level above this project by .7 feet if installed. If CBJ moves forward with the NRCS project, CBJ will be tasked with amending the flood insurance rate maps through a FEMA mapping effort. Mr. Watt said CBJ participates in the National Flood Insurance Program and the updates occur for a variety of reasons. The update process is not fixed in time and sooner or later evolves to meet the reality of flood risks.

The Assembly asked several questions and discussed flood elevations and flood plain mapping.

Mr. Nankervis asked about polling the neighborhood regarding an LID with a property owner participation at an amount of \$80,000.

Mr. Kiehl said the Assembly had directed the drafting of an LID ordinance in November. He restated the motion adopted at the November 20, 2017 meeting, "to bring back an LID ordinance that assesses each property at \$80,000." He said the Assembly has held many meetings and has articulated many public purposes. The LID ordinance is likely the only way to get to a decision.

Following discussion, and hearing no objection, the committee tabled the matter pending receipt of information on an LID ordinance or the information on polling.

D. Indemnification - Alaska Department of Transportation Permits

Ms. Mead referred to her memo in the packet and said there is a new process for CBJ based on an old section of the Charter, which has not been used in the past. The Charter contains a provision that prohibits future appropriations. The practical effect of that is when CBJ contracts with other parties, CBJ can not indemnify them. Indemnification is deemed to be a future appropriation because it is the promise that if there is a lawsuit, or damages to be paid or awarded, that CBJ will pay that for the other party. The State Attorney General in 2005 issued an opinion which stated that the state constitution, which contains a very similar prohibition against future appropriations, cannot indemnify. That has always been the state's position. The same provision is in the federal constitution and the federal government takes the same position. That language is in our Charter, which is our

"constitution" - CBJ cannot indemnify. There is a small exception. If the CBJ would be otherwise prohibited from participating in a state or federal contract / lease / program / grant, etc., the Assembly, by ordinance, can authorize the future appropriation. This would allow an agreement and obligation to be incurred, because it is another Charter prohibition that that CBJ cannot incur an obligation without an appropriation duly made. Putting this all together, an ordinance is needed from the Assembly that authorizes the manager to sign an Alaska Department of Transportation permit for an approach road to finish the Pederson Hill Subdivision. Ordinance 2018-05 has been drafted for this purpose.

MOTION, by Gladyszewski, to send Ordinance 2018-05 to the Assembly for further consideration. Hearing no objection, it was so ordered.

E. Essential Public Facilities

Mr. Watt said this is an ordinance to deem a facility essential if it meets certain characteristics for zoning purposes.

Ms. Mead provided the Assembly with an updated draft of this memo, which provides a definition for essential public facility. It is a difficult definition because it is a facility that is providing a public service characterized by the community reaction to the facility. It is a facility that is "impossible" to site. It was requested that this ordinance contain the same language that is in a conditional use permit with respect to endangering health and safety and complying with the comprehensive plan and recognizing the values of homes and neighborhood harmony. She said she could not add those as the purpose of this is to allow a community to site a facility or use that is deemed by the governing body to be essential public facility providing an essential public service but is the type of facility that no one wants in their "backyard." The two concepts were incompatible and prevented drafting. There was a request to remove that the process that the manager could use to initiate this process and add in that the Assembly would need to determine by resolution initially that the facility met the definition of an essential public service, followed by the review by the Planning Commission.

Mr. Jones said it seemed that this process could be started following a rejection from the Planning Commission and an appeal process, since it was an assumption to think that the community would object to a specific public facility.

Ms. Mead said these issues would come to the Assembly when the manager is trying to site something somewhere that is not already allowed by code. This process is for those times when the manager has identified a location for a specific use that would not otherwise be allowed there. This issue arose when the manager was trying to locate a sobering center and Bartlett Regional Hospital was discussing moving the sleep off center to a different location. Given the need for a facility close to the proximity of where those persons who would use it might be, there was a review of downtown locations and the current land use code would not have allowed the citing of the facility in the location where the manager determined would be the best location for the facility. If the manager determines a location for a use and the Planning Director states that the use is not allowed in that zoning district, the manager can bring this to the Assembly in the form of a resolution to determine whether the facility meets the definition of an essential public facility, and if so, the planning commission review is initiated. The Planning Commission could say no, if it determined the use would violate health and safety or public welfare, or violate the policies of the Comprehensive Plan. The Planning Commission could also condition the use.

Ms. Mead said this ordinance is only for a public service that the municipality would perform or provide to the public. If it is for an entity that is providing a public service for the CBJ, it would potentially be considered an essential public facility.

Mr. Watt said this is a big tool that should be rarely used. It lets the government do things others can't, but on the other hand, CBJ is doing some things that others won't do. He asked if the Assembly wanted to provide this type of special authority.

Ms. Gladziszewski said if so, the ordinance should be drafted as narrowly as possible. This is a variance to a use, which is not allowed in code. She said this would allow consideration of a use where that use is prohibited, and would only get the project through the first hurdle of allowing it to be considered at all by the Planning Commission. The Assembly should allow the Planning Commission to condition and apply the same review done for any other permit, which would include neighborhood harmony. She said to do otherwise would give the government extraordinary power.

Mr. Jones expressed his concerns about the Assembly stating in a resolution that an essential public facility meets the conditions of health, safety and public welfare, then if the Planning Commission determines that the facility materially endangers those factors, it gives the Planning Commission the ability to override the Assembly.

Ms. Mead said the difference is the Assembly is making a determination that a facility is an essential public facility. The Planning Commission is reviewing the siting in that specific location will violate health, safety and welfare. She said she modeled the process from Washington State.

Mr. Kiehl asked if it would be possible to handle these type of situations through use of the non-code ordinance process and Ms. Mead said yes. He thought a public hearing before the Planning Commission was a better way, but if the Assembly says, this meet the criteria and then tells the Planning Commission to authorize the use, there could be a perception of unfairness as the Planning Commission is appointed by the Assembly. Kicking it off with an Assembly resolutions seems funny. If starting with the Assembly, perhaps a non-code ordinance is appropriate. Otherwise, allowing the Planning Commission to do its review and letting the Assembly hear an appeal may be better.

Ms. Mead asked if the Assembly wanted the process for the manager to submit an application to the Community Development Director added back in to the ordinance. Or the process clarified that the Assembly is not making a determination in the resolution about where the facility will be cited, only that the proposed use, in a vacuum, is providing a public service the Assembly wishes to provide to the community.

Mr. Kiehl preferred the manager to bring the matter forward.

Mr. Jones said either way, the determination by the Planning Commission was appealable to the Assembly. Under our own rules we can only consider if the Planning Commission complied with their own rules. If, in the appeal process, the Assembly decides that the Planning Commission was correct in their decision, then how could a non-code ordinance be forwarded that would override the Planning Commission action? He thought the matter would need to start with the Assembly with some standing. He spoke about the need to use a hearing officer. He thought the matter would need to start with the Assembly with some public hearings to avoid the appeal process.

Ms. Mead said the model she followed uses a process that the Assembly identifies a public need or service, then it goes through the Planning Commission process with a recommendation about where to site the service, with the manager bringing that recommendation forward. Going back to the manager submitting an application for a Planning Commission process allows for conditions and a check on whether it would materially endanger health and safety. This could be done with a non-code ordinance but those must be done in a uniform and non-arbitrary way. Codifying the process makes it non-arbitrary.

Ms. Gladziszewski said there is a perception that city projects don't have the same standards required of public developers. Allowing a facility to be cited anywhere, and having lower standards was going too far.

Mayor Koelsch said that the Assembly should have this type of pathway forward and if we get into a situation in which the rules are greater than the people that make them, then we have a problem. This is a tool to use sparingly. There has to be a mechanism to take care of our obligations.

Ms. Mead said she understands Ms. Gladyszewski's point and said the purpose of the Table of Permissible Uses (TPU) is to group together uses in zones that are compatible. If something is not compatible with a particular zone, it is not allowed in that zone. Essential Public Facilities are things that the Planning Commission will never be able to find in harmony with the surrounding area. If that were the case, the TPU could be amended and the use could be allowed in the zone. The condition of harmony could never be met. This is creating a special rule, because the government is trying to provide a service that is important enough to provide that the rules may be "bent." It may help to build in language that makes this an extraordinary process. She said she thought the draft needed to be amended to include language that says it can be sited through a normal Title 49 process, that this is not intended to subvert Title 49.

Mr. Edwardson said he wants to "want" this because he sees a need but is against this because it seems like an ordinance to allow the government to be arbitrary. We need to trust our processes and the people we appoint to put in so much time to make practical decisions.

Mr. Jones said if we really want a facility, the Table of Permissible Uses should be amended so that more facilities could be sited than just the one the government was trying to create. If we think the manager's proposal is so out of line, we can say no. There are many steps, including in a contract for management of services, and all along the decision making process we can say no. We need this in a manner so that it makes it hard for us to make a decision, but he did not want it drafted in a way that the Assembly's decision is second guessed.

Ms. Mead said it seemed that everyone agreed that there be language regarding applicability under "extraordinary circumstances." She asked about a manager application process with review by the Planning Commission or by Assembly resolution then Planning Commission.

There was no specific objection to drafting the ordinance to include the process of the manager application process with review by the Planning Commission.

Mr. Gregory said he did not like the resolution, and through a difficult process, on the topic of siting a campground, a better outcome was arrived at for those campers. He felt this ordinance made it too easy to not dig hard enough for a good solution.

Mr. Edwardson said that his experience is that anyone who has been arbitrary didn't think that they were arbitrary and he agreed with Mr. Gregory and could not support the matter.

Mr. Nankervis asked the committee if it wished to have an essential public facilities ordinance and a majority supported, with Mr. Gregory and Mr. Edwardson objecting.

Mr. Nankervis asked if the committee would like to see the draft ordinance modified and a majority supported.

Ms. Mead re-capped that she understood the manager recommendation would be put back in and she would add limiting language for use in rare occasions. Ms. Gladyszewski said she would like to see the same conditions used that the Planning Commission uses for any facility, and it was agreed to include neighborhood harmony in the draft, which could be amended at a future meeting.

Mr. Kiehl asked about the ability of the CBJ to do performance bonds. Ms. Mead said this ordinance does allow an outside entity to provide the public service, and performance bonds are a tool available to the Planning Commission, the Commission could require the outside entity to post a performance bond.

V. ADJOURNMENT

There being no further business to come before the committee, the meeting was adjourned at 9:15 p.m.

Submitted by Laurie Sica, Municipal Clerk