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Attachments: 1. PowerPoint Amendments to PC BOA and Hillside Rules and Procedures, 2. Board of Adjustment Rules Redline (for Council Meeting), 3. Commission Rules and Regulations Redline (for Council Meeting), 4. Hillside Building Committee Rules of Procedure Initial Draft (for Council Meeting)

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TO: Mayor and Council

FROM: Andrew Miller, Town Attorney
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DATE: December 6, 2018

CONTACT:

AGENDA TITLE:

Discussion of Recommendations on Changes to the Rules and Procedures for the Planning Commission, Board of Adjustment and Hillside Building Committee; and Procedures for Adopting Future Changes to Rules

BACKGROUND:

As part of the Council's discussion on governance changes, the Council determined that some changes to the Rules of Procedure for the Planning Commission ("Commission") and Board of Adjustment ("Board") should be explored, and that rules should be adopted for the Hillside Building Committee ("Committee," which currently has no adopted rules of procedure). Council Members had observed that having unclear rules of procedure on certain issues (or no rules at all), had led to frustration for both residents and Town staff when the rules did not address certain situations.

A Town Manager working group was organized to discuss some potential solutions to some of the problems that the Council had identified. The working group consisted of the Town Manager, Town Attorney, Vice-Mayor Bien-Willner (who is the Council liaison to the Commission) and Council Member Scott Moore (a former Board and Commission Member). The working group identified four

problem areas where some changes to the rules for the aforementioned public bodies would be useful: 1) late submittal of materials by applicants or residents/general public; 2) surprise submittals of documents or electronic materials on the night of a meeting; 3) lack of clarity on allotted speaking times for “spokespersons” for residents or neighborhood groups; and 4) clarity on timing requirements and agenda setting for motions to reconsider a motion or action from the prior meeting. [Note: more detailed discussions on the problem areas and some potential solutions are contained in the next section.]

The working group discussed changes that could be implemented in each of these areas that would help staff, residents/general public, applicants, and the public bodies maintain greater transparency and openness as well as providing for a more rigorous and thorough review of submitted materials by the Town staff. Of particular concern was making sure that all parties have sufficient time to review materials submitted for public review prior to scheduled hearings or meetings. Additionally, there was some desire to have the rules for each public body be somewhat similar so that residents and the public would have an expectation of similar rules in their dealings with each of the Town’s public bodies. Based on the input of the working group the Town Manager and Town Attorney prepared suggested changes to the existing Commission and Board Rules, and an initial set of rules for the Committee. The group also determined that the next step should be to present the suggested rules changes to the Commission and Board, and the initial set of rules to the Committee, for their review and comment.

The “problem areas” noted above and the suggested revisions to the rules were then discussed at a joint meeting of the Commission and Board on November 7, 2018. The Commission and Board provided some general input and each body commented that proposed changes, on the whole, would be beneficial. The Board and Commission were advised that the next step would be to have the Committee review the initial set of Committee rules and to then present the working group findings along with the comments of the Commission, Board and Committee to the Council for comment and further direction. The Committee was presented with an initial set of Rules at its November 14, 2018 meeting and it concurred with the need for the Committee to have a set of rules and that the initial draft was a good starting place.

Staff desires to have the Council now provide comments on these proposed changes, as well as any other changes that the Council believes may also be in order, as well as confirmation having a coordinated approach to the Rules of Procedure for the Commission, Board, and Hillside Building Committee is desired. If a coordinated approach is desired the Council may want to make changes to the Town Code so that the approval of the Council is required prior to the rules for the Commission and Board becoming effective (the current Town Code, §§ 2-5-2(C)) does not require Council approval). Additionally, since the Committee has no provision in the Town Code for the adoption or rules, the Council may want to direct the Town staff to prepare a code amendment that grants the Committee the authority to make rules, subject to those rules being approved by the Council.

Four Problem Areas Identified and Potential Solutions Discussed by the Planning Commission, Board of Adjustment and Hillside Building Committee

1. Late submittal of materials by applicants or residents/general public:

Council Members had observed that all too often applicants have been submitting materials for inclusion in the agenda packets at the last minute (that is, just in time for the staff to place them in the agenda packet), or even on the night of a public meeting. The practice of staff only receiving an applicant’s written and electronic materials “at the last minute” (or even later) does not allow

the staff to have adequate time to review the materials and comment or respond to them prior to having to prepare and distribute the agenda packet. The working group felt that a hard deadline should be instituted; with repercussions should an applicant not meet the required deadline for submitting materials. On the other hand, since residents/general public comments (typically emails) are responding to materials submitted in the agenda packet, residents/general public comments should have a later “cut-off” time, such as 24 hours prior to the posted public meeting time.

Potential Solutions:

The working group suggested that applicants should be required to submit their materials (including electronic materials such as a PowerPoint presentation that the applicant would like to use at the public meeting) at least five (5) days prior to the date that the staff has designated as the date that the agenda packets will be distributed to the Commission or Committee, and for the Board by the date that the public notice of the meeting is published. Materials submitted after the “cut-off” date and time would not be distributed to the public body and would not be considered at the public meeting or hearing on the applicant’s matter. If the applicant felt that the consideration of materials submitted after the cut-off date and time absolutely needed to be placed before the public body, then the applicants’ meeting or public hearing would then need to be continued and the applicant would have to pay the costs of re-advertising, re-noticing, and/or re-posting a public hearing, if applicable. Applicant “hand-outs” of materials at the public meeting would not be permitted unless the hand-out is a copy of materials that were already submitted prior to the cut-off time. Similarly, any electronic materials, PowerPoint presentations included, cannot have new or updated slides or graphics.

The working group suggested that submittals or written statements by residents/general public should have to be submitted at least 24 hours prior to the posted public meeting time in order for the staff to be able to assemble and distribute them to the public body members prior to the meeting time. If a resident or member of the general public cannot make a meeting time and has a late submittal, that material may be given to another member of the public who can “present” that material at the public meeting. Because the material would be handed out at the meeting, the member of the public should also be required to have at least ten (10) copies of the material available for distribution (one for each public body member, and one copy for the staff, the applicant, and the minutes-taker). Similarly, the residents/general public present at the meeting may also submit their own written comments at the public meeting, provided that they have at least (10) copies available to distribute.

PowerPoint presentations by residents/general public present unique problems due to the need to load such electronic materials on to the Town computer system and the concomitant shortened public comment times typically allotted to the general public. Thus, the working group suggested that PowerPoint presentations by the general public should not be permitted; provided, however, a member of the general public may hand-out a printed copy of the PowerPoint “slides” that such member of the public desires to present, again requiring at least ten (10) copies of the PowerPoint “slides” submitted for distribution.

2. Surprise submittals of documents or electronic materials on the night of a meeting:

As noted above, the submittal of documents by an applicant on the night of the meeting are problematic and should not be permitted. For example, the current Board Rules provide:

“Any person may submit written comments to the Board on any matter before the Board.”

Whereas the current Commission Rules provide:

“Any person may submit written comments to the Commission and Board. Such comments will be provided to the members of the Commission, at their homes or offices, if they are delivered to the Planning Department at least 48 hours before the meeting to which they relate; otherwise they will be distributed at the meeting.” (Emphasis added)

Consistency between the two sets of rules would assist staff in making sure that the public sees a consistent approach for all of the public bodies, as well as giving staff at least some time to review the written comments before forwarding them to the public bodies.

Potential Solutions

Because the current rules for the Commission and Board vary and do not differentiate between applicants and the general public (instead they refer to “Any person”), the working group suggested that this rule should be modified to disallow late submittals by applicants and instead provide for a 24-hour cut-off for written comments from the general public. If a member of the public does have a written comment to submit after the 24-hour cut-off period, then that member of the public should have to submit 10 copies of the written material, for the reasons noted above. The Commission Rules should also be changed so that the comments can be sent to the Commissioners by email. The Board and Committee should adopt new rules that address the late submittal problem in a similar fashion.

3. Lack of clarity on allotted speaking times for “spokespersons” for residents or neighborhood groups:

When contentious applications have been heard in the past, neighborhood groups have often organized and selected a spokesperson (and sometimes an attorney hired by the neighborhood group) to speak on behalf of numerous individual residents. The current rules for the Commission and Board do not address the length of time that a designated “spokesperson” for a large group of residents or members of the public has to speak. Their rules also do not set the amount of time that an applicant is allotted to state their case during public hearings. In comparison, the Town Council Rules of Procedure allot fifteen minutes to an applicant at a public hearing, but also do not set time periods for a “spokesperson.”

Potential Solutions

The working group suggested that there be some consistency between the public hearing processes of the Commission, Board, Committee, and the Council. This would aide applicants and the public on what to expect during the entire public hearing process for applications such as major and intermediate SUP amendments. When a “spokesperson” is identified, both sets of rules should have a specified time set aside for a spokesperson. Although the current Commission Rules would provide that the Chair “may impose reasonable time limits upon the oral statements of any persons wishing to address the Commission” (see Section V.E.) this does not guarantee consistent treatment of spokespersons. Additionally, to the members of the group that have designated a spokesperson, it seems inconsistent to allot 15 minutes or more to an applicant, but to have a much lesser time (sometimes as little as 3 minutes) allotted to a spokesperson who is presenting for a potentially large neighborhood group. Thus, the working group recommended that when a spokesperson for an identified group of residents (such as a HOA officer or an attorney) desires to speak on behalf of that group, a larger amount of time

should be allotted, but not in excess of fifteen minutes unless the chair finds that there are particularly detailed and difficult matters involved in the case before the Commission so as to justify additional time for the designated spokesperson.

One additional requirement suggested by the working group was that when a neighborhood group brings forward a spokesperson the members of that group should be required to be present at the meeting. This requirement would then allow for the chair to be able to gauge how many residents a spokesperson represents and that the spokesperson will actually be speaking for a larger group, not just on behalf of one or two people. The chair can then also advise the members of that group that if they choose to speak individually they should limit their time and avoid any repetition of matters already addressed by the neighborhood spokesperson.

4. Clarity on timing requirements for motions to reconsider a motion or action:

The current Commission Rules do not mention how a motion to reconsider should be handled, thus Robert's Rules of Order would be the default process for handling such motions. However, the Council Rules do mention motions to reconsider and provide that a motion to reconsider any action of the Council can only be made "on the day that the action was taken or at the next regular meeting of the Council." Because of the open meeting law requirements, the Council has also been required to have any member who desires to make a motion to reconsider "at the next regular meeting" first request that the Town Clerk place on the agenda the action item from the prior meeting showing that such member requested that it be placed on the agenda for the purposes of being able to move to reconsider the motion approved at the prior Council meeting.

Potential Solutions

The working group suggested that the Council should make a formal change to its rules sometime in the future to have the "agenda request" requirement placed in the Council Rules. The working group also felt that the Commission should have a place in its rules for a motion to reconsider, with an approach similar to what is contained in the Council's Rules, including having a time limit for when a member who voted in the majority must request that the matter be placed on the next business meeting agenda. The Commission should discuss what that time limit should be.

NEXT STEPS

Discussion and feedback on proposed changes to the Planning Commission and Board of Adjustment Rules, and initial set of Hillside Building Committee Rules; and desire of the Council to make changes to the Town Code relating to Council approval of all rules.

ATTACHMENTS:

Redline of suggested changes to the Commission Rules and Board Rules; and initial draft of Hillside Building Committee Rules