



Board Agenda Item 6

DATE: February 7, 2017

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works & Planning

Daniel C. Cederborg, County Counsel

SUBJECT: Procedural Rules Governing Public Hearings Regarding Planning, Zoning and Subdivision Matters.

RECOMMENDED ACTION(S):

Conduct Workshop on Procedural Rules Governing Public Hearings Regarding Planning, Zoning and Subdivision Matters.

FISCAL IMPACT:

There is no increase of Net County Cost associated with the recommended action.

DISCUSSION:

Background

Since at least 1978, the Board of Supervisors has maintained a written policy setting forth uniform procedural rules for the conduct of quasi-judicial planning and zoning matters before the Board of Supervisors, Planning Commission, and Board of Review. The purpose of these rules is to ensure (1) uniformity of procedure, (2) public access to hearings, (3) fairness to interested parties and the public, and (4) compliance with legal requirements.

The Procedural Rules together with certain provisions of the Zoning Ordinance satisfy the requirements of Government Code section 65804, subdivision (a), which mandates that cities and counties develop and publish procedural rules for the conduct of hearings related to zoning matters, so that all interested parties shall have advance knowledge of procedures to be followed.

Purpose of This Item

The purpose of the workshop is to review and discuss the Procedural Rules (See Attachment A), consider whether amendments may be in order and for staff to receive the Board's direction. If the Board determines that changes to the Procedural Rules are in order, staff will receive the Board's direction, and return at a future date with revisions to the Procedural Rules conforming to that direction.

Summary of Procedural Rules

The Procedural Rules (Rules) are comprised of eleven sections. Those sections and brief summaries of each follow:

I. Purpose

- a. Insure uniformity of procedure, access to hearings, fairness to the public and interested parties, and compliance with law.

II. Application

- a. Rules apply to all planning, zoning, and subdivision matters of a quasi-judicial nature which require public notice and an opportunity for each side to be heard, upon which factual determinations must be made on evidence presented, and decisions made in accordance with legal standards.
- b. Rules do not apply to matters of a broad legislative policy character.

III. Pre-hearing Requirements

- a. Upon written request, record of proceedings should be made and preserved, and a copy of which to be made available at cost; staff reports filed with Clerk; copies of Agenda materials made available prior to hearing through Clerk.

IV. Written Correspondence

- a. Written correspondence shall be submitted to Clerk. If correspondence is received prior to the hearing, Clerk distributes to Board or Commission members and posts on website.
- b. If written correspondence is submitted directly to a Supervisor or Commissioner, the Supervisor or Commissioner should deliver such correspondence to the Clerk for filing, copying, and distribution to all members.

V. Order of Evidence

- a. Unless good cause requires otherwise, the order of evidence is:
 - i. Staff report
 - ii. Report of Commissioners or Supervisors of site visitation or ex parte communications prior to hearing
 - iii. Testimony of proponents
 - iv. Testimony of opponents
 - v. Rebuttal testimony of proponents
 - vi. Sur-rebuttal testimony by opponents
- b. Then close the hearing; clarifying questions may be asked by members; discussion among members, and a decision made.

VI. Rules of Evidence

- a. Relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs;
- b. Witnesses generally not sworn in; and
- c. Hearing need not be conducted according to formal judicial rules of evidence

VII. Site Visitation

- a. Prior to hearing: Members may visit site, subject to obligation to disclose fact of site visitation at the hearing.
- b. After the hearing is closed: Members may visit site if the hearing is closed subject to right of Members to visit site, subject to obligation to disclose fact of site visitation when the hearing resumes.

VIII. Ex Parte Communications

- a. Ex parte communications are personal or telephone contacts by individuals, County staff members, or other agency representatives by Members outside the hearing, where representations or arguments are made upon the specific proposal.
- b. Verbal ex parte communications shall be disclosed by each Member at the hearing.
- c. Written ex parte communications should deliver such correspondence to the Clerk for filing, copying, and distribution to all members.

IX. Continuance

- a. Allowed for good cause upon showing that, for reasons beyond interested person's control, it would cause undue hardship or create injustice to proceed at the scheduled time.

X. Decision

- a. In the event the Board takes no action because a motion on the item failed to carry by 3 votes, the matter shall be re-heard at the request of any party or any Board member made within two weeks of the date of the failed motion; otherwise, the matter shall be deemed denied.

XI. Other Rules of Procedure

- a. Except as provided in these Procedures, the respective rules of procedure of the Board of Supervisors, Planning Commission, and Board of Review govern.

REFERENCE MATERIAL:

BAI #7, Index No. 78-472, March 7, 1978
BAI #6, File No. 5681, October 5, 1982
BAI # Special Item [added during meeting], August 23, 2005
BAI #22, October 18, 2005
BAI #8, April 22, 2008

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A

CAO ANALYST:

John Hays