

8/18/18

Dear Ms. Turner,

Thank you for providing a track changed copy of the old BOS procedures so that we can see the changes proposed. Many of the changes are an improvement. Others are puzzling.

I apologize for the informal nature of these comments. However, given the short notice, I am unable to provide more formal comments. Please pass these on to the Board of Supervisors.

The old Board Procedures and the Proposed Board procedures are numbered differently. I will try to refer to them properly below. I apologize for any number confusion.

A) If there is any specific explanation for specific changes to the Board Procedures, please provide that information with the Board Packet, and forward it to me.

B) What is the urgency that justifies putting this matter on the agenda of a special meeting? Why can't such an important issue, with Constitutional implications, be the subject of a noticed public hearing at a regular Board meeting?

C) The agenda item indicates that this matter does not require public notice or public hearing. If, as stated in the staff report, "All persons are welcome and encouraged to attend and to participate in meetings of the Board," and as stated in the Board Procedures, "staff and the public are also encouraged to engage in respectful dialog" then why is this matter being acted upon at a special meeting, with minimal public notice?

D) What circumstances have changed since the 2014 amendments that have triggered the proposed changes to the Board Procedures?

E) The proposed procedures deal with the amount of time a speaker can address an issue on the agenda (Rule 20, Rule 21), the number of times a person may speak to an issue (Rule 21), the manner in which people can submit exhibits to the Board (Rule 21), the time limits on submitting exhibits (Rule 21), the conduct of appeal hearings, who can speak (with no special time for project applicants?), and for how long (Rule 22); preventing members of the public from making a point of order (Rule 24) and the participation of the public in Board meetings (Rules 45, 46, 47). These rules directly affect people's First Amendment rights to free speech and to seek redress of grievances from their government.

F) There are controversial issues and confusing parts in the proposed new procedures:

-New Rule 1, as revised, would allow the Board Chairman, acting alone, to suspend any or all of the rules of procedure, regardless of the wishes of a majority of the Board.

As pointed out in the staff report and in the Board Procedures, one purpose of these rules is to put in one place the requirements of multiple state and Constitutional provisions regarding free speech and the conduct of meetings. If one person can suspend these rules, what other rules would be applied in the interim to ensure that the requirements of state meeting laws and the Constitution are followed? Violations of the Constitutional rights of individuals can subject the County to financial liability under the federal Civil Rights Act. Is it wise to expose the County to that much liability for the rash act of a single individual?

Ceding Board decisionmaking responsibilities to one member of the Board sets a dangerous precedent. State law gives power to a Board of Supervisors acting as a Board, elected by people from each Supervisor district, not to individual Supervisors making discretionary decisions without the consent of a majority of the Board. The people of Calaveras County elected a Board of Supervisors to act as a Board. They elected a person to represent their district. They did not elect Board members to surrender the interests of their district, and the wisdom of group decisionmaking on matters of free speech and self-government, to a single individual from another district. If the Board can cede these important powers to one member, what other powers could they cede to one member?

If we are to maintain those freedoms of speech and self-government, that are the cornerstones of our republic, then we cannot place in the hands of one person the power to snuff them out.

- Rule 3, as revised, would be amended to eliminate the quarterly evening meeting, that provides students and working people their only opportunity to speak to the Board in person and be heard.
- As revised, Rule 20, Rule 21, and Rule 22, would reduce the speaking time of an individual on an item from 5 to 3 minutes; even during appeal hearings.
- In Rule 22, no time is specifically allotted to the project proponent when its project approval is under appeal. I believe that some members of the development community may not be happy with that.
- New Rule 24 precludes a member of the public from making a point of order. This is content based restriction of speech. It must be narrowly tailored to meet its purpose. It does not appear to be so narrowly tailored. Also, this may be highly prejudicial, since the party disadvantaged by a breach of the Board Procedures will often be a member of the public who is not getting to speak, or who is personally attacked or slandered by another speaker.
- It seems odd that in Rule 25 as revised, a "Commitment to Civility, the Board is repealing the provision to have discussion during board meetings be "free of personal attacks."
- Rule 26, as revised, allows individual members of the Board to receive privileged communications via text or email during a public meeting. There is already a procedure for going to closed session for the entire Board to receive confidential advice from County Counsel. Allowing individual Board members to seek and receive such advice electronically during a meeting could exclude other members of the Board from receiving the advice they need.
- It seems odd that, while Rule 26, as revised, supports the submission of electronic documents to reduce document printing and distribution, Rule 46 requires the public to provide 28 copies of written documents to the Board Clerk.
- Rule 43 removes the requirement that a request for an unusual expenditure of staff time be first approved by the Board by vote on an item on the agenda. My guess is that the Taxpayers Association may have some concerns about this.
- It seems odd that with regard to revised rule 47, "Orderly Conduct," the Board is repealing the provision requiring members of the public speaking before the board to refrain from "slanderous and profane remarks".

G) Since 2006, the Calaveras Planning Coalition has been promoting public participation in local government decisions that affect people's quality of life. Because the proposed Board Procedures could directly restrict and indirectly chill constructive public participation, and may adversely infringe upon the First Amendment rights of the people of Calaveras County to seek redress of grievances from their government, on Behalf of the Calaveras Planning Coalition, I respectfully request that the new Board Procedures be circulated for public comment, publicly noticed in the newspaper of record, and discussed at a public hearing, at a regular meeting of the Board of Supervisors, at a time and date certain; preferably at the quarterly evening meeting.

Sincerely,

Tom Infusino, Facilitator  
Calaveras Planning Coalition  
cc. Board of Supervisors