

MINUTES

Committee of the Whole
City and Borough of Juneau
Mike Satre, Chairman

May 27, 2014

New Wireless Communication Facility Ordinance and Master Plan

I. ROLL CALL

Michael Satre, Chairman, called the Committee of the Whole meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 5:05 p.m.

Commissioners present: Michael Satre, Chairman; Karen Lawfer, Ben Haight, Bill Peters, Paul Voelckers, Gordon Jackson, Nicole Grewe

Commissioners absent: Dennis Watson, Vice Chairman; Dan Miller

Staff present: Hal Hart, Planning Director; Travis Goddard, Planning Manager; Robert Palmer, Assistant Attorney II; Amy Mead, City Attorney; Rob Steedle, Deputy City Manager; Eric Feldt, Planner II;

AME2014 0007, an introduction of proposed amendments to Title 49: street standards, and AME2014 0008: an introduction of proposed amendments to Title 49: providing a platting process for right-of-way acquisitions, were removed from the agenda.

II. REGULAR AGENDA

TXT2009-0007: Review of the Draft Wireless Telecommunication Facilities Master Plan and Ordinance.

Applicant: City and Borough of Juneau

Location: Borough-wide

The Commission has two letters in their blue folders this evening; one letter from Verizon and one letter from AT&T. There is also a letter from Mr. Feldt dated May 27. This memo recommends new edits by the CDD staff and the Law Department

Mr. Feldt said he then wanted to address the 14 issues the Commission brought up at its last meeting that it wanted addressed. The third issue to be addressed he felt would be the items the Industry wanted addressed in the Ordinance.

Chairman Satre clarified that this Committee of the Whole meeting was to review the Ordinance and the Plan with the subsequent Regular Meeting to open up the Ordinance for public comment.

Mr. Feldt reminded the Commission that the May 19, (2014) moratorium deadline set by the Assembly has passed. No new applications for wireless applications coming into conflict with the moratorium are expected within the next few days. What this means, said Mr. Feldt, is that the City and Borough of Juneau is still operating under current Title 49 regulations.

The expected vote by the Assembly on the new Ordinance is slated for June 30, (2014), said Mr. Feldt. On June 16, a Committee of the Whole meeting will be held between the Assembly and the Planning Commission to discuss the Ordinance and Master Plan, said Mr. Feldt. CityScape's attorney is to be present for that meeting to answer any questions, said Mr. Feldt.

Mr. Feldt discussed the memorandum from the Planning Department and the Law Department on the Master Plan. He said their goal was to assure that the Master Plan was in line with the Ordinance, with federal regulations, and to protect the City from legal liability. Mr. Feldt outlined for the Commission detailed wordsmithing which was done on the Master Plan. He said their goal was to ensure:

1. policies and implementation language was less obligatory,
2. the policies are not preempted by federal law,
3. reduce the redundancy and overlapping purposes, and
4. ensure the CBJ is not liable for the applicant's responsibility in obtaining all other state and federal permits.

Mr. Feldt said they recommended that the word "shall" be substituted for "should" and the word "must" be substituted for the word "may".

He said they recommended that on Page 5 of the Master Plan that they add the word "requiring" before the word "coordinating", and that on item number three that the word "approval" be added before the word "compliance" with the minimum FCC radio frequency emissions standards.

On page 6 it is suggested that the Modify Neighborhood Harmony paragraph should be consistent with federal law, and Policy Four should be modified to read: "To protect the public interest, and neighborhood harmony by minimizing the impact while accommodating the development of wireless communication facilities".

There are also several small sections which are suggested that be deleted, said Mr. Feldt, which are shown in the memorandum and in the Master Plan edit.

Ms. Lawfer asked about Policy Number Five on Page 8 of the Master Plan about not incentivizing the collocation of a raise in cell towers. She said she wanted to make sure that the Ordinance and the Master Plan were not in conflict with each other.

Mr. Feldt clarified that collocation can be incentivized and that it is carried out into the Ordinance, but that it cannot be stated that it is to protect property value.

Mr. Voelckers asked if there was any mechanism in place to assure that the applicant did follow through with the requirement that they check with the FAA on their lighting requirements as stated in the Ordinance.

Mr. Goddard responded that policy seven stipulates that the burden is actually on the City and Borough of Juneau to make sure that the policy is carried out. However, said Mr. Goddard, the changes actually reflect switching the burden back onto the applicant and away from the staff.

Mr. Voelckers mentioned that there does not currently seem to be anything in the Ordinance which mentions the advantages of rimshot towers.

ORDINANCE

During the last Planning Commission meeting on this issue which was Thursday, May 8, 2014, the Commissioners and public identified 14 issues they wanted to be revised prior to the proposed WCF Ordinance being forwarded to the Assembly. Those issues have been addressed in the revised Ordinance and summarized as follows, said Mr. Feldt:

1. Increase Public Notice.
2. Define strobe lighting; can we prohibit lit towers?
3. Can we prohibit towers in flight paths?
4. Address bird migratory guidelines.
5. Further scrutinize tower proposals in RR and D-1 districts.
6. Show how to bring existing towers into conformance.
7. Better address scenic viewshed corridors.
8. Clarify setbacks (especially break-point in tower construction).
9. Better address guy wires (make more visible to bird migration).
10. Have post-construction RF testing.

11. Change section 49.65.930 (i) (B) (to have the developer design the WCF to blend with existing landscape without a full concealment treatment).
12. Make Table 1 more lenient for concealment WCF' s.
13. Create a bonus provision that would encourage existing towers to come into conformity.
14. Explain why balloon testing was removed from the Ordinance.

During this Wireless Communication Facility Ordinance and Master Plan review period, this complete memorandum with recommendations is posted on the website at:
<http://www.juneau.org/cddftp/projects/WirelessPlan/documents/5-27PCMemo.pdf>.

COMMISSION COMMENTS ON PUBLIC NOTICE

Mr. Peters said he thought public notice referred specifically for lit towers.

Mr. Feldt responded the public notice requirement was for any wireless communication facility that requires a special use permit.

Ms. Lawfer asked where the three proposed public notice signs would be placed.

Mr. Goddard responded that those three signs would be placed at the Planning Director's discretion.

COMMISSION COMMENTS ON STROBE LIGHTING

Mr. Voelckers asked if it was a requirement that lit towers use strobe lighting.

While the staff did not have a clear definition regarding a requirement for strobe lighting, Mr. Haight said the FAA circular defined strobe lighting by different pulse rates and durations.

Mr. Goddard added that they did not want to put the community in the position of overruling the FAA on the issue of strobe lights.

Mr. Voelckers said that he felt it was worth pursuing the research on this topic since they had heard in lot of public testimony against the use of high-intensity strobe lights.

Mr. Haight concurred that this topic was with worth pursuing, and that in FAA Circular 70/74601K, that medium intensity lights were not recommended for use in urban areas on structures less than 200 feet.

Chairman Satre added that it was far more expeditious to move away from using lights altogether.

Ms. Lawfer stated that at the point the tower was up for review before the Commission, the lowest level light of a light was required would be decided upon at that point.

COMMISSION COMMENTS ON MIGRATORY BIRD GUIDELINES

Commissioner Satre said he had done some investigation himself and found that most bird fatalities due to cell towers were from cell towers 400 feet in height and over and that Juneau does not have any cell towers over 400 feet in height.

COMMISSION COMMENTS ON TOWER PROPOSALS IN RR & D-1 DISTRICTS

Commissioner Satre clarified that there could still be a tower proximal to a single family home in a Rural Reserve (RR) area.

Mr. Feldt verified that this was correct.

Mr. Voelckers asked if this issue had been considered; that a cell tower actually be not proximal to a single family home in a rural reserve area.

Mr. Feldt responded that this was a regulation that could be inserted into the Ordinance. He added that staff had not put a lot of research into that area. He said that this could certainly be an idea that could be up for further discussion.

Ms. Lawfer asked if there were height requirements.

Mr. Goddard said the question had been raised whether a height requirement should be set for areas other than just Industrial.

Chairman Satre added the argument could be raised that it could be very difficult to get above tree level to get above 60 feet in the rural reserve area.

Mr. Feldt said a very tall tower may not be needed in a Rural Reserve area because those areas tended to be mountainous areas already.

At the suggestion of Ms. Lawfer, with the assistance of City Attorney Ms. Mead, the Commission agreed to change bullets one and two to state that the minimum distance of a cell tower be set at 500 feet from any dwelling unit in a Rural Reserve area.

COMMISSION COMMENTS ON HOW TO BRING EXISTING CELL TOWERS INTO CONFORMANCE

Chairman Satre said it was his understanding that only the addition of the collocation would have to comply with the conformance, but not the entire tower.

Ms. Mead said she this section needed to be tweaked a little bit, and that only eligible collocations, bringing about minor modifications, needed to be brought into conformance with the code.

Ms. Lawfer asked about the net result of the total frequencies emanating from the tower from the total collocations.

Mr. Goddard responded that this specific aspect of the Ordinance was based upon the specific physical modalities of the tower. When FCC reviewed the tower it would be based upon the total frequency emanating from the tower.

COMMISSION COMMENTS ON SCENIC VIEWSHED CORRIDORS

Chairman Satre commented that this was the first time that this had actually been specifically designated as an area of the mapped area as a scenic viewshed area.

Ms. Mead stated that this language is taken directly from the Comprehensive Plan.

Chairman Satre asked if this is now opening up the definition of viewshed.

Ms. Mead responded that Chairman Satre was correct, and that this would be the first time that this would be codified.

Mr. Voelckers stated that this aspect of the Ordinance felt inappropriately specific to him as well. He added that he felt that it could possibly have unintended consequences.

Ms. Mead stated that this did not need to remain.

Ms. Lawfer asked if they would be removing or if they would be modifying D on page 20 of the Ordinance.

Ms. Mead responded that it is currently a prohibition. Therefore, the Commission would currently have to deny any application that would affect this portion of the Ordinance. However, Ms. Mead repeated that the Commission could remove this portion of the Ordinance.

Ms. Grewe asked if there were other sections in the Comprehensive Plan that were equally protected.

Ms. Mead replied that it was the only area that had a text description of an area, which contained a 'From' and a 'To' point.

Ms. Grewe said she did share the concerns that it was a bit specific, but that she was in favor of retaining it in the Ordinance.

COMMISSION COMMENTS ON SETBACKS AND BREAK-POINT IN TOWER CONSTRUCTION

Mr. Voelckers said he felt the Ordinance language was inconsistent regarding distance of a cell tower and the fall distance from a house.

Chairman Satre commented that this was on Page 8.

Mr. Voelckers said he felt the whole paragraph on structural assessment raised some drafting issues.

Ms. Mead said they could amend the section on the structural assessment to state something like, "the setback is equal to the height of the tower or the height equal to the breakpoint technology, whichever is greater".

Mr. Voelckers agreed with that language, but added he felt this language was just misplaced at this section in the Ordinance.

COMMISSION COMMENTS ON RF TESTING

Chairman Satre verified that the process would still essentially be driven by post-construction complaints.

Ms. Lawfer asked how an individual would complain about RF frequency.

Mr. Goddard responded that the FCC has a very good, very responsive, online compliance department.

Ms. Lawfer asked if there were any other utilities other than wireless communications towers that emitted radio frequencies.

Mr. Haight answered that they emit very low frequencies which are not equal to radio frequencies.

Mr. Voelckers asked if the FCC process was complaint-driven or if it was a good follow-through process which was to make sure that facilities acted as designed.

Mr. Goddard said that he was not sure, but that he assumed that the online process was complaint-driven.

Ms. Mead said if there is a five year follow-up report required on a tower with multiple col - locators, they would need to know which party would be responsible for that follow-up report.

Mr. Voelckers said there ultimately would be an owner of the tower, the same party which would be responsible for the structural assessment.

COMMISSION COMMENT ON MAKE TABLE 1 MORE LENIENT FOR CONCEALMENT WC F'S

Mr. Voelckers said he recalled that they had discussed Residential district being too specific, and that Mixed Residential and Commercial Districts could also be considered.

Mr. Feldt asked if Mr. Voelckers was recommending that they add other districts to the statement.

Mr. Goddard stated that in AT&T's most recent letter that they had requested that all districts be considered.

COMMISSION COMMENTS ON THE CREATION OF A BONUS PROVISION THAT WOULD ENCOURAGE EXISTING TOWERS TO COME INTO CONFORMITY

Chairman Satre asked if it was possible to essentially force existing wireless facilities into compliance within a period of time.

Ms. Mead responded that yes, this could be done.

Ms. Lawfer commented that requirements such as lighting can change a lot over the years.

Ms. Grewe stated that the second bullet stating that a bonus provision would need to be reviewed so as not to create a new nonconforming WCF could be eliminated.

Chairman Satre stated that most of the existing wireless facilities are not going to meet the new code. He stated that it may be simplest to put a sunset provision on the existing towers.

Mr. Haight said he was reviewing in his own mind which particular aspects of the facility would trigger the re-permitting process. He said he was trying to identify which specific aspects would trigger a new review.

Ms. Mead stated that the existing towers could remain as they are and not be required to come into compliance with the new Ordinance, or the existing towers could be required to come into compliance with the new Ordinance said Ms. Mead.

Ms. Grewe said that she has been thinking about how to deal with the issues of concealment of towers and lit towers and to figure out a way to bring those towers into compliance.

Chairman Satre mentioned that one of the reasons that gravel extraction areas are brought up for renewal every 10 years is because they are in Rural Reserve areas which may be typically rezoned into higher density areas over time. He said Montana Creek is a great example of that. He said a similar rationale could be used for any tower in a rural reserve area.

Mr. Voelckers agreed, stating he felt that the Rural Reserve District towers would be in the most need of review on a regular basis.

Chairman Satre asked the Commission if they would be comfortable recommending the Ordinance to the Assembly with several intent clauses, or if they wanted to be very specific with all of the clauses, leading ultimately to another meeting.

Ms. Lawfer said that she felt it would be cleanest to first address the Master Plan and then the Ordinance.

Mr. Voelckers mentioned that he had several specific points in the Ordinance that he wanted to address. On page 29 of the Ordinance under definitions under concealed WCF, he suggested replacing “painted antenna and feed lines to match the color of a building or structure” with “structures which blend or integrate with form and color of the building or structure...” such as faux windows, dormers, or other architectural features that blend with an existing or proposed building or structure.

Mr. Voelckers suggested Item Q on page 14 of the Ordinance be struck as being overkill. He suggested that under Item S after the word “constructed” that the words “relative to site and subsurface conditions” be added to cover the meaning of the deleted content of Item Q.

Mr. Voelckers suggested a third change in the Ordinance which would be on page 16 and an added item 6 which would be to the effect of recommending that the applicant add if lighting was necessary, that it be the least level of lighting possible.

Ms. Lawfer asked the staff to define the extent of a third-party review.

Mr. Feldt responded that Cityscape would be performing a review to assure that all applicable state and federal regulations were met. He added that review would be covered by a fee.

Mr. Goddard clarified that the fee would be clear with the provider and negotiated with a contract. He added this has been discussed with the providers and that they were amenable with this.

III. **OTHER BUSINESS** – None

IV. **REPORT OF REGULAR AND SPECIAL COMMITTEES** – None

V. **ADJOURNMENT**

The meeting was adjourned at 6:50 p.m.