

PLANNING COMMISSION
City and Borough of Juneau
Michael Satre, Chairman

SPECIAL MEETING
Draft Wireless Telecommunication Facilities Master Plan and Ordinance

May 8, 2014

I. ROLL CALL

Mike Satre, Chairman, called the special meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 6:00 pm.

Commissioners present: Mike Satre, Chairman; Dennis Watson, Vice Chairman; Karen Lawfer, Ben Haight, Bill Peters, Paul Voelckers, Dan Miller, Nicole Grewe

Commissioners absent: Gordon Jackson

A quorum was present

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

II. REGULAR AGENDA

TXT2009-00007: Planning Commission review of and recommendation to the Assembly regarding the Draft Wireless Telecommunication Facilities Master Plan and Ordinance.

Applicant: City and Borough of Juneau

Location: Borough-wide

Staff Recommendation:

The Community Development Department (CDD) recommends the Planning Commission endorse the new Draft Ordinance and Master Plan for Assembly Approval.

▪ **Ordinance Review**

Mr. Feldt told the Commission there are standard operating procedures from the Comprehensive Plan that will be inserted into the Master Plan. He said that CityScape, the contractor for this project, will be putting that information into the final document.

Mr. Feldt said he would first provide the Commission with a brief outline of the many chapters of the Draft Ordinance, followed by a more elaborate explanation, so the Commission could ascertain that the policies it has decided upon at this point match what is in the Draft Ordinance.

Mr. Goddard said there were comments from the Industry regarding certain terminology used in the Draft Ordinance. He said the issue had been raised at the Assembly meeting as well. He said he would cover those terminology definitions briefly for the Commission. He said the federal regulations classify review in two ways:

- ✓ Streamlined 90 day process
- ✓ Regular Review up to 150 days

Mr. Goddard explained the terms “shot clock” and “streamlined” are derived from federal regulations. Initially the process had been viewed through vernacular described as a building permit review (quick process), or a Conditional Use Permit review, which would require additional review by the Planning Commission, said Mr. Goddard.

The recent draft of the Ordinance uses the terms “Director’s review” for the quicker process, and “special permit” for a process requiring more review by the Commission, said Mr. Goddard. He said these are simply different terms for the same processes described in the previous draft of the Ordinance. Mr. Goddard said to clarify, whether the Wireless permit was on track for a quick review or more scrutiny by the Commission, that all would require a building permit. The longer process additionally requires a land use review by the Planning Commission, said Mr. Goddard.

“Shot clock” is a term used by the agencies, said Mr. Goddard. There is only one opportunity to stay the shot clock, (request additional information) which is within the first 30 days, said Mr. Goddard. All of the wireless configurations on Table I in the Draft Ordinance would qualify for the 90 day review process, said Mr. Goddard. Additionally, there are some wireless applications requiring Planning Commission review which could also be accomplished within 90 days, said Mr. Goddard. The staff would identify those applications falling within the 90 day review, and get them to the Commission in time for review, said Mr. Goddard.

Mr. Feldt said the streamlined permit and the building permit would be handled at the department level. The Special Use Permit has different findings than a Conditional Use Permit, said Mr. Feldt. It would go before the Commission, and certain conditions may be imposed, said Mr. Feldt.

Mr. Feldt provided a brief overview of the Draft Ordinance:

- 49.65.900 Purpose
Defines intent and purpose of the ordinance
- 45.65.910 Applicability
Applications of the ordinance
- 49.65.920 Location Preference for New WCF's
The hierarchy comes into play here through policies developed by Commission
- 49.65.930 General Requirements
How towers are to be constructed, and general processes
- 49.65.940 Permit Application Process for all WCF's
Defines the general permit process
- 49.65.950 Collocation and other modifications to existing facilities pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012
Addresses the streamlined process for a wireless application; only department review required
- 49.65.960 General application submittal requirements for all WCF's
- 49.65.970 Special use permit applications
Requirements for special use permit applications
- 49.65.980 Extent and parameters of special use permit for WCF's
- 49.65.990 Interference with Public Safety Equipment
This applies to all forms of government, not just local government
- 49.65.1000 Transfer of Ownership
This is important so that it can be tracked if one company transfers ownership of a specific tower so the borough knows who to contact if there are problems
- 49.65.1020 Conflict with other ordinances
This section essentially refers to the enforcement section of Title 49

Mr. Feldt said the direction provided by the Commission to the Law Department and the Community Development (CDD) staff since its last meeting on April 15, 2014, has been placed into the new Draft Ordinance.

Chairman Satre said he wanted to clarify that the Commission did not formulate policy; it has provided direction. Chairman Satre said he felt the CDD and Law staff needed to walk the

Commission and the public through each portion of the Ordinance, explaining what each section does.

Mr. Feldt said the Master Plan is part of this Ordinance. Even though it does not state this explicitly, the Ordinance will be added to the list of adopted plans in Title 49.

PURPOSE

Mr. Feldt began to review the Ordinance in more detail. He said health, safety and general welfare of the public was placed in the Ordinance as the number one priority, due to public and Commission comment.

Ms. Lawfer asked what happened to the change in setbacks which was initially at the beginning of the Ordinance.

Mr. Feldt said the Law Department found that those setback requirements were not needed. He said there is a special setback portion later in the document.

Mr. Watson asked about item (e) under the first section of the Ordinance which referenced the preservation of neighborhood harmony and scenic view sheds. He said it still had not been decided at the last meeting how scenic view sheds would be impacted. Mr. Watson said at some point he would like to see the impact of scenic view sheds clearly defined.

Mr. Feldt said this had come up at the Assembly Committee of the Whole (COW) meeting on Monday night. He said under the Special Use section of the Draft Ordinance it states the application shall be denied if it is proposed for any area designated as a scenic corridor/view shed as identified in the Comprehensive Plan.

Mr. Watson said his biggest concern is that almost anyone could say that a proposed tower is affecting the scenic viewshed. He said he felt this was opening up the issue for appeals, due to its non-specificity.

Mr. Voelckers asked about the Special Use process that does come before the Commission for review. He said he felt it was more than just the Director's discretion that was part of the scenic viewshed issue. He said he agreed that the criteria needed to be fleshed out in the Draft Ordinance on what constituted impact of a scenic view shed.

Mr. Goddard said the Director has that review authority because there are sections of low – impact wireless facilities that allow the Director to make that determination. When the request goes into the Special Use category, it would be possible for the Commission to deny an application, said Mr. Goddard.

APPLICABILITY

Mr. Goddard said essentially this portion states that all wireless communication facilities are subject to this Ordinance. The exemption section addresses facilities which are exempt from this Ordinance, such as a government-owned or temporary wireless facilities, said Mr. Goddard. Existing wireless facilities would be allowed to continue as they presently exist, but any subsequent proposed modification to the facility must be in compliance with the Ordinance,

said Mr. Goddard. The entire tower would not need to be brought into compliance with the Ordinance, said Mr. Goddard, just the modifications.

LOCATION PREFERENCES

Mr. Feldt said the hierarchy is listed here beginning with the perceived least-obtrusive wireless facilities to the most intrusive facilities. The higher up on the list the Industry constructs its facility, the less stringent the application process. A tower with lighting is perceived by the public as very intrusive; that is why this type of tower is listed at the bottom of the hierarchy, said Mr. Feldt.

Mr. Miller said there is a section in the Master Plan which discusses the rimshot approach and desirability of wireless facilities. However, said Mr. Miller, according to the hierarchy listed in the Draft Ordinance, it would be one of the least-favored facilities.

GENERAL REQUIREMENTS

Mr. Feldt reviewed the general requirements for the wireless facilities.

Referring to (b) (1) in the section, Mr. Watson said he did not see how any facility could be made impervious to being climbed or accessed.

Referring to the design criteria sub-section, Mr. Haight said the height requirements for the towers limited their configurations. He said he was concerned about the construction of shorter towers for better concealment. He said in those cases there would not be room for the required proposed four antenna arrays.

Mr. Goddard said the staff had also had this discussion. Mr. Goddard said that all towers listed on Table I would not trigger the need for collocation. This would not become an issue unless the antenna was a larger size, and needed to go through a more detailed Special Use Permit review, he added.

Mr. Voelckers said it seemed to imply in the Ordinance that tower applicants would be channeled into cooperation with other vendors, and yet it was never implicitly defined anywhere in the Ordinance.

Chairman Satre asked how the guy wire requirements of the Draft Ordinance compare and contrast with the requirements for electrical transmission facilities that have guy wires.

Mr. Feldt said there are not requirements for those other facilities.

Mr. Miller said the language in the setback section had never been discussed by the Commission. He stated setback requirements could be overlooked in order to place a tower in a more hidden place on the lot, such as within trees, then why would it not be allowed to slide the tower closer to the property line for any other reason. If the setback requirements exist for safety, said Mr. Miller, why could those rules be discounted for an issue such as improved appearance on the lot.

Mr. Voelckers said he felt there were problems with specificity in drafting the language in this area, and also some duplication of language with another section of the Ordinance.

Mr. Haight said he felt this area of the Draft Ordinance needed to be revisited. He said no engineer would certify a tower to fail; they would certify a tower not to fail.

Ms. Lawfer said her questions addressed sub-sections (g) and (h). She said she did not understand why those items were in the Ordinance.

Mr. Feldt said that letter (g) refers to Natural Areas that are defined in the Comprehensive Plan. He said these areas are to be protected because they are community areas. He said that letter (h) refers to consistency with the Master Plan.

Mr. Watson said that at one point it was considered that cell towers be moved out of the populated areas into the less obtrusive areas, and that the Natural Areas were probably where they would best be suited.

Mr. Voelckers said he agreed with Ms. Lawfer regarding item (h). He said almost the exact same language is used for item (b) under the Purpose section of the Draft Ordinance, and that he saw no need for it to be repeated.

Mr. Feldt said that item (A) under the Visibility subsection may not be that clear.

Chairman Satre asked if it is not clear, then why is it placed in the Draft Ordinance.

Mr. Goddard said that part of the discussion by the staff about this portion of the Ordinance was that it may not appear clear taken section by section, but that it built upon each section to make a comprehensive whole. Mr. Goddard said they could attempt to draft something more restrictive, but that it then may not pass the legal tests.

Ms. Lawfer asked if a vendor wanted to add an antenna to an existing power pole if it would be perceived as “complementing existing structures”, as stipulated in subsection (B) under *Visibility*.

Mr. Goddard said a power pole would be perceived as a structure; that all towers and poles fell under the term “structure” as a means of simplifying the language of the Ordinance.

Mr. Miller said this portion of the Ordinance clearly states that all WCF’s will clearly resemble the surrounding landscape or blend in with the urban environment. He asked how this would apply to a cell tower that was not concealed.

Mr. Feldt said this language would dictate that every single cell tower be concealed.

Mr. Miller said if this was the case, then all the references to non-concealed towers should be struck from the Draft Ordinance.

Ms. Lawfer said an antenna placed on top of a power pole would not be concealed, and yet it would be blending with an urban environment, of which the pre-existing pole would be a part.

Mr. Palmer said these two provisions in the Draft Ordinance under *Visibility* do allow for some discretion. He said the Ordinance does allow unconcealed towers. He said the visibility provisions do not prohibit unconcealed towers, but provide some direction as to their appearance within the existing landscape.

A galvanized, steel tower in an industrial district could be deemed consistent with the surrounding environment, said Mr. Goddard, without additional visual modifications being required.

Mr. Voelckers said he agreed with Mr. Miller. He said he would recommend that this provision be stricken from the Draft Ordinance, because it undercuts the validity of the hierarchical approach to towers.

Mr. Haight said he agreed with Mr. Miller and Mr. Voelckers. He said he felt the provision was a policy statement, which was a component of the Master Plan.

PERMIT APPLICATION PROCESS FOR ALL WCF'S

Mr. Watson said it appeared that CityScape was the chosen expert for the CBJ. He asked if a vendor requested a different review expert, if that option would be available.

Mr. Palmer said the City does have a contract with CityScape, and that the City is bound by that contract for another year to use CityScape to perform the technical review on all cell tower applications. Mr. Palmer said the City does not have the contractual authority to use another contractor for this service.

All towers listed in Table I would be eligible for approval by the Department, said Mr. Feldt, meaning they would undergo a departmental review. He noted the provision had been amended to reflect that rooftop and attachment heights of towers are now identified as above the highest point of the existing structure.

Ms. Lawfer asked if the City defined 90 days as 90 calendar days.

Mr. Palmer said the standard is according to federal law, which is 90 calendar days.

Mr. Goddard said this is also how the City measures the days.

COLLOCATIONS AND OTHER MODIFICATIONS TO EXISTING FACILITIES PURSUANT TO SECTION 6409 OF THE MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

If an application exceeded the definitions of "substantial change" in this provision, said Mr. Feldt, then it would not go through the streamlined process.

GENERAL APPLICATION SUBMITTAL REQUIREMENTS FOR ALL WCF'S

Mr. Voelckers said in reference to subsection (o), that it should specify towers of a certain height, and not be too punitive by requiring geotechnical studies for smaller towers.

Mr. Feldt said similar to the point raised by Mr. Voelckers, for a building permit-only tower, a propagation study (p) may be required for free standing towers only, which would then be presented to the Commission under the specifications of a special use permit.

Mr. Watson asked if it was legal to ask a business to disclose its contractual agreements (q).

Mr. Palmer said the requirement was that the applicant disclose if they had an agreement with another vendor, not which business that agreement was with, or the extent of the agreement.

Chairman Satre asked if there were any other types of building permits that required more than certification that the building met the required standards, by stating that every single requirement must be met.

Mr. Feldt said he would have to check.

Chairman Satre said that his understanding was that the builder would submit drawings, which would then be analyzed by an engineer as to whether it met the code. Chairman Satre said it seemed interesting to him that the requirements for the cell towers went beyond the engineer's stamp of approval.

SPECIAL USE PERMIT APPLICATIONS

This section defines what is required for those towers needing a Special Use Permit, said Mr. Feldt.

Mr. Voelckers said that since towers requiring lighting were referenced to this section, that they be linked by being mentioned in this portion of the provision.

Mr. Voelckers said there was no reference in this section to balloon testing. He said he assumed that it would fall under additional testing the Commission may request (B).

Mr. Watson said he wanted to reiterate his concerns about using balloons for testing, especially when they were located in and around flight paths. He said unless the size of the balloon was specified, and it was approved by the FAA, then they should not even be considered to be part of the Ordinance.

Mr. Miller said he was concerned that the requirement in (v) that the applicant demonstrate how the base of the tower would be screened from view was not required of wired facilities, and did not see why it was required of the wireless facilities.

Chairman Satre asked if the public notice requirement had to be repeated in this section, or if its provision in the public notice section was enough.

Mr. Palmer said it was not necessary to have the public notice specifics in this section.

Ms. Lawfer suggested that it be added to the Ordinance that the existing public notice requirements were the minimum requirements that must be met.

Chairman Satre said he felt if it was stated in the Ordinance that the public notice requirements were the minimum requirements, that it opened the door for another party to state the notice given on a certain project was not the minimum required notice.

Mr. Watson asked for the definition of a “historic site”, as mentioned in (B).

Mr. Feldt answered that a historic site was either established locally as a historic site, or it was listed on the National Register of Historic Places. Mr. Watson suggested the definition of “historic site” be clarified further in the Ordinance.

Chairman Satre said he read the provision (E) as effectively limiting competition, which he understood to be forbidden by federal law.

Mr. Palmer said that Chairman Satre had a good point, and that they needed to change this portion of the provision. The concept is that collocation was to be encouraged, but that if it was not possible the applicant could not be forced.

Mr. Miller said that he felt “(C) conflicted with the historic nature of a neighborhood”, to be a very vague term. The definition of “historical” could be different for each person, he added. He said he also had major concerns about the following subsection, (D). He said it was his understanding that it was permitted to build WCF’s in every zone, so he did not see the reasoning behind this provision.

Mr. Feldt said that they would need to research the answer to Miller’s question regarding “(C)”, and that after discussions with the Law Department they had decided to eliminate “(D)”.

Mr. Goddard said that subsection “(C)” provided the option to require concealment of a tower because it did not fit in with the nature of the neighborhood.

Chairman Satre asked if an application was clearly in violation of regulations, why it would even make it to the Commission review level.

Mr. Palmer said this was one of the areas on a Special Use Permit that would never get to the Commission, as long as the Director had stated the permit was not in compliance.

Mr. Watson clarified that (3) (C) stipulated that no towers could be constructed within a scenic view corridor or viewshed. He stated that this encompasses a very large area, within 400 feet on each side of the affected roads. He added that he believed that Parks and Recreation had its own scenic view corridors defined, and he wondered if they matched those in the Comprehensive Plan.

Mr. Feldt said this scenic view corridor stretched along Glacier Highway from Eagle Beach to before Echo Cove. Other areas include areas in the State Wildlife Refuge, and Fish Creek Road leading to the Eaglecrest ski area, and a portion of North Douglas.

Mr. Miller clarified that at the beginning of (3) (C) that the word “in” should be inserted, to match the phraseology of the provision proceeding it.

Chairman Satre clarified there are no provisions against the construction of wired facilities in these areas.

Mr. Feldt said that utilities are exempt from being prohibited from being constructed within view shed corridors.

Mr. Watson asked if an antenna could be constructed on top of a utility pole within the view shed corridor.

Mr. Feldt said if this fell within an eligible collocation and into the streamlined process then it could not be denied.

Mr. Palmer said the prohibition regarding scenic view sheds only applies to special use permits. Anything within Table I could be constructed within the scenic corridor view shed, he added. Mr. Palmer said this is not an unfettered allowance. He said the Director has discretion regarding substantial impact as far as the location of the towers goes.

Mr. Miller asked if extensions would be possible on the 18 month time constraint for construction of wireless cell towers.

Mr. Feldt said extension(s) within this section (4) would be possible and would be consistent with the Conditional Use Permit language.

EXTENT AND PARAMETERS OF SPECIAL USE PERMIT FOR WCF'S

Ms. Grewe asked how many times a Conditional Use Permit could be renewed.

Mr. Feldt said it could be renewed twice.

Chairman Satre clarified that it is really an extension, not a permit renewal.

INTERFERENCE WITH PUBLIC SAFETY EQUIPMENT

No Commission comments.

TRANSFER OF OWNERSHIP

No Commission comments.

NON-USE AND ABANDONMENT

Mr. Voelckers said it may be cleaner to link (2) regarding permitted wireless facilities that have fallen into disrepair to the engineer reports which are required at five year intervals.

Mr. Goddard said they would have to make sure that covered both existing and new facilities.

Chairman Satre asked if existing facilities not covered under this provision would be covered under the portions of the code which allowed the City to make determinations regarding property which was determined a nuisance.

Mr. Watson said he did not notice clear language regarding this when he was reviewing Title 18 or 19.

Mr. Palmer said Title 19 of the Building Code does refer to the International Property and Maintenance Code. He said that is where the review criteria reside to determine if a piece of property is a public or health hazard.

Mr. Miller said he thought that 90 days was a short period of time for a vendor that would possibly rent out tower space to find a new tenant for that space.

Ms. Lawfer said perhaps the response time could be set at 90 days.

Mr. Watson asked how this 90 day stricture compared with other construction limits in Juneau. He said other properties in Juneau are allowed more than 90 days, and he wondered about the discrepancy.

Mr. Goddard said this had somehow gotten dropped, in this case, and that the Department needed to review this portion of the provision.

Chairman Satre said he was getting a little worried. He said in his mind the purpose of this meeting was to review this Draft Ordinance, and get any questions answered from the Commission, take comments from the public, and then make a recommendation to the Assembly. He said at this juncture the Commission already has a long list of questions that it needs addressed.

CONFLICT WITH OTHER ORDINANCES

No Commission comments.

DEFINITIONS

Mr. Voelckers commented that concealed wireless cell towers are addressed on page 27, with the same thing repeated several pages later, on page 29. He said the definition just needed to be provided one time, and not repeated.

▪ **Public Testimony**

Doug Mertz

North Douglas resident Doug Mertz said from his point of view some large items have been missed in the Draft Ordinance. He said the largest issue for him is the lack of a public notice provision in the Ordinance. Leaving the decision on how much and to what extent public notice should be given to the Director's discretion placed too much power in the hands of the Director, said Mr. Mertz. A few clicks on a keyboard would be all that would be required to provide notice to neighborhood associations, said Mr. Mertz.

Only one public notice sign is currently required no matter how many neighborhoods are affected, said Mr. Mertz. It should be at least signage provided in every neighborhood that is affected, he said.

The protection of birds in nesting and migratory bird corridors is an important issue, said Mr. Mertz. The Mendenhall Wildlife Refuge is protected, but not parks, said Mr. Mertz. They suggest a quarter mile or half mile protection for migratory birds from the refuge itself, since

birds do not stay strictly within the corridors while flying, said Mr. Mertz. There are also no provisions for adorning guy wires so they are more visible to flying birds, said Mr. Mertz.

Mr. Mertz said he did not understand why flight paths were not protected from cell towers. He said it could possibly be a provision about limiting the height of cell towers within flight paths.

The provision in the Draft Ordinance about lit cell towers does not provide any language about what should be done if the FAA does not determine that lighting should be required. It can be left to the discretion of the Director, said Mr. Mertz, according to the current Draft Ordinance, and should not be left to the Director, he said. He added there are no definitions provided in the Ordinance about strobe lights.

He said while the Ordinance states that a decision by the Commission to deny a permit should be provided with substantial evidence [Special Use Permit Applications, (e) *Planning Commission Determination*, (4) (h)] it does not state that a Commission decision to permit a tower should be provided with substantial evidence. It needs to be applicable both ways, said Mr. Mertz.

Frank Rue

Mr. Rue said that he recommends that 49.65.920 (a) (6) be amended from “Any WCF requiring air navigation lighting” to “Any cell phone tower high enough for either the Federal Aviation Commission or the Airport Manager required to be marked with a white strobe light not be allowed.” The community has worked hard to make the airport area more accessible, said Mr. Rue. Why put a cell tower so dangerous in that flight path that it requires maximum lighting. Also, he added, it negatively impacts everyone who can see it. He said he felt that cell towers to warn air traffic could be achieved with paint and red lights that were not aggressive.

Mr. Watson asked what occurred with the Fish Creek cell tower.

Mr. Rue said the white strobe on that tower was eliminated once it was determined that the air carriers did not need it, making the tower much more tolerable for the neighbors in the area.

Margo Waring

North Douglas resident Margo Waring said she supported the previous testimony given by Mr. Rue and Mr. Mertz. She referred to 49.65.960 (b), and said that what got eliminated from the previous version of the Ordinance was that certification took place after the installation of the facility, not before the installation. She said she felt it was important that certification took place after installation, to ascertain the tower was not exceeding its emissions limits.

She said the public notice provision was inadequate, and at the minimum a section should be added for public notice when there were to be lights on the proposed tower. Lighting is one of the features that is very stressful to neighbors, she said. The public notice should be extended to the residents who could view the light, she said.

Ms. Waring said she did not like the fact that Rural Reserve areas were grouped with Industrial areas in the Ordinance. She said this means that home owners established in Rural Reserve areas are given less protection and due process rights, with the reduced ability to preserve their property values compared with home owners in other areas of the community. She added she felt this grouping of areas would result in a sort of “land rush” of cell phone providers into these areas because of the reduced construction restrictions. Ms. Waring said she felt that exceptions needed to be made for residential neighborhoods located within the Rural Reserve zoned land.

Mr. Voelckers stated that Rural Reserve areas are also the areas which may attract more desirable development such as rimshot configurations. He asked if Ms. Waring thought that could be addressed by setback, for example.

Ms. Waring responded that rimshot locations are not usually in neighborhoods, they are located further up the mountains, and she could not think of any established Rural Reserve neighborhoods which were located up the hillsides.

Maryanne Bickner

Ms. Bickner repeated the testimony of Ms. Waring, and said that Rural Reserve zoned land should not be included with Industrial zoned land in the Draft Ordinance.

She added her opinion that public notices be posted where they would be visible to the affected parties.

Ms. Bickner stated that she did not think that towers would function well nestled next to trees, due to interference from “green wood”. She added that the growth of the trees in the future adjacent to the towers could also be a problem.

Gene Randall

Mr. Randall read an email from Juneau resident Bruce Weyrauch, which echoed the opinion of other testimony regarding the inadequate provisions for public notice within the Draft Ordinance. The missive from Mr. Weyrauch stressed the importance of providing public notice to all residents who may be affected by a cell phone tower with lights, not just those residing within the stipulated number of feet currently required for public notice provisions.

Mr. Randall said he concurred with Mr. Weyrauch’s email. He said lack of public notice was one of the main complaints about the controversial Spuhn Island cell tower which was allowed to be constructed. Mr. Randall said the Ordinance as it is currently written recognizes no difference between the construction of a chicken coop and a cell tower with a strobe light.

AT&T Representative

Ms. Kimberly Allen, from a law firm in Seattle representing AT&T, said that AT&T requested that the Commission take its time to adequately represent policy and procedural issues within the Ordinance.

Ms. Allen said that AT&T agreed with the section of the Ordinance that sets out provisions for concealed, camouflaged, wireless cell facilities. She said the language in this area provided a strong incentive for construction of these types of facilities.

The company of AT&T did provide some alternate language for portions of 49.659 (4) (f) regarding setbacks and breakpoint technology, said Ms. Allen. This language was provided in written form to the Commission.

AT&T also wanted to address the issue of third-party review, said Ms. Allen. She said as currently stated in the Draft Ordinance, third party review is available for every application that comes through the door. She said that AT&T is requesting that third party review be limited to discretionary permits. Those would be the applications which would come before the Commission for review.

There is also a discrepancy in the Draft Ordinance in which “actual costs” are mentioned at the beginning of the Ordinance, but a specified fee of \$4,000 is stipulated in the fee schedule later on in the Ordinance. She said the Industry would prefer the actual costs, or a cap of \$4,000.

As a basis for permit denial, Ms. Allen said they found “traffic impacts” to be unnecessary. She said a cell phone tower is generally an unmanned facility, with one visit per month for maintenance. She said traffic impacts do not exist.

Ms. Allen said that AT&T does not know how it would demonstrate to the Commission that its tower fit in with the “historic” nature of a neighborhood. She said this needed to be defined in the Ordinance.

Viewshed definitions and requirements also needed to be defined, said Ms. Allen, because the applicants would need to demonstrate to the Commission that they have met all of the criteria. In order to do this, they needed to be provided with clear guidelines, said Ms. Allen.

Ms. Allen said that “flush mounting antennas” are referred to on page 5 of the Ordinance. She said she wanted to inform the Commission that flush mounting the antennas increases the height of the antenna.

Multiple antennas on facilities is encouraged by the CBJ, and AT&T is in agreement with that policy, said Ms. Allen. However, she said that there are separation requirements between antenna arrays so there is no interference. Ms. Allen said she was not sure if there was enough space allowed on poles where five and six antenna arrays were required, to allow for the antenna array spacing.

AT&T has agreements with all providers that they will collocate, said Ms. Allen, not the contrary.

Mr. Voelckers asked Ms. Allen is she had verified with other providers that the industry is not pressing for the timeline on the moratorium enforced by the Assembly. Ms. Allen said she has

not had contact with other providers, but that she is relying on the public comment which has been expressed.

Mr. Voelckers asked Ms. Allen for her comments about guy wires.

Ms. Allen said the industry is moving away from the use of guy wires, although she could not say for sure what the case would be for Juneau, given its unique weather and terrain characteristics.

Mr. Watson asked if any increased costs experienced by AT&T in Juneau would be absorbed by the corporation in expenses or attached to Juneau expenses.

Ms. Allen said AT&T currently has a capital budget for expanding the network. She said any increased costs would affect how far they could address the needs of the network, rather than passing those costs on directly to the community.

Mary Irvine

North Douglas resident Mary Irvine said she would like to add her opinion that public notice in the current Draft Ordinance was not adequate. She said her other primary concern was with lighted towers. She said she felt if a lighted tower was proposed, that it should trigger pervasive public notice. The current existing general notice requirement of the CBJ is not adequate for such a situation, she said.

Mitigation measures for lighted towers include shields, baffles and louvers over the lights, said Ms. Irvine. She distributed an FAA circular to the Commission which addressed this issue. She told the Commission she would like to see it add a section to the Ordinance on minimizing the effects of lights on top of cell towers by the use of baffles and shields. She also encouraged language added to the Ordinance for use by the applicant of the best, available, zone visibility maps such as Lidar and bare earth models. Ms. Irvin also suggested that it be written into the Ordinance that the Applicant bear the cost of public notification.

Ms. Irvine also requested that the Commission find a way to bring existing towers into compliance with the adopted Ordinance over a period of time.

Mr. Miller asked Ms. Irvine if she would support the implementation of a bonus provision such as granting an extra ten feet of tower length and a speedier application process for the installation of baffles over the tower lights.

Ms. Irvine said she would be in support of that idea. She added that often baffles do not need to go all the way around a light.

Sue Ann Randall

Ms. Randall said she concurred with all of the previous public testimony. She said public notice was at the top of her list. She repeated that the current notice structure does not go far enough to reach those affected by cell tower lights. She said the city's method of notifying homes of property taxes that are due is effective.

Ms. Randall said she was in favor of the balloon test system for any towers in possible flight paths or that may require strobe lights. The proposed height of a tower should be included in the first paragraph of the tower description, said Ms. Randall. Ms. Randall said the height of the land upon which it rests should be added to the height of the actual tower to reach a more accurate description of the tower height.

The pre-application meeting should be a good point to receive public input about the proposed projects, said Ms. Randall. She said she felt that public involvement early in the application process was important. Except for the State and local wildlife refuges, there is no accommodation for migratory birds, she said.

- **Commission Comments**

Chairman Satre said the Commission could remain and work to amend the Ordinance and make a recommendation to the Assembly. He said he thought this would take the Commission far past its normal time for adjournment. Chairman Satre said he was not sure there was an endpoint on the horizon for the Commission that evening. Another option would be to provide some guidelines to the staff and to the Department of Law to amend the Ordinance, said Chairman Satre. He said he felt there were way too many open questions to be addressed to ask the Department to pass on the Ordinance without Commission review once it had made the amendments. Chairman Satre said he felt they would need to provide guidelines to the staff, and meet again to review the Ordinance once it had been amended to reflect those guidelines.

Chairman Satre said there is a long list of concerns regarding the Ordinance, without Commission consensus as to how to address those concerns.

Ms. Grewe said she would like to hear discussion on which amendments would be forwarded to the staff.

Ms. Lawfer said the public notice distribution needed to be addressed, whether through Ordinance or through the application process where it would be addressed by the staff. Ms. Lawfer emphasized that any tower with a proposed light would have to go before the Planning Commission for review.

Mr. Haight said public notice is definitely an issue which needs to be addressed. While the public notice process is currently identical for all projects requiring public notice, Mr. Haight said a cell tower has a much larger potential impact on a much larger segment of the community than most other types of projects. He said for cell towers the public notice process needed to be more far-reaching than the general public notice process.

The lighting of towers still needed attention in the Ordinance, said Mr. Haight. He added that strobe lights have not only a large impact on the public, but that at times, he felt they were distracting to pilots as well.

Towers within air traffic areas also needed to be reviewed, said Mr. Haight. The effect of wireless towers on the migratory bird population also needed to be reviewed. Mr. Haight said

he thought the public comment about distinguishing Rural Reserve from Industrial zoning had merit.

Mr. Watson said if a special set of public notification guidelines was set for cell towers, then it would leave the Commission vulnerable for making special notification requirements for other types of projects. He said he felt there was a certain amount of risk if one particular application process was singled out for its own public notice requirements. Mr. Watson said he felt the Director and the staff recognized the importance of cell tower permits and would distribute public notice accordingly.

Ms. Grewe said she would like to see accommodations made for established neighborhoods within the Rural Reserve zone. She said she felt the public notice process needed to be addressed, and that there could be more explicit language for “high bird areas”. She said strobe lights definitely needed to be defined, and modification of existing towers needed to be further defined; was it only modification of antenna arrays that needed to be brought into compliance with the ordinance, or did the entire tower need to be modified.

Chairman Satre said it was just the modification that needed to meet the provisions of the Ordinance.

Ms. Grewe said she felt that portion of the Ordinance needed to be clarified.

The Scenic viewshed and mitigation measures needed to be reviewed again, said Ms. Grewe. She said she thought the baffles were a good idea. Cell towers in air traffic patterns needed to be reviewed again, said Ms. Grewe.

Mr. Voelckers said he felt they needed clarification on setbacks including fall zones and breaks, and on the Rural Reserve provision of the Ordinance. Mr. Voelckers said he felt there was the need for a broader form of public notification. He said especially lighted cell towers had a much broader impact on the community and that it should be addressed in the Ordinance. He said to assist with the bird flight issue, that a section could be added on the Ordinance list for free standing towers with guy wires and free standing towers without guy wires, with guy wires less favorable, because of their unintended impacts.

Mr. Miller said that for most situations within the Ordinance that the regular public notice process would be adequate. He added that once the cell tower became lit, that he felt extra notice should be required. Mr. Miller said that notifying the neighborhood associations is a very simple thing to do. The post testing did not make it into this version of the Ordinance, and should be a requirement in this version, said Mr. Miller.

The design criteria on page 6 which requires at least room for four antenna arrays on a tower 120 feet in height may not be feasible, said Mr. Miller, according to the testimony provided by the AT&T attorney that evening. He said he thought that portion of the Ordinance should be reviewed for feasibility.

The setback issue on page 7 needs to be reviewed, said Mr. Miller. If it is ok to change the setback on a tower because of appearance, then it should be safe to change the setbacks required for all towers, said Mr. Miller.

On page 8, 49.65.930 (i) (B) needs to be clarified, said Mr. Miller, as the language describing cell towers blending with the surrounding landscape is not very specific or meaningful as it stands. He said he felt that Table I was too conservative to encourage industry to construct cell towers according to the specified provisions. Mr. Miller said he felt providing a bonus provision within the Ordinance encouraging mitigation of existing cell towers within the community would be helpful.

Mr. Miller said 49.65.970 (e) (2) (C) needed to be reviewed because “historic nature” was a very nebulous term, and held no real meaning.

Ms. Lawfer said she wanted to remind the Commission that the towers were for all forms of wireless communication, not just cell phones.

Mr. Voelckers said he had assumed that other ordinances dealt with restrictions on construction within a flight path. He said he would like the staff to let the Commission know if this provision needed to be in the Ordinance, and if so, then it should be added. Mr. Voelckers said that in this version of the Ordinance there is no mention of balloons. He said it appeared that it had been dropped entirely from the Ordinance, and he did not know the reason why.

Mr. Peters said the two items which stand out to him in terms of Ordinance requirements are public notice and lights on cell towers. He added that he shared Mr. Watson’s concern that when it is specified on how the public notice is to be given, that the Commission could be approached by people in different situations wanting special public notice as well. He said the public notice component should be related specifically to lighted towers, and that it should be handled at the staff level.

Mr. Peters said he has issues with the definition of “viewshed”. He said while he respects the public comment they have received on this portion of the Ordinance, that he wants to make sure that the community does not send out an Ordinance that says, “Juneau is closed for business”. He said he doesn’t want to see the definition of view shed so broad that it had a restraining effect on commerce in the community.

Chairman Satre said that he still disagreed about creating special public notice provisions within the Ordinance, but that he would like to see what kind of language the Law Department could put together on this aspect of the Ordinance, especially regarding lighted towers. Chairman Satre said he felt the Commission was aligned on what issues needed to be addressed by the staff in revision of the Ordinance.

Chairman Satre said he is a little worried because this conversation reminds him of the Noise Ordinance which was finally abandoned for a variety of different reasons. He said he wanted to caution everyone that they come to an end point.

▪ **Continuance**

This item was continued until the staff has made the revisions coming out of this meeting to the Draft Ordinance for the Commission's review.

III. **OTHER BUSINESS** - None

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

V. **ADJOURNMENT**

The meeting was adjourned at 10:10 p.m.