

Minutes
Planning Commission
Regular Meeting
CITY AND BOROUGH OF JUNEAU
Michael LeVine, Chairman
April 14, 2020

I. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in the Assembly Chambers of the Municipal Building, to order at 7:02 p.m.

Commissioners present: All Commissioners present via video conferencing – Michael LeVine, Chairman; Nathaniel Dye, Vice Chairman; Paul Voelckers, Clerk; Travis Arndt, Assistant Clerk; Ken Alper, Dan Hickok, Josh Winchell, Weston Eiler

Commissioners absent: None

Staff present: Jill Maclean, CDD Director, Alexandra Pierce, CDD Planner; Emily Wright, Law; Laurel Christian, CDD; Teri Camery, CDD;

Assembly members: Greg Smith

II. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA

MOTION: by Mr. Dye to suspend the rules regarding meetings as described in the meeting packet.

The motion passed with no objection.

Mr. LeVine explained this allows for the Commission to meet via electronic means due to the Coronavirus pandemic.

III. APPROVAL OF MINUTES

- A. February 25, 2020 Draft Minutes – Regular Planning Commission Meeting
- B. March 10, 2020 Draft Minutes - Regular Planning Commission Meeting
- C. March 10, 2020 Draft Minutes – Planning Commission Committee of the Whole

MOTION: *by Mr. Voelckers to approve the minutes from the Planning Commission February 25, 2020, Regular Planning Commission Meeting, March 10, 2020, Regular Planning Commission Meeting, and the March 10, 2020, Planning Commission Committee of the Whole Meeting.*

The motion passed without objection.

Mr. Levine explained the rules for public participation.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

V. ITEMS FOR RECONSIDERATION - None

VI. CONSENT AGENDA

USE2019 0022: A Conditional Use Permit for an existing rock quarry in Hidden Valley, Upper Lemon Creek
Applicant: SECON
Location: End of Anka Street

Staff Recommendation

Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use Permit. The permit would allow continuation of an existing quarry. The approval is subject to the following conditions:

Hours of Operation and Permit Expiration

- 1) Hours of operation shall be 7 a.m. to 10 p.m. Monday through Friday, and 9 a.m. to 10 p.m. on Saturday and Sunday, April through November.
- 2) All blasting operations shall be conducted during daylight hours. No blasting operations shall be conducted on Saturday or Sunday or on official local, federal, or state holidays.
- 3) The extraction permit shall expire ten years from the date of Planning Commission approval.

Site Restoration

- 4) Seed mixes utilized for revegetation in restoration efforts shall be free from non-native, noxious weeds.
- 5) The applicant shall submit and maintain a performance bond in an amount no less than \$101,000 for restoration/reclamation of the site, as required by CBJ 49.65.240. The bond must be final prior to the start of operation.

Blasting

- 6) Explosives shall not be stored on site, except that which is immediately necessary for the next blast.
- 7) The development shall not generate sound levels which exceed 65 dBa at the property

line during the day or 55 dBa at night, per CBJ§49.15.330(g)(11).

- 8) Blasting operations shall be conducted by an Alaska Department of Labor certified powder-man and all operations shall conform to MSHA, ATF, and OSHA standards, as applicable, and all other applicable standards.
- 9) 24 hours' notice shall be provided to the Juneau Flight Service Station and the Police and Fire Departments.
- 10) The applicant shall comply with the CBJ Standard Specifications for Civil Engineering Projects and Subdivision Improvements, as modified by the following:
 - a. Warning signs with the time and date of the blast will be posted 24 hours prior to blasting on Anka St. and at the Lemon Creek trailhead.
 - b. 24 hours' notice will be provided to the Juneau Flight Service Station and the Police and Fire Departments prior to blasting.
 - c. Public Service Announcements will be broadcast on local radio 24 hours prior to blasting.
 - d. Three air horn blasts will be made at 5 minutes prior to blasting.

Required Conditions, per CBJ§49.65.235:

- 11) A strip of land at the existing topographic level, and not less than 15 feet in width, shall be retained at the periphery of the site wherever the site abuts a public way. This periphery strip shall not be altered except as authorized for access points. This section does not alter the applicant's duty to maintain subjacent support.
- 12) If the bank of any extraction area within the permit area is above the high water line or water table, it shall be left upon termination of associated extraction operations with a slope no greater than the angle of repose for unconsolidated material of the kind composing it, or such other angle as the commission may prescribe. If the extraction operations cause ponding or retained water in the excavated area, the slope of the submerged working face shall not exceed a slope of 3:1 from the edge of the usual water line to the water depth of seven feet. This slope ratio may not be exceeded during extraction operations unless casual or easy access to the site is prevented by a fence, natural barriers, or both.

Other

- 13) The applicant shall provide the Community Development with the annual SWPPP report no later than February 15th each year.

MOTION: *by Mr. Voelckers to accept staff's findings, analysis and recommendations and approve the consent agenda, with acceptance of staff's Blue Folder memo recommending deletion of the advisory condition*

The motion passed with no objection.

VII. UNFINISHED BUSINESS - None

VIII. REGULAR AGENDA

USE2020 0002: A Conditional Use Permit for an accessory apartment on an undersized lot
Applicant: Andrew Heist
Location: 407 Irwin Street

Staff Recommendation

It is recommended that the Planning Commission adopt the Director's analysis and findings and **APPROVE** the requested Conditional Use permit. The permit would allow the development of an accessory apartment on an undersized lot.

The approval is subject to the following conditions:

1. Prior to issuance of a building permit, the applicant must submit documentation to demonstrate that all applicable parking code requirements have been met, in conformance with CBJ 49.40.200.
2. ~~Prior to the issuance of a building permit, the applicant must submit a revised site plan showing vegetative cover on the site.~~ (Removed by Amendment)

PWP2020 0001: Parking waiver for one parking space for an accessory apartment related to USE2020 0002
Applicant: Andrew Heist
Location: 407 Irwin Street

Staff Recommendation

Staff recommends the Planning Commission adopt staff recommendations and findings and GRANT the requested parking waiver for the one (1) required off-street parking space associated with the proposed accessory apartment (USE2020 0002).

Staff Presentation

Ms. Christian presented USE2020 0002 and PWP2020 0001 together explaining staff findings, conditions, and recommendations.

Questions from Commissioners

Mr. Winchell asked how long the property has been unused and if it had been used as an apartment or rental recently. Ms. Christian was not sure of the timeframe and suggested the applicant may have that information but per CBJ records it has not been used as a rental in the past.

Mr. Voelckers questioned why there was a condition requiring vegetative cover for an accessory apartment permit and whether it would be material to the approval of the permit. Ms. Christian explained it was customary to normally require some vegetative cover but it would not be material to the approval.

Applicant Testimony

Andrew Heist spoke to the Commission explaining the property is currently vacant. Mr. Heist explained that when he bought the property in 2018, it was apparent that the space had been used as an apartment and they are in the process now of making it a properly permitted apartment.

Mr. Alper asked how the laundry and furnace would be addressed when an apartment goes in. Mr. Heist explained that the furnace has been removed and there will be electric baseboard heat separately between the apartment and the main unit as well as separate laundry facilities between the main house and apartment.

Mr. Alper asked if this will be used as a residential apartment or a short-term vacation type rental. Mr. Heist intends it to be utilized as a long term leased apartment.

Mr. Dye asked about the vegetation on the property. Mr. Heist said there is not much space on the property for vegetation but he is planning to make the property as nice as possible and he will add some if and where he can.

MOTION: *by Mr. Dye to accept staff's findings, analysis, and recommendations, and approve USE2020 0002 as amended by the removal of Condition 2 requiring vegetative cover.*

The motion passed with no objection.

MOTION: *by Mr. Dye to accept staff's findings, analysis, and recommendations, and approve PWP2020 0001.*

Mr. Arndt and Mr. Voelckers spoke in favor of the motion. Both complimented Staff for the work they did in quantifying the parking in the area. Commissioners were impressed with the parking study conducted by CDD which determined parking in the area was adequate and the PWP would not have a negative impact.

The motion passed with no objection.

WCF2019 0009: A Wireless Communication Facility Permit to install new, unlit 150-foot communication tower
Applicant: Vertical Bridge
Location: Merganser Road

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and approve the requested Special Use Permit for a WCF tower with the following conditions:

1. ~~The WCF must be constructed as a monopole; (Removed by Amendment)~~
2. ~~The WCF must be matte dark green in color; (Removed by Amendment)~~
3. ~~The WCF cannot have lighting, and if in the future the FAA requires lighting, a modification to the Special Use permit must be approved by the Planning Commission; (Removed by Amendment)~~
4. The site security and required signage must be installed and maintained according to the plan;
5. ~~The WCF must accommodate more than five (5) antenna arrays. (Removed by Amendment)~~

Staff Presentation

Ms. Christian gave a brief presentation of WCF2019 0009 explaining the Special Use Permit request and staff findings, conditions, and recommendations.

Questions from Commissioners and Discussion with Staff

Mr. Dye asked is there a definition in Title 49 for how to determine the height for a WCF? In particular, is the 5-foot lightning rod part of or in addition to the 150-foot height of the tower? Ms. Christian explained that the lightning rod is not included in the tower height but the overall height is 155-feet with the lighting rod.

Mr. Voelckers expressed worry that the 'fall zone' of the tower was larger than the area protected by the fence to be built around it. Ms. Christian explained the intent of the fence is not protecting the tower in case of a fall, rather it is to protect the tower from unauthorized use. Mr. Voelckers was concerned CBJ might be liable if the tower were to fall and injure a member of the public.

Dan Bleidorn, Lands, spoke to the considerations regarding a fall and explained the lease area would include the entire fall area.

Mr. Hickok asked for clarification between lattice tower versus monopole. Ms. Christian explained the differences.

Mr. Hickok asked to what extent CDD staff had looked into the health concerns regarding 5G. Ms.

Maclean and Ms. Christian explained that they are constrained by FCC requirements and the applicant did follow that.

Mr. Arndt said that the site already has two grey lattice towers and asked why this tower was required to be a green monopole. Ms. Maclean explained that the other two poles predate the current ordinance and the Master Plan. As new towers come in, they are to conform to ordinance.

Mr. Arndt spoke to the differences between lattice tower and monopole foundations and asked if staff had considered if the applicant would be able to conform to that requirement. Ms. Maclean explained that is a question for the applicant.

Mr. Arndt asked why condition number five requires more than five antenna arrays when the Code only requires five or more.

Mr. Winchell voiced concern that this would be a pole reaching 95 feet above the existing tree line and will be painted to blend in with the trees and would be unlighted and asked if staff had considered the safety of air traffic in the area. Ms. Maclean explained the pole is within FAA standards and would not appear as a tree and it would be visible as a communications pole.

Mr. Winchell asked if staff had looked into the perceived risks of this being constructed in a residential area rather than in a commercial area. He asked if CBJ was required to follow FCC regulations without looking into it further. Ms. Wright explained the court precedent and explained that CDD staff cannot go outside of FCC regulations. However, she explained the Commission members could make their decisions based on their expertise. Mr. Voelckers shared with the other members that he was on the Commission when the WCF ordinance was written and at the time it was stressed to the members that they could not go outside of the FCC ruling concerning tower radio emissions.

Mr. Voelckers asked why Staff was asking that the pole height be reduced when it was not very visible during the balloon test. Ms. Maclean explained that the code requirement states the applicants did not justify the height request in their application.

Mr. LeVine asked for clarification on the height requirement pointing out that according to the conditions, it is a 150-foot tower but in the staff report it says we would like the tower height to be reduced. Ms. Maclean explained that the actual minimum height required would be a question for the commission to ask the applicant.

Applicant Testimony

Gary Brekke, applicant, spoke regarding the tower height and explained the tower is 150 feet plus the 5-foot-tall lightning rod. Regarding the minimum required height, he explained the 150-foot height was requested so the antennae could be placed above the tree tops. Regarding the

requirement for additional antennae on the pole, he explained that there is no place on the tower to add additional antennae beyond the five proposed. Any additional would have to be installed below the tree line and would, therefore, provide little to no coverage.

Commissioner Questions for Applicant

Mr. Dye asked for clarification of the height explaining that the diagrams and drawings showed differing amounts. Mr. Brekke explained the lightning rod would be five feet above the 150-foot tower.

Mr. Arndt asked whether switching from lattice tower to monopole would be a hardship. Mr. Brekke explained they had already spent an amount of money to design the lattice tower. They could switch to monopole but it would require more engineering design.

Mr. Hickok asked about the health issue and would the risk be increased by adding multiple 5G antennae. Mr. Brekke answered as long as all the carriers meet or exceed FCC requirements, it would not be an issue.

Mr. Winchell asked whether the new pole would be in addition to or in replacement of a tower already existing on the other side. Mr. Brekke said that the new tower would provide much more coverage but he did not know whether the other tower would be taken out of service. Mr. Winchell asked where on the hill the tower would be located in relation to the residential area. Mr. Brekke confirmed the tower would be on the far side of the hill away from the residential area and he explained that locating the tower near residential areas was preferred as most people want their cell phones to work in their homes.

Mr. Voelckers asked if the tower was to add capacity to accommodate five antennae would that require a change to the project as it is currently planned? Mr. Brekke answered that the pole has been redesigned already to accommodate the five arrays so it will not be a hardship.

Mr. Voelckers asked about the lattice vs. monopole design and what would be the issues if they went with one over the other? Mr. Brekke explained that he does not know why the owner went with the design they did.

Mr. Dye asked about the requirement the tower not be lighted and what would happen if the FCC later required it to be lighted. How much of a hardship would it be to remove a 150-foot tower? Mr. Brekke answered that it would be network affecting as sites are selected based on network need and he reminded the commission that these towers facilitate more than just voice and data traffic, they also have E-911 and location services. For those reasons, it would be a big deal to have to remove or relocate the site.

Mr. Dye asked if it was a hardship to paint the tower matte green. Mr. Brekke said they would

prefer not to but it would not be a problem to do so.

Mr. LeVine referenced 49.65.130(e)(1) which sets the requirement for antennae capacity on towers based on their height. This tower would be required to be engineered to accommodate at least five antennae. Mr. LeVine said as he understands it, the tower could accommodate three or four arrays but any more than that would provide poor to no coverage due to tree coverage and not due to the engineering. The tower could accommodate the extra arrays but they would be ineffective. Mr. Brekke confirmed this is the case.

At Ease 8:45 until 8:57

Public Testimony

Brian Thatcher – 16420 Ocean View Drive - Mr. Thatcher voiced concerns regarding the Merganser Road access as it crosses his property. He was concerned about the damage that could be done by the truck and heavy equipment traffic during the construction of the tower.

Dianne Grieser – Juneau – Ms. Grieser expressed concerns regarding the safety of 5G technology.

Tyson Lee – 16490 Ocean View Drive – Mr. Lee spoke to the visual impact of the tower saying that it is more visible than was shown in the photos. Mr. Lee also expressed concerns regarding the safety of 5G technology and encouraged the Commission to deny this tower.

Skye Stekoll – 16530 Ocean View Drive – Mr. Stekoll believes that due to the height of the tower the FAA will require a light once it is built. He would prefer the tower not be built in this location or at least that it be lowered if it must be located there.

Mr. Winchell asked whether Mr. Stekoll would have a direct view of the tower and the arrays from his residence. Mr. Stekoll answered that it would be directly in his view.

Mr. Voelckers asked whether Mr. Stekoll had seen the balloon test. Mr. Stekoll did not know when the test was conducted and did not see it. He explained there are only two significantly tall trees and the rest are much shorter and the tallest trees would likely be felled in the construction of the tower.

Greg Anderson – 16430 Ocean View Drive – Mr. Anderson spoke in support of the tower stating that the additional access would be beneficial and he is not concerned about 5G safety.

Heather Sykes – 16331 Ocean View Drive – Ms. Sykes stated she did see the balloon test and that it was quite noticeable. She does not think there have been enough studies into the safety of putting these towers so near to neighborhoods and asked the commission to vote NO.

Cassie Lockhart – Ms. Lockhart spoke in opposition to the tower stating visual and safety concerns.

Continued Applicant Discussion

Mr. LeVine called Mr. Brekke back to address the public concerns. Mr. Brekke spoke to the 5G concerns explaining that the frequency that would be used on this tower would not be the high intensity waves over a small area that people are concerned about. This tower would use lower frequency bands to reach a wider area.

Mr. Winchell asked Mr. Brekke if, in his experience, there was a level of absorption of these bands that concerned him. Mr. Brekke said that he has no fear whatsoever as this is safe technology.

Mr. LeVine asked why the client's array currently located on another tower needed to be relocated to a new tower and also asked if the tower could not be lower than the 150 feet requested. Mr. Brekke explained that he was not part of the decision-making process of the height of the tower. He can only assume that the decision was likely based on engineering information. As for relocating the array to a new tower, Mr. Brekke explained the decision was related to GCI's desire to increase their coverage area and the fact that ATT owns the other tower and has raised their lease rates to collocate on their tower.

Mr. Voelckers asked who determined where to locate the tower and whether other locations had been considered. Mr. Brekke said there had been consideration of other sites but he is not part of that decision.

Commissioner Comments and Questions for Staff

Mr. Dye asked about condition 3 regarding FCC requiring lighting in the future. Specifically, if the FCC later required a light be installed, could CBJ require the applicant to lower or remove the tower? Ms. Maclean answered that yes, the Commission could require it be lowered or removed if this happened if they found that it was warranted. Commissioners discussed condition 3 and the possibility of FCC rules changing to require lighting and whether this condition is simply a restatement of the code.

Mr. Winchell expressed concern about aviation in the area with the tower being so tall, matte green, and unlighted.

Mr. Arndt was concerned about with the conditions regarding the tower type (lattice vs monopole), the requirement to paint it matte green, and the required antennae capacity. Mr. Voelckers commented in support of Mr. Arndt's comments.

MOTION: *by Mr. Dye to approve WCF2019 0009 striking conditions #1,2,3, and 5.*

Mr. Dye spoke in support of not requiring changing to monopole, matte green color, the lightning

rod should not count as part of the height so should not be required to accommodate more than 5 arrays, and removing the condition regarding lighting.

Mr. Winchell spoke for the record that he would have liked to have heard from experts regarding the public concerns of safety regarding 5G.

Mr. Arndt spoke in support of the motion.

Mr. LeVine spoke to the motion saying he is not particularly in support of or against the tower but said he does not see information supporting inability to collocate or justifying the height so he will not be able to support the Permit.

Mr. Dye commented that he did feel the issue of collocation was supported in the application but he did agree with Mr. LeVine that the application did not clearly justify the necessity of the requested height but he also did not see anything in the application to say the requested height was not necessary and because of that, he was going to vote for it.

Roll Call Vote:

YES Votes: Mr. Dye, Mr. Voelckers, Mr. Winchell, Mr. Alper, Mr. Hickok, Mr. Eiler, Mr. Arndt

No Votes: Mr. LeVine

Motion Passed on Roll Call 7 yes/1 no

At ease 9:55 to 10:03pm

WCF2019 0010:	A Wireless Communication Facility Permit to install new, unlit 150-foot communication tower
Applicant:	Vertical Bridge
Location:	Crazy Horse Drive

Staff Recommendation

Staff recommends the Planning Commission adopt the Director's analysis and findings and approve the requested Special Use Permit for a 150-foot tall communication tower with a 5-foot lightning rod with the following conditions:

1. ~~The WCF must be constructed as a monopole; (Removed by Amendment)~~
2. ~~The WCF must be matte grey in color; (Removed by Amendment)~~
3. ~~The WCF cannot have lighting, and if in the future the FAA requires lighting, a modification to the Special Use permit must be approved by the Planning Commission; (Removed by Amendment)~~
4. The site security and required signage must be installed and maintained according to the plan;
5. ~~The WCF must accommodate more than five (5) antenna arrays. (Removed by~~

Amendment)

Staff Presentation

Ms. Christian gave a brief presentation of WCF2019 0010 explaining the Special Use Permit request and staff findings, conditions, and recommendations.

Questions from Commissioners and Discussion with Staff

Mr. Dye questioned the necessity to make a condition that it be a monopole when that is what is in the applicant submittal already.

Mr. LeVine asked why staff is not asking for this pole to be lowered when they did for the other permit. Ms. Maclean explained that the difference is this one is in an industrial zoning district and the other was in a residential zoning district.

Commissioner Questions for Applicant

Mr. Dye asked if a new monopole is grey in color when it comes from the factory. Mr. Brekke confirmed that they are grey in color.

Mr. LeVine asked why the decision was made to build a new tower rather than collocating on an existing tower. Mr. Brekke explained that there is no place to expand on existing towers and lease rates have increased for collocating on the current location making a new tower was most feasible.

Public Testimony

Dianne Grieser – Juneau – Ms. Grieser spoke in opposition to a 5G tower

MOTION: *by Mr. Dye to accept staff's findings, analysis, and recommendations, and approve WCF2019 0010 striking conditions #1,2,3, and 5.*

Roll Call Vote:

YES Votes: Mr. Dye, Mr. Winchell, Mr. Hickok, Mr. Arndt, Mr. Eiler, Mr. Alper, Mr. Voelckers

No Votes: Mr. LeVine

Motion Passed on Roll Call 7 yes/1 no

IX. **BOARD OF ADJUSTMENT** - None

X. **OTHER BUSINESS** - None

XI. **STAFF REPORTS**

Ms. Maclean reported:

- the Nonconforming Ordinance goes into effect tomorrow.

- If Commissioners would like a binder for future meetings they can be provided but Commissioners would need to return the binders to Marine View
 - Mr. LeVine said he did not need a binder but the packet would be good. Other Commissioners agreed.
 - Mr. Voelckers asked about the timeline regarding filling the vacant Commissioner seat and the Joint Meeting with the Assembly. Ms. Maclean said the HRC is scheduled to meet on April 30 and appointing a new commissioner would be an agenda item at that meeting. She did not have a timeline for when the Joint meeting would occur.

XII. COMMITTEE REPORTS - None

XIII. LIAISON REPORT

Mr. Smith reported on Assembly activities and stated they have been taken over by Coronavirus recently

Based on current projections CBJ is looking at loss of revenues about \$30,000,000 over the next 30 months which would deplete fund balance and reserves. The assembly is looking at several options to mitigate the loss.

XIV. CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS - None

XV. PLANNING COMMISSION COMMENTS AND QUESTIONS –

Several of the commissioners thanked staff for all their work to make the Zoom meeting possible and said the meeting was a total success.

XVI. EXECUTIVE SESSION - None

XVII. ADJOURNMENT – 10:37 p.m.