



## TOWN OF BEAUX ARTS VILLAGE

### PLANNING COMMISSION

#### MINUTES

September 17, 2020

Remote Via Zoom / Telephonically

**Present:** Chairperson Steve Tegeler, Commissioners Jeremy Laws, Kim Moloney, Steve Miller

**Excused:** None

**Staff:** Deputy Clerk Angela Kulp

**Guests:** Resident Kathy Corra

Chairperson Tegeler called the meeting to order at 7:32pm.

**MINUTES:** Commissioner Miller moved to approve the August 20, 2020 minutes as written. Chairperson Tegeler seconded. Vote: 4 For, 0 Against. Motion carried.

**COUNCIL UPDATE:** Deputy Clerk Kulp noted the Council wants to act upon 5G this calendar year.

#### **OLD BUSINESS: 5G Technology Analysis**

Re: The Small Wireless Facilities Master Ordinance 13.25 for franchise agreements  
The Small Wireless Facilities Deployment Ordinance 18.10 for design standards  
in the Town's ROW.

Deputy Clerk Kulp noted King County is still currently in phase two of the governor's safe start re-opening for the pandemic, the governor's continuance of extending the OPMA waiver is in effect, and this remote meeting included call-in instructions on the posted agendas for all those interested in participating.

The public hearing opened at 7:33pm

#### Public Comments:

Resident and previous Councilmember Kathy Corra inquired if there were any new updates on aesthetics for 5G.

Commissioner Miller replied that yes, actually, the 9<sup>th</sup> circuit court recently ruled on Portland vs FCC in a consolidation of several suits, upholding the FCC rule by striking down some local aesthetics that exceeded the balance that Congress had approved, and striking down a provision that local jurisdictions can not discriminate between providers.

The public hearing closed at: 7:39pm

The commissioners agreed considering this new 9<sup>th</sup> circuit ruling and the Council's desire for action this year, that further discussion of the drafted 5G ordinances was warranted tonight. Commissioner Miller shared some suggestions he had on both ordinances, that would strengthen our drafts with provisions to gain more control in the limited areas allowed taking the new ruling into account. Commissioner Miller shared four suggestions, two in each ordinance. During discussion, two additional questions were raised to share with the Council. Discussion proceeded, with a collaborative approach to wording and mutual consensus of including these suggestions into the ordinance drafts for the Council.

The suggested modifications to the ordinance drafts include:

In *The Small Wireless Facilities Master Ordinance 13.25 for franchise agreements*:

- The Planning Commission recommends that in section 13.25.010 (5), the following words should be added between "and *aesthetic beauty and neighborhood character* welfare".
- The Planning Commission recommends that in section 13.25.130 (1) Statement in draft: "Applicants will be treated in a competitively neutral and nondiscriminatory manner with other service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts." Should be replaced with "*Applicants for small cell facilities shall not be subject to unreasonable discrimination from other service providers whose facilities are similarly situated in terms of structure, placement, or cumulative impacts.*"

In *The Small Wireless Facilities Deployment Ordinance 18.10 for design standards in the Town's ROW*:

- The Planning Commission recommends that in section 18.20.030 B., Statement in draft: "Applicants for wireless facility permits shall *be treated in a competitively neutral and non-discriminatory manner...*" should be replaced with "Applicants for wireless facility permits *shall not be subject to unreasonable discrimination from...*"
- The Planning Commission recommends that section 18.20.060 D (10) be moved to D (11) and a new D (10) be added as: "*The pole and small wireless facility overall height shall be consistent with the maximum height of residential structures defined in BAV 18.10.080 in order to maintain neighborhood character aesthetics and provide the most protection of existing trees, tree canopy, and vegetation.*"

The questions/concerns that arose for the Council to consider include:

- The Planning Commission is concerned about who will be reviewing adherence of these ordinances on behalf of the town and how do we plan to account for the cost limitation per permit imposed by the FCC?
- The Planning Commission does not believe there is anything in the town's zoning code that will restrict small wireless communication equipment on private property. Therefore, the Commission believes there is concern a homeowner

could allow a 20' pole on the top of their roof with an antenna on top of the pole. The Planning Commission's recommendation is to eliminate verbiage related to allowing poles to be installed on private property or restrict what can or cannot be done through our building code section 18.10.080. The Planning Commission believes there are two options:

- Do not allow small cell wireless facilities on private property (does this violate FCC restrictions?) except in the case for personal use
- Provide restrictions on what can or cannot be done on private property
  - Consider verbiage around putting all equipment inside the homeowner's structure and only antennas can be visible and restricted in size (like locations on lines between poles – 3ft^3)
  - Located within allowable building setbacks and all equipment except for antenna must be concealed.

Commissioner Miller moved to send onto the Council:

- *The Small Wireless Facilities Master Ordinance 13.25 for franchise agreements and*
- *The Small Wireless Facilities Deployment Ordinance 18.10 for design standards in the Town's ROW*
- The new ordinance suggested changes and questions proposed per above
- The 5G Q&A done in February

and recommend the Council pass these ordinances as modified.

Commissioner Laws seconded. Vote: 4 For, 0 Against. Motion carried.

Deputy Clerk Kulp will modify the 5G drafted ordinances to include and send to the Council with all supporting information requested above for recommended Council action.

**NEW BUSINESS: Short-term rentals, e.g. Airbnb**

In the interest of time, Commissioners agree to table this new business to the next meeting.

**Adjourn:** Commissioner Moloney moved to adjourn the meeting. Chairperson Tegeler seconded. Meeting adjourned at 9:44pm. Vote: 4 For, 0 Against. Motion carried.

**Next Meeting:** The next regular Planning Commission meeting is expected to be held remotely as before at a special time of 7:30pm to accommodate a quorum, on Thursday, October 15, 2020.

Respectfully submitted,  
Angela Kulp, Deputy Clerk