A regular meeting of the Fairbanks North Star Borough Planning Commission was held in the Mona Lisa Drexler Assembly Chambers, Juanita Helms Administration Center, 907 Terminal Street, Fairbanks, Alaska. The meeting was called to order at 6:00 p.m. by Eric Muehling, Acting Chair.

A. ROLL CALL

MEMBERS PRESENT: Chris Guinn  Mike Stepovich
                   John Perreault  Doug Sims
                   Charles Whitaker  Eric Muehling

MEMBERS EXCUSED: Mindy O’Neall  Robert Peterson

OTHERS PRESENT: Christine Nelson, Director of Community Planning
                Ben Jaffa, Assistant Borough Attorney
                Manish Singh, Planner III
                Michelle Gutierrez, Clerk

B. MESSAGES

Citizen’s Comments – limited to three (3) minutes

Gary Newman testified as follows:

- Current Quasi-judicial process needs to be changed.
- Surveyor appeal previous commission decision to the superior court; which the court
determined he did not have standing. The appeal was thrown out.
- Some testimonies are not heard due to the QJ process.
- The process shouldn’t interfere with the function.
- Previous Mayor mentioned a committee that would work on this matter but nothing has changed.
- The process demeans the commissioner’s ability to hear constructive comments from
  the public.
- The commissioners should be able to determine if the testimony is appropriate and
  relevant regardless if they are within 1000 feet or not.
- The process is prone to error.
- Suggested a resolution to get some attention toward trying to make the process more
  functional process.

Jeff Collins testified as follows:

- Worried about his fence being damaged in relation to the communications tower

Chair Muehling interrupted his testimony and clarified that citizen’s comments is a time for
items not on the agenda and he would have the opportunity to testify during public testimony
for CU2017-008.

Disclosure & Statement of Conflict of Interest

None
C. APPROVAL OF AGENDA AND CONSENT AGENDA

Christine Nelson briefly explained the reasoning to postpone VR2019-001 and VR2019-002.

MOTION: To postpone VR2019-001 and VR2019-002 to April 9, 2019 by Commissioner Sims seconded by Commissioner Perreault.

MOVED WITHOUT OBJECTION OR ROLL CALL

MOTION: To approve the remainder of the agenda and the consent agenda to include minutes by Commissioner Stepovich seconded by Commissioner Guinn.

MOVED WITHOUT OBJECTION OR ROLL CALL

D. MINUTES

Minutes from March 12, 2019. Approved.

E. QUASI-JUDICIAL HEARING

OATH ADMINISTERED

CU2017-008: A request by AT&T, on behalf of Sally Pelno, for amendment of the conditional use approval of a major communications tower to replace the wood pole with a steel pole and to make changes to the site plan and to the previous conditions of approval in the Rural Residential (RR) zone, on Lot 5, Block 2, Lakloey Park Subdivision, located at 1410 Valley Drive (tower) adjacent to 1414 Valley Drive (house), on the north side of Valley Drive, west of Levan Way. (Staff Contact: Manish Singh)

Manish Singh presented the staff report. Based on the staff analysis, the FNSB Department of Community Planning recommended approval.

Questions by Commissioners

Commissioner Perreault asked to expand on the 10 conditions from the 2014 conditional use permit that were not fully met.

Mr. Singh referenced page 33 of the meeting packet; further explained the difficulties of creating a utility lot through the platting process that would meet the yard setback approved through the previous conditional use permit, without changing the lease area.

Further discussion ensued on the condition 4 in the current conditional use for the utility lot not being platted in yet.

Commissioner Guinn questioned if the Planning Commission’s decision would apply if the Platting Board doesn’t approve the utility lot.

Mr. Singh explained that a utility lot is a requirement by Title 17 for leases that extend for more than 5 years; the next step is to get approval for a utility lot after the Conditional Use Permit (CUP). He further explained they would have had a utility lot if the yard setbacks were previously in place but they will be now if the commission approves the current CUP.

Chair Muehling questioned the modified yard setbacks and requested to pull up a graphic so he could see what it looked like.
Mr. Singh explained the property line of the parent parcel and within that property the proposal is to align the utility lot with the 30 by 30 lease area and further explained the tower setbacks have to be measured from the utility lot.

Further discussion ensued in regards to the fence helping to obscure the tower.

Discussion ensued in regards to why 30 by 30 was chosen for the lease lot and the yard modifications between Commissioner Sims and Mr. Singh.

Commissioner Sims asked if there is a provision in the communication tower legislation within Title 18 that allows you to vary the tower setback requirements without going through a setback variance process.

Mr. Singh stated there is and further explained the yard requirement criteria for communications towers.

Applicant Testimony

Patrick Hinman testified as follows:
- 30 by 30 lease lot has been there for 13 years, not a new site; just being modified.
- More spectrum and more antennas are needed for 4G and 5G.
- Wood pole was structurally failing so no more antennas could be added which is the reason for the change out, to allow more coverage in that area.
- The utility lot previously could not meet the setbacks because the site had been there prior to the conditional use permit provisions.
- The want to make it compliant.
- Asked for approval
- The surveyor will submit to get the plat approved.
- Current cell tower is producing 2G/3G and the new tower will be 4G/5G.

Questions by Commissioners

Commissioner Sims questioned why wood was used in 2005.

Mr. Hinman explained at that time, GSM was used and it did not need the antennas like we do today.

Commissioner Sims asked in the future, if they want to establish a tower somewhere, a larger lease lot would be expected.

Mr. Hinman said yes and today they use 40 by 40 or 45 by 45 lease lot.

Commissioner Guinn asked if this case is a variance wrapped up in a CUP.

Mr. Singh said no and explained the CUP criteria gives the commission the ability to waive certain tower setback requirements by acknowledging that there are no safety hazards presented with the modification and the tower is adequately screened.

Public Testimony Opened

Jeff Collins testified as follows:
- Roadway into the tower is a path, silt.
- Trucks on a narrow corridor that is on a slope that runs east to west.
• The house behind the tower is on a hill; the west side of the house slopes down and meets his fence and his property is flat.
• Every year he digs out the mud that gets pushed up against his fence.
• Due to the narrow path, the truck wheels are up against his fence.
• He built his chain link fence 1 foot inside the property line as a courtesy to his neighbors on both sides.
• Snow plowed up against his fence caused damages in past years.
• There is plenty of room on the neighboring property to the tower to take a bulldozer to create a proper entrance way.
• He wants to see the access improved and ensure his property is protected.

Questions by Commissioners

Commissioner Sims referenced figure 3 to confirm where Mr. Collins property is located and questioned if the corridor is a utility easement.

Mr. Collins explained that it is right up against his fence.

Commissioner Stepovich referenced Exhibit A and stated it appears the access road goes over the utility easement and right up to the property line.

Mr. Collins further stated it runs up against his fence.

Commissioner Whitaker asked if he talked to anyone else from AT&T.

Mr. Collins explained that he tried to call AT&T to find out who he can speak to locally and had no luck, he also tried to look for a number on the tower also with no luck.

Commissioner Guinn referenced Exhibit A and stated that it looks like there is adequate room to move that access towards the dwelling.

Mr. Collins agreed and stated the slope could be taken out with one pass of a bulldozer and gravel can be put down, or they could put up a wood fence against his fence for protection.

Public Testimony Closed

Applicant Rebuttal

Mr. Hinman reiterated Mr. Collins suggestion to have the slope graded and graveled so the trucks don’t slide over and stated that is possible. He further stated he will speak to the construction crew to ensure they understand that they will need to improve that access. He also stated the idea of having access from the cul-de-sac across the north lot line. He promised to make it right for the neighbors in respect to any fence damage; any repair and even put up a solid fence if need be.

Questions by Commissioners

Chair Muehling questioned the tower access frequency.

Mr. Hinman stated trucks are going in and out to service the tower once or twice a month.

Mr. Collins began to ask Mr. Hinman questions about a timeframe as to when things will be done, fence repair, etc.
Mr. Jaffa advised the Chair to remind them that any arrangements they wish to make with each other can be done on their own time. Commissioner Whitaker asked if there is a way someone could contact AT&T if a neighbor has a problem.

Mr. Hinman stated the techs who drive to the tower would be a good contact and stated he can give the number for the Alaska construction manager for AT&T.

Mr. Jaffa reminded the commission that it is a leased property and the owner of the parent property would also have some responsibilities to the neighbors; another venue for pursuing any issues that arise.

**MAIN MOTION:** To approve CU2017-008, an amendment of the conditional use approval of a major communications tower to replace the wood pole with a steel pole and to make changes to the site plan and to the previous conditions of approval, with six (6) conditions, and adopting the staff report and twelve (12) Findings of Fact in support of the approval by Commissioner Sims seconded by Commissioner Guinn.

Discussion ensued on the main motion.

**MOTION TO AMEND:** To add condition number seven (7) to read “Physical access to the communications tower utility lot shall ensure no material damage occurs to neighboring property by Commissioner Sims seconded by Commissioner Whitaker.

Discussion ensued on the motion to amend between commissioners and legal in respect to the word “material” being subject to debate.

**MOTION TO AMEND THE AMENDMENT:** To replace the word “material” with the word “physical” in condition number seven (7) by Commissioner Muehling seconded by Commissioner Guinn.

**ROLL CALL (motion to amend the amendment)**

Six in Favor: Sims, Perreault, Guinn, Whitaker, Stepovich and Muehling

Zero Opposed: 

MOTION TO AMEND THE AMENDMENT PASSED

**ROLL CALL (motion to amend)**

Six in Favor: Sims, Perreault, Guinn, Whitaker, Stepovich and Muehling

Zero Opposed: 

MOTION TO AMEND PASSED

**MAIN MOTION:** To approve CU2017-008, an amendment of the conditional use approval of a major communications tower to replace the wood pole with a steel pole and to make changes to the site plan and to the previous conditions of approval, with seven (7) conditions, and adopting the staff report and twelve (12) Findings of Fact in support of the approval by Commissioner Sims seconded by Commissioner Guinn.

**ROLL CALL (main motion)**
Conditions for Approval

1. The tower is limited to sixty nine feet (69’) in height, including all antennas and other appurtenances.
2. The subject tower shall remain unlit.
3. The applicant shall maintain a sight-obscuring fence and/or dense vegetation to mitigate visual impact to adjacent properties. This screen shall be placed immediately inside the utility lot lines.
4. A utility lot for the lease area shall be created and recorded through a FNSB platting process, such that both Lot 5, Block 2 and the required utility lot comply with all applicable Title 17 and Title 18 requirements, including:
   a. The utility lot may not exceed two thousand thirty square feet (2,030 sq. ft.) in area.
   b. The boundaries of the utility lot shall comply with the site plan labeled A-1.2 dated January 29, 2019, attached as Exhibit A.
5. All required and waived setbacks shall be measured from the edge of the communications tower, rather than the center of the pole or the accessory equipment.
6. The property shall be developed in accordance with Exhibit A and the site plan labeled as A-1.3 dated January 29, 2019, attached as Exhibit B.
7. Physical access to the communications tower utility lot shall ensure no physical damage occurs to neighboring property.

Findings of Fact

1. The conditional use amendment request is to replace the existing wood communications tower with a steel communications tower of the same 69 feet height and locate the replacement steel tower approximately 9 feet south of the existing wood tower within the existing 30’ x 30’ lease area.
2. This tower replacement will improve the structural capacity of the tower and support a concurrent upgrade to AT&T’s latest technology, with replacement antennas and replacement equipment.
3. The conditional use amendment requests changing the previously approved yard modifications because it was not possible to create a utility lot with the tower setbacks approved with the previous conditional use permit (CU2014-009) without revising the existing 30’ x 30’ lease area.
4. The location of the existing wood tower was approved by the FNSB Planning Commission with the previous conditional use permit (CU2014-009). A new alternate site analysis is not required because the 69’ tower has existed on this location for 13 years; and the proposed location for the replacement steel tower is not substantially changed; and the conditional use modification request is not for a new communications tower; and the replacement tower is to be located within the existing 30’ x 30’ lease area.
5. The applicant has provided a visual impact analysis which includes a description of the existing and the proposed visual impacts of the tower. The analysis is supported by 11 annotated photographs provided by the applicant from the distances of 500’, 2500’ and 2 miles for at least two distinct compass directions. The property has existing trees of approximately 40-60 feet tall around the sight-obscuring fenced compound, which provide significant natural screening to the tower.
6. The purpose of the yard setback requirement for communications towers is to ensure safety of neighboring properties and public right-of-ways in the event of a tower fall.
7. The FNSB yard setback requirement for the 69' tower is 34'6" (50% of the tower height). The Planning Commission may grant yard setback modifications pursuant to FNSBC 18.96.160(C)(2)(h).

8. The proposed modified setbacks are: 20'3" from north utility lot line, 6'4" from south utility lot line, 19'4" from west utility lot line and 7'4" from east utility lot line. These proposed modified setbacks will be measured from the edge of the replacement tower.

9. The 69' height of the existing wood tower was approved by the FNSB Planning Commission with the previous conditional use permit (CU2014-009). No change in height is proposed with this modification.

10. With the conditions imposed, the proposed conditional use will conform to the intent and purpose of Title 18 and of other ordinances and state statutes:
   a) The purpose of Title 18 will be met because the proposed conditional use is consistent with ‘Perimeter Area Preferred Residential Land' comprehensive plan land use designation. The subject property is already developed with a single-family residence. The replacement tower is compatible with the surrounding community because the 69' tower would be significantly screened with the existing 40'-60' trees on the property.
   b) The intent of Title 18 will be met because with the conditions imposed, the conditional use will both protect private property rights and promote public health, safety, and welfare.
   c) With the conditions proposed, the replacement tower appears to comply with all local, state and federal laws.

11. There are adequate existing energy and transportation facilities serving the site and other public services are available to serve the proposed conditional use.
   a) The replacement of the existing tower doesn’t require any water and sewage facilities.
   b) The facility has adequate fire services because the property is served by the North Star Volunteer Fire Department.
   c) The facility is served by the Alaska State Troopers for law enforcement.
   d) The facility has adequate power supply because they are served by the GVEA grid.
   e) The subject property has access from Valley Drive which is a local road maintained by Lakloey Hill Road Service Area. The traffic generated exclusively by existing communications tower is only that resulting from occasional tower maintenance. This tower maintenance traffic is expected to have negligible impact on the existing traffic on Valley Drive.

12. With the conditions imposed, the proposed conditional use will protect public health, safety, and welfare because:
   a) The overall safety of the tower is improved with the increased structural integrity of the replacement steel tower. The applicant has provided a foundation design and a structural analysis prepared and stamped by an engineer registered in the State of Alaska.
   b) The replacement tower is proposed to be located 48' from the west property line and 32'6" from the north property line of the parent parcel. It is proposed to be located at more than 100 feet from south and east property lines of the parent parcel. The replacement tower is proposed to be located two feet less than the required 34'6" setback from the north property line of the parent parcel.
   c) The nearest structure on the neighboring property to the west is located at least 80 feet from the proposed location of the replacement steel tower. The nearest structure on the neighboring property to the north is located at least 100 feet from the proposed location of the replacement steel tower. With the 69' tower height, the nearby structures on the neighboring properties to the west and north would be safe even in the event of a complete tower fall.
   d) The replacement tower is proposed to be only 6'4" from the south utility lot line and 23'6" from the existing owner’s residence on the parent parcel. By locating the replacement tower 9' south of the location of the existing wood tower, the
risks for the neighboring property owners to the west and north are reduced. However, the safety risks in the event of a tower fall may be increased with respect to the owner’s residence on the parent parcel. These risks can be addressed contractually between these parties. The applicant, i.e. lessee, states that the lease requires AT&T to maintain insurance for their facility to address owner’s, i.e. lessor’s, property damage/bodily injury, etc.

e) The replacement tower, which is designed and stamped by an engineer, will not require a plan review from State Fire Marshal’s office.

f) The replacement tower will comply with Title 18 standards for the RR zone (FNSBC 18.40) and Standards for Communications Towers (FNSBC 18.96.160) as well as other applicable laws.

F. NEW BUSINESS

1. Discussion on strategies to fill Planning Commission vacancies.

Clerk informed the commission of applications submitted for the current vacancies.

2. Discussion on a Planning Commissioner becoming the new working group member for the Salcha-Badger Plan.

This was addressed at the previous meeting. **Commissioner Stepovich** will be the new working group member.

G. EXCUSE FUTURE ABSENCES

None

H. COMMISSIONER’S COMMENTS/COMMUNICATIONS

**Commissioner Guinn** referenced the citizen’s comment in regards to flaws in the process and that should be address in the near future.

**Commissioner Sims** questioned why questions are not allowed during citizen’s comments.

Mr. Jaffa explained that citizen’s comments are generally not intended for discussion on matters that were not noticed to the public.

Ms. Nelson requested to follow up on that matter and stated the Assembly does allow for questions during their citizen’s comment period.

**Commissioner Whitaker** asked how to get the quasi-judicial procedures discussion on a future agenda.

Clerk informed the commission the discussion will be placed on the April 9, 2019 or April 23, 2019 agenda.

Mr. Jaffa explained how the interested person definition is broader depending on who the applicant is.

I. ADJOURNMENT

There being no further business, the meeting was adjourned at 7:32 p.m.