

- **MINUTES of the PRESCOTT PLANNING & ZONING COMMISSION MEETING held on January 28th, 2021 at 9:00 AM via ZOOM teleconferencing.**

I. CALL TO ORDER

Chair Don Michelman called the meeting to order at 9:10 a.m.

II. ATTENDANCE

COMMISSIONERS	STAFF MEMBERS
Don Michelman, Chair	Bryn Stotler, Community Dev. Director
Ted Gambogi, Vice Chair	George Worley, Planning Manager
Stan Goligoski	Tammy DeWitt, Community Planner
Thomas Hutchison	Kaylee Nunez, Recording Secretary
Gregory Lazzell	
George Lee, Absent	COUNCIL
Butch Tracey	Councilman Steve Sischka, Liaison
	Councilman Phil Goode
	Councilmember Rusing

III. REGULAR AGENDA ITEMS

1. Approval of the January 14th, 2021 Meeting Minutes.

Commissioner Lazzell moved to approve the January 14th, 2021 minutes, Commissioner Tracey seconded the motion. Motion passed (6-0).

2. LDC21-001- Discussion of a proposed update to Section 2.4.49 Telecommunications Facilities in the Land Development Code.

Community Development Director Bryn Stotler explained that the City's Land Development Code (LDC) has not been updated since 2003 and that a Council study session was held on October 27th to discuss options for adjusting the current telecommunications (wireless) facilities code. Ms. Stotler explained that three, principle updates were requested by Council members as a result. They are:

- 1) Mandatory concealment (stealth designs) in residential areas
- 2) A stated preference for collocation and usage of already compromised site(s)
- 3) Requirement to screen ground infrastructure

Ms. Stotler also explained that this meeting is meant to be a 'discussion starter' only and that no final determinations will be made at this time

Community Planner Tammy DeWitt also clarified that all material presented is rough draft only. Ms. Dewitt explained the City's current process for all, new wireless facilities; which require a Special Use Permit (SUP) in all zoning districts. She also discussed how cell phone technology has changed immensely in the past 18 years and that towers have changed a lot as a result; including enhanced engineering that provides for 'collapsing in' as opposed to falling in the event of a structural failure. There are two drafts being presented. The first draft is a rewrite of Prescott's current wireless ordinance, which involves a complete replacement of the current LDC language. The second draft is an update of Prescott's current wireless ordinance.

Both drafts propose that wireless (telecommunications) facility height allowances be increased to the following:

- 50 feet in residential zoning districts (SF-6, SF-9, SF-12, SF-18, SF-35 & RE-1 ACRE)
- 60 feet in multifamily and light commercial zoning districts (MF-M, MF-H, SPC, MU, RO, NOB & DTB)
- 70 feet in commercial districts (BG & BR)
- 80 feet in industrial (IT, IL & IG)
- All Residential, multifamily & light commercial and commercial districts will require that the telecommunications facilities be concealed. Concealment requirements in industrial districts could be considered.

Commissioner Hutchison inquired about a 2018 FCC directive and asked whether we (the City) were responding to that change. Ms. Stotler referred to Assistant City Attorney Matt Podracky for response. Mr. Podracky responded that the City is attempting to come into compliance with existing (federal) rules. There are five limitations the FCC places on local governments regarding wireless facilities. The federal government is working towards deregulation in regards to wireless technology. Mr. Podracky explained that this update is not in response to 2018 FCC changes per se but changes to the law since the last LDC update in 2003 and the requests made by the Council in response to the October 27th study session. Mr. Podracky also included that the City changed the code two years ago to allow small cell towers in the right of way (ROW) with no zoning oversight; this was in response to state legislation.

Ms. DeWitt concluded that both, proposed drafts create development criteria to allow telecommunications facilities to exceed (current) zoning district height requirements and that all requests to exceed such will need Conditional Use Permits (CUPs) to be approved by the Board of Adjustment. Ms. DeWitt explained that staff chose the Board of Adjustment as they are a quasi-judicial board and review applications for relaxations of code requirements versus applications regarding land use decisions; which are traditionally made by Planning & Zoning Commission. Ms. Stotler and Mr. Podracky both assured that CUPs have public noticing requirements and do allow for public input and participation.

Commissioner Lazzell agrees with [tower] height variances being reviewed by the Board of Adjustment. Mr. Lazzell asked whether a 50 foot tower would be allowed in a residential area by administrative application only under the new height allowances. Ms. DeWitt answered that it would. Mr. Lazzell expressed that it seems excessive, especially as permits are needed for less intensive projects in residential areas. He requested the height be brought down to 30' in residential areas. Commissioner Hutchison asked whether the City looked at comparable jurisdictions when drafting these proposals. Ms. Stotler explained that staff had presented samples of code from other communities in the October 27th Council study session. She stated that Council didn't seem to resonate with any of their approaches and, instead, came up with the three requests presented earlier. Ms. Stotler explained that staff drafted the aforementioned heights by right in accordance with historical (height) requests in the various zoning districts and in order to comply with existing federal framework.

Ms. DeWitt presented slides summarizing other, comparable jurisdictions' telecommunication facilities codes. This included: Durango (Colorado), Payson and Flagstaff. There were no outstanding nor contrasting discoveries made. Commissioner Lazzell asked whether we could accommodate the natural characteristics of particular areas of town (i.e. tall pines vs. oaks) into the code. Assistant City Attorney Matt Podracky answered that doing so would be an appeal to aesthetics versus functionality. He explained that, per FCC regulations, local jurisdictions cannot 'prohibit or have the effect of prohibiting the provisions of personal wireless services'. Mr. Podracky seemed doubtful whether we could potentially defend a denial based on such an aesthetic bases and reasserted that we (the City) cannot deny a cell tower application if it is 'the least intrusive mean' to cover a 'significant gap' in personal wireless service.

Commissioner Goligoski stated that he feels the proposed height allowances (by right) are too generous and that the Planning & Zoning Commission should still be reviewing height exceptions as SUPs. Ms. Dewitt explained that we chose the Board of Adjustment versus Planning & Zoning Commission generally reviews land use decisions whereas BOA reviews development criteria, which height exceptions align more closely

with. Commissioner Goligoski also stated that option two seems 'cleaner' to him and that the terms facility and tower are interchanged frequently and should be separated as they infer different uses.

Chair Michelman asked Mr. Podracky whether an appeal from the Board of Adjustment would go to the Superior Court (of Arizona) and if the applicant would have to hire an attorney to in such an instance. Mr. Podracky answered that they would not *have* to hire an attorney but should the case become complicated and require federal litigation it might need professional counsel. Chair Michelman also asked whether the difference between height allowances in single family versus multifamily zoning districts could be construed as discriminatory. Mr. Podracky asked that someone could certainly make that argument but it would unlikely be a winning argument as traditional zoning does have levels of 'allowable discrimination'. Ms. DeWitt answered that multifamily sites are typically 'more disturbed' than residential, which shaped Councils' determination for a greater height allowance in those areas.

Commissioner Lazzell commented that allowing different heights (by right) in different zoning districts is no different than doing so in different geographical areas. Ms. Stotler explained that we need to take into account that our zoning districts greatly vary in their topography, especially residential. Mr. Lazzell followed with an opinion that we should not take away from our residents' ability to speak on towers proposed in their living area. Ms. Stotler explained that we are looking to 'strike a balance' between citizens' desires and fitting the federal framework.

Chair Michelman asked that each Commissioner comment on the proposed height changes and the proposal to have height variances reviewed by the Board of Adjustment (versus Planning & Zoning Commission).

- Commissioner Lazzell reiterated that he is in support of the changes to the multifamily, commercial and industrial height allowances but feels that residential districts should have more public input. He supports applications for height exceptions being reviewed by the Board of Adjustment.

- Commissioner Goligoski expressed that he is in favor of cleaning up the code and likes the second draft. He also stated that we should omit the height allowances altogether as they might limit the City's decisions, especially with continuing advances in technology.

- Commissioner Tracey would like to see a map of coverage provided by a 50' versus 30' tower provided in the future and is in agreement with Commissioners Lazzell & Goligoski regarding the height allowances.

- Commissioner Hutchison explained that decisions must be driven by hard data and that he is strongly supportive of the public being part of the process.

- Commissioner Gambogi agrees to the proposed height allowances and supports height exception applications being reviewed by the Board of Adjustment

- Chair Michelman agrees with Commissioner Lazzell's opinion regarding height allowances; however, he feels all height exceptions applications should still be reviewed by the Planning & Zoning Commission.

Community Development Director Bryn Stotler expressed that we will not be voting on anything today; that it seems the Commission is favoring a 'hybrid' of the two, proposed updates. Assistant City Attorney Matt Podracky re-capped that four Commission members are in favor of keeping review of applications for wireless facility height exceptions with the Planning & Zoning Commission (Michelman, Tracey, and Goligoski & Hutchison) and two Commissioners are in favor of having them reviewed by the Board of Adjustment (Gambogi & Lazzell).

IV. STAFF UPDATES

Director Stotler expressed that the Commission would not be voting on anything at this meeting, and that it seems the Commission is favoring a 'hybrid' of the two proposals.

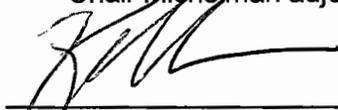
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IV. STAFF UPDATES

Community Development Director Bryn Stotler reiterated that we will be taking public comment at future meetings concerning this topic, and the Commission is free to continue its review at as many meetings as they deem necessary to arrive at recommendations for Council.

V. ADJOURNMENT

Chair Michelman adjourned the meeting at 10:27 AM



Kaylee Nunez, Recording Secretary



Don Michelman, Chair