

Kitsap County Planning Commission Minutes – January 8, 2019

KITSAP COUNTY PLANNING COMMISSION

Administration Building – Commissioner’s Chambers

January 8<sup>th</sup>, 2019 @ 5:30 pm

These minutes are intended to provide a summary of meeting decisions and, except for motions made, should not be relied upon for specific statements from individuals at the meeting. If the reader would like to hear specific discussion, they should visit Kitsap County’s Website at <http://www.kitsapgov.com/dcd/pc/default.htm> and listen to the audio file (to assist in locating information, time-stamps are provided below).

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Members present: Kim Allen (Acting Chair), Aaron Murphy, Tom Nevins, Joe Phillips, Richard Shattuck, Jim Svensson

Members absent: Gina Buskirk (Chair)

Staff present: Jim Bolger, George Geyer, Darren Gurnee, Lisa Nickel, Jeff Smith, Dave Ward, Amanda Walston (Clerk)

5:30:30

**A. Introductions**

- **Motion:** Jim Svensson moves to excuse absent Planning Commissioners.
- **Second:** Joe Phillips seconds.
- **Vote: 6 in favor; 0 opposed – motion carries.**

**Interim Chair**

- **Motion:** Richard Shattuck nominates Kim Allen to serve this meeting as acting Chair.
- **Second:** Joe Phillips seconds.
- Tom Nevins asks whether Ms. Allen serving as Chair presents a perception of conflicting interest due to her employment as a wireless consultant.
- Mr. Shattuck notes any Planning Commissioner may have potential conflicts, but all take their role seriously and set that aside to listen and provide information in an open manner. Mr. Shattuck believes Ms. Allen’s disclosure of employment and statement of impartiality is appropriate.
- Aaron Murphy agrees, believes it is a benefit that such a variety in background and different industries is represented.
- Mr. Phillips agrees, believes Ms. Allen’s experience as a Planning Commissioner and other public roles has provided a strong background.
- Ms. Allen, as previously disclosed, is a consultant for wireless community and an attorney, as well as a former hearing examiner n Kitsap and other areas. She has, in this case, removed herself from all interactions and communications with her employer (Verizon) and is involved solely through the lens of citizen and Planning Commissioner.
- **Vote: 6 in favor, 0 opposed – motion carries**

## Kitsap County Planning Commission Minutes – January 8, 2019

- 1 • **B. Adoption of Agenda**
- 2 • **Change to Agenda – 2019 Elections**
- 3 • Bylaws state elections take place the first meeting of the new year. One current
- 4 member is absent tonight, and two new members will join us at the next meeting,
- 5 pending confirmation by the Board of County Commissioners (BoCC). Staff
- 6 recommends postponing elections to the next regular meeting.
- 7 • **Motion:** Tom Nevins motions to postpone elections to the next regular meeting.
- 8 • **Second:** Aaron Murphy seconds
- 9 • **Vote: 6 in favor, 0 opposed – motion carries**
- 10 • **C. Adoption of Agenda**
- 11 • **Motion:** Joe Phillips moves to adopt minutes of the 11/20/18 meeting as presented.
- 12 • **Second:** Jim Svensson seconds.
- 13 • **Vote: 6 in favor; 0 opposed – motion carries.**
- 14 **5:33:38**
- 15 • **D. Work Study Wireless Code Update – Darren Gurnee, Department of Community**
- 16 **Development (DCD) Planning & Environmental Programs (PEP)**
- 17 • Mr. Gurnee provides a brief overview of the Wireless Code update process and
- 18 timeline, noting that the public hearing has been postponed to February and a 3<sup>rd</sup>
- 19 Work Study session has been added.
- 20 • **QUESTION:** Chair Allen asks whether a letter addressed to Staff and the Planning
- 21 Commission, from Ms. Stocking, has been added to the public comment.
- 22 • **ANSWER:** Mr. Gurnee notes it is currently included on the DCD Code
- 23 Update webpage, which provides a link to submit online written
- 24 comments. Any other comments received, written or verbal, are
- 25 posted here as well. Chair Allen requests the link listed on the Agenda.
- 26 • Mr. Shattuck notes the letter mentions regulating and monitoring
- 27 health and safety effects, which are not within the Planning
- 28 Commission’s purview and asks how staff may address that.
- 29 • Mr. Gurnee introduces **Lisa Nickel, Kitsap County Deputy Prosecuting**
- 30 **Attorney.**
- 31 **5:39:20**
- 32 • Ms. Nickel confirms the Planning Commission cannot make decisions
- 33 on whether the requirements are met, but it can require submittal of
- 34 proof of requirements met.
- 35 • **QUESTION:** Mr. Nevins notes multiple opposition to the FCC ruling, and asks how

## Kitsap County Planning Commission Minutes – January 8, 2019

1 the outcome of those challenges could impact any decisions or changes made,  
2 particularly the dissenting opinion from the FCC Commissioner.

- 3 • **ANSWER:** Ms. Nickel notes the request for a stay of the ruling, while  
4 appeals are considered, was denied. Also, 5 -6 pending federal appeals  
5 were recently consolidated and moved from the 9<sup>th</sup> circuit into the 10<sup>th</sup>  
6 circuit jurisdiction, and time frames have expanded. Latest ruling goes  
7 into effect before those challenges will likely be decided.

8 **5:41:55**

- 9 • Mr. Gurnee calls for questions from previous sessions, hearing none, provides a  
10 review of the preliminary draft code, noting underlying need to balance  
11 compliance and preservation of visual quality in Kitsap County.
- 12 • Permitting wireless facilities, letters of exemption, and other processes including  
13 Conditional Use Permit is the heart of this code and fairly consistent with current  
14 code. FCC regulations require differences from current Land Use processes.  
15 Maintenance, repair, exemptions, non-conforming uses, abandonment and  
16 removal are also addressed.
- 17 • Mr. Gurnee notes the Staff Report and analysis will be provided for the next  
18 Works Study and Public Hearing.

19 **5:48:05**

- 20 • Mr. Gurnee reviews the Permissibility Table, on page 4 of the proposed code  
21 draft, which lists timeframes and requirements for different types of permits,  
22 including new, existing or collocated facilities.
- 23 • **QUESTION/ANSWER:** Mr. Murphy asks, and Mr. Gurnee confirms, if a decision is  
24 not reached before timeframes are up, the permit must be deemed approved.
  - 25 • Mr. Murphy asks if timeframes are reasonable based on current staff  
26 capacity, workload. Mr. Gurnee responds that this update is looking at  
27 current processes and analyzing feasibility with the additional changes.
- 28 • **QUESTION:** Mr. Nevins notes the batch references had some room for appeal or  
29 flexibility, asks if 5 applications totaling 500 installations hit the desk, could the  
30 timeframe and decision be petitioned.
  - 31 • **ANSWER:** Mr. Gurnee defers to Ms. Nickel, who agrees with the  
32 interpretation, and is looking at how to best incorporate it into code,  
33 since it would be a case by case basis.
- 34 • **QUESTION/ANSWER:** Mr. Shattuck asks about, and Mr. Gurnee confirms, the  
35 regulations allow hiring consultants to assist in processing to meet timeframes.
  - 36 • Chair Allen believes recovery of documented County costs to comply

## Kitsap County Planning Commission Minutes – January 8, 2019

1 with requirements should be reflected in the code, noting other  
2 jurisdictions use this process to ensure deadlines are met with large  
3 batches. Mr. Gurnee will flag this for consideration.

4 **5:58:05**

- 5 • **DISCUSSION:** Concerns are raised regarding feasibility of timeframes when  
6 including additional time required for noticing and the appeal process for  
7 different permit types, timeframes may not be feasible.
- 8 • Most current land use review for wireless facilities are taking place within a 60 –  
9 70 day window, however, adding in time for appeals, which are counted within  
10 the shot clock, could be problematic.
- 11 • If an appeal is received during the 14 or 21-day appeal period following a notice  
12 of decision, the additional review, legal noticing and hearing schedule may cause  
13 delays beyond allowable timeframes.

14 **6:03:50**

- 15 • Mr. Gurnee continues reviewing the preliminary draft, including applicability,  
16 land use and zoning, exemptions, prohibited locations and structures, and other  
17 requirements as well as the pre-application, which is referenced as part of the  
18 shot clock window, but not required.
- 19 • **QUESTION/ANSWER:** Mr. Nevins suggests requiring the pre-application meeting  
20 as part of the filing process, to require communication and clarification from the  
21 start. Mr. Gurnee will flag this for consideration.

22 **6:10:35**

- 23 • **QUESTION:** Mr. Shattuck asks if permits can be applied for in anticipation of the  
24 5G installations. Could someone potentially apply for permits for the site, and  
25 then seek out a carrier to sell the location to?
  - 26 • **ANSWER:** George Geyer, Kitsap County Information Services, notes this  
27 is covered in detail on page 5, item #8. Proof of an agreement with the  
28 intended, licensed carrier is required.

29 **6:17:45**

- 30 • **QUESTION:** Mr. Svensson asks for clarification on the definition of a small  
31 wireless facility and where it is located in the draft.
  - 32 • **ANSWER:** Mr. Gurnee notes it is not in the definitions section, as it is  
33 very detailed, from FCC regulations and cannot be changed. It is  
34 identified as a subset of wireless facilities on page 21.
- 35 • Mr. Gurnee continues to review the draft, noting tower-based facilities and

## Kitsap County Planning Commission Minutes – January 8, 2019

- 1 collocation have drawn several industry comments, and may result in a revision  
2 to the section.
- 3 • Mr. Gurnee discusses fees, review time, shot clock and tolling, noting this section  
4 could include reference to recovery fees, as flagged by Chair Allen.
- 5 • Chair Allen suggests changing the language from ‘experts’ to read  
6 consultants, staff, etc. to allow broader flexibility.
- 7 • Mr. Murphy also challenges using the term expert, as it is ambiguous.
- 8 • **QUESTION/ANSWER:** Mr. Shattuck is concerned with language in small facilities,  
9 provision for tree trimming ‘to industry standards.’ Where are standards found  
10 and how they affect Kitsap County design standards for landscaping and  
11 vegetation is unknown. Mr. Gurnee will flag that for consideration.
- 12 • **QUESTION/ANSWER:** Mr. Murphy asks if any additional changes are expected  
13 following FCC language coming 01/14/19. Mr. Gurnee notes standards will take  
14 effect, and numerical references to the ruling will appear in the code.
- 15 • **QUESTION:** My Phillips asks about the details and processes for installation and  
16 maintenance of fiber optics.
- 17 • **ANSWER:** Ms. Nickel notes requirements are included in the Public  
18 Works Right-of-way (ROW) permitting process.
- 19 • Chair Allen notes fiber optics would typically be provided by a 3<sup>rd</sup> party.
- 20 • Mr. Geyer notes different jurisdictions have different requirements, for  
21 underground and above. Different companies also have different  
22 requirements – Puget Sound Energy (PSE) has its own additional  
23 guidelines for pole installation sites
- 24 **6:35:00**
- 25 • Mr. Gurnee notes these are new requirements for facilities installed in the ROW,  
26 and are meant to be prescriptive in order to meet FCC ruling requirements. Mr.  
27 Gurnee also notes tower height, performance-based criteria, stealth technology,  
28 shrouding and additional requirements in Parks areas.
- 29 • Mr. Murphy asks about strikethrough language and other full repeal and replace  
30 sections on the draft. Mr. Gurnee will isolate sections with no changes.
- 31 • Dave Ward, DCD Planning & Environmental Programs Manager, asks Mr. Smith  
32 and Mr. Geyer to discuss ground-based support structures.
- 33 • Mr. Smith notes a typical tower type would have equipment located  
34 around the base with lighting and screening requirements.

**Kitsap County Planning Commission Minutes – January 8, 2019**

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- Mr. Geyer notes specific intent in drafting to allow a variety of equipment and options for other small cell monopoles, other sites.

**6:45:30**

- Mr. Smith directs attention to 17.530.050, line 33 page 12, which discusses location and standards of all facilities located in the ROW.
- **QUESTION/ANSWER:** Mr. Nevins asks, and Mr. Smith clarifies, ‘clear zone’ indicates visual site distance that must not be blocked, goal is keeping facilities outside the clear lane of travel. Ms. Nickel notes the term is also used by Public Works.

- Chair Allen calls for other questions, hearing none, Mr. Gurnee notes materials for the next meeting will include the Staff Report, SEPA and if helpful, a visual presentation showing differences between small cell, tower, monopole, etc.

**6:51:05**

- Mr. Gurnee notes the public comment period opens today. A matrix with public comment/concerns, staff response and proposed changes will be provided. These comments will also be visible in an online form on the Code Update webpage. Chair Allen requests a link to the online form.

- **E. Administrative Update – Jim Bolger, DCD Assistant Director**

- Mr. Bolger notes pending appointment of new Planning Commissioners on Monday 1/14/19. BoCC will also confirm Mr. Bolger as Interim DCD Director. Much of County Code designates decision to the Director, so specific appointment was required.
- A new item coming before the Planning Commission soon will be Transfer of Jurisdiction. Kitsap is one of the last counties to go through this.

- **F. For the Good of the Order**

- None heard.

**Time of Adjournment: 6:55:50**

Minutes approved this 19<sup>th</sup> day of February 2019.

  
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Kim Allen, Planning Commission Chair

  
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Amanda Walston, Planning Commission Clerk