

LARKSPUR PLANNING COMMISSION
REGULAR MEETING MINUTES OF MARCH 26, 2019

The Larkspur Planning Commission was convened at 7:00 p.m. in the Council Chambers by Chair Ziesing.

Commissioners Present: Chair Todd Ziesing, Daniel Kunstler,
Laura Tauber, Ignatius Tsang

Staff Present: Planning Director Neal Toft
Senior Planner Kristin Teiche
City Attorney Claire Lai

OPEN TIME FOR PUBLIC EXPRESSION

There were no comments.

PLANNING DIRECTOR'S REPORT

- He reported that Commissioner Monte Deignan has resigned after many years of service on the Commission. He will be missed!
- He noted Chair Ziesing will not be at the April 9th meeting and he wanted to make sure they had a quorum.

PUBLIC HEARING ITEMS

1. **TEXT #19-02: Amendment to Larkspur Municipal Code (LMC) Chapter 18.51 Communications Facilities. The purpose of the amendments are to address changes in State and Federal regulations pertaining to wireless facilities and to provide improved guidance and processing of applications. Amendments include, but are not necessarily limited to: 1) renaming Chapter 18.51 "Wireless Communications; 2) expansion of the definitions; 3) clarification of applicability, exemptions and submittal requirements, to facilitate processing of wireless facility applications while preserving the aesthetics of the community and insuring compliance with FCC mandated processing deadlines; and 4) inclusion of "Small Cell" facilities, subject to regulations adopted by City Council Resolution, which will be presented to the Planning Commission at this hearing for review and comment.**

Senior Planner Teiche presented the staff report. She noted staff placed the resolution on the dais along with six late mail items.

Commissioner Tauber noted one of the items brought up in the numerous emails sent to the Commission was the proximity of these facilities to schools. She asked if staff took this into consideration when drafting the ordinance. Senior Planner Teiche stated "no" but staff has talked to the City Attorney about adding this to the resolution. City Attorney Claire Lai stated she talked with staff about including a buffer zone but they have to keep in mind there could be potential challenges and arguments that could be brought about by carriers.

Commissioner Tauber asked about a requirement for replacement of damaged trees or landscaping. There are a lot of old trees in Larkspur and she wondered how this would be addressed. City Attorney Lai stated staff could look at this.

Commissioner Kunstler had a question about the FCC standards reversal issue and asked about specific quantification standards in the document. City Attorney Lai stated the only item included

from recent FCC interpretations is the definition of “small cell facilities” and the definition of “substantial change” to a wireless facility.

Commissioner Kunstler stated there is reference to Design Review and a Conditional Use Permit in the ordinance. However, the resolution articulates a ministerial approval process. Senior Planner Teiche stated 5G wireless facilities applications have a much shorter “shot clock”. Staff came up with a process whereby there is a public notice and appeal period. Commissioner Kunstler asked if the application would come to the Commission if a Variance is required. Senior Planner Teiche stated the resolution is not worded to be that “black and white” but gives the applicant the opportunity to request an exception and demonstrate through the Conditional Use Permit process that they cannot meet the standards and to explain why it should be done differently. Appeals will go directly to the City Council. The variance procedures would continue to a traditional wireless facility, and these would be heard by the Planning Commission.

Commissioner Kunstler referred to page 9 of the resolution and asked about the difference between the “permit term” (10 years) and the “buildout period” (six months). Senior Planner Teiche stated the six month limitation refers to the expiration of the small cell permit if installation has not begun within six months of the approval.

Chair Ziesing opened the meeting to public comments.

Mr. Matt Landman, Larkspur, made the following comments:

- He does not consent to the radiation exposure associated with 5G.
- The technology has not been proven safe. It is the same as an airport body scanner.
- He asked the City to create an unbiased research committee to assess this technology.
- 5G should be banned from Larkspur.

Ms. Roberta Anthes, Fairfax, made the following comments:

- She is part of the 5G Free Marin Task Force.
- The law firm representing the Town of Fairfax is recommending that they not incorporate any of the specific standards.
- She urged the City to include the following: 1) an exceptions chapter with robust requirements; 2) the Americans with Disabilities (ADA) and the Endangered Species Act; 3) an annual recertification requirement.

Ms. Anahar, Greenbrae, made the following comments:

- She is part of the Free 5G group and wants to see the best possible ordinance.
- There is more and more proof about how unsafe 5G is.
- She would like to see setbacks of 1,500 feet between poles and from residential areas and schools.
- There are fiber optics all around Marin- it is safe.

Mr. James Holmes, Larkspur, made the following comments:

- Staff should review the ordinances from Mill Valley, Ross, San Anselmo, Fairfax and incorporate the best parts.
- They want to occupy as much jurisdictional space as they can building on what the other cities have experienced.
- He discussed aspects of the San Rafael ordinance and wanted Larkspur’s to be as protective.
- Public notice should be on the Website.
- Privacy considerations should also be in the mix.

Ms. Jess Lerner, Fairfax, made the following comments:

- She is a part of 5G Free Marin.
- 5G is not safe.
- She suggested the following additions to any ordinance: prohibiting facilities in residential zones; requiring public meetings for applications; establishing significant setbacks and intervals; applying buffers near schools; preventing fire hazards; frequent signal monitoring; language on ADA; tightening the permitting process; requiring an annual recertification process.
- She recommended requiring 1,500 feet between towers.
- Privacy and security is a serious issue.

Ms. Kathleen Boggs made the following comments:

- She opposes 5G installations.
- 5G is harmful.
- The ordinance should include a strong exception clause.

Ms. Bonnie McMurray, San Anselmo, made the following comments:

- She is concerned about all the small cell radiation that is already in the air.
- Kids are having problems learning and remembering. Their brains are still developing.
- Telecomm can be very seductive.

Mr. Loner Holden, San Rafael, made the following comments:

- He cited scientific studies indicating they should keep 5G in check on behalf of the health of citizens.
- He referred to a Website called “Powerwatch” which studies the effects of electromagnetic frequencies and discussed the adverse health effects.
- Vague and general terminology is being used to manipulate the public.
- Technology is turning the planet into a “microwave oven”.

Chair Ziesing closed the meeting to public comments.

Commissioner Kunstler provided the following comments:

- He has to bifurcate his comments.
- The “elephant in the room” is the FCC. They are attempting to bulldoze antiquated standards down the throats of municipalities and have turned into a mouthpiece for telecomm carriers.
- The question in front of them is- what can they do as a municipality, given the constraints, to provide the best protection from standards that seem to be inadequate.
- The ordinance should be as strongly crafted as possible, given what they are up against.
- They need to protect residents to the optimal degree.
- His inclination would be to ask for a continuance to allow them to study the issue further.

Commissioner Tauber provided the following comments:

- She agreed with Commission Kunstler about the need for a continuance.
- They need to take the best from all the other documents- the buffer zone for schools, more restrictive language with respect to trees, landscaping, and endangered species.
- She discussed the need to be stronger but within the bounds of the FCC. Senior Planner Teiche asked if she was referring to the ordinance or the policy resolution. Commissioner Tauber stated “both”.

Commissioner Tsang provided the following comments:

- This is an important hearing since it relates to the health of residents.
- He agreed with the speakers.
- He would like to go further than the most restrictive ordinance- he wants to push back at the FCC.

- He agreed with the other Commissioners and would like to see a continuance.

Chair Ziesing provided the following comments:

- He was prepared to push this forward to the Council but with some of the guidance provided from the speakers.
- The policy should be very strict with a strong exception clause.
- They should get the best ordinance for the residents of Larkspur.
- All of the speakers were concerned about health.
- The Commission is a subset of a larger process.
- He would support a continuance but they could also recommend it to the Council and let them direct staff on the amendments.

Planning Director Toft stated time is of the essence and this is a matter of getting “their house in order”. The City is not inviting or encouraging 5G, they need to get rules and regulations in place for the submittal of applications and address the “shot clock” issue. The ordinance can be crafted so it is tough but also manageable and defensible. The issue will be on the Council agenda next week. They are dealing with two different documents- amending the Telecommunications Chapter and the Resolution for 5G (Small Cell) Policies.

Commissioner Kunstler provided the following comments:

- He asked if staff was suggesting the Council get something on the books that could be amended later. Planning Director Toft stated that was up to the Council- they could also remand it back to the Commission.
- He could reconcile the need to get something on the books with the caveat that the Council revisit the issue to address concerns. Planning Director Toft stated the Commission could add language to that effect to their resolution.

Chair Ziesing provided the following comments:

- The language is not as ambitious or aggressive as he would like to see in terms of controlling the use of these facilities.
- He is particularly concerned about proliferation.

Commissioner Kunstler provided the following comments:

- He does want to be responsive to the need to get something on the books.
- However, he does not think they are in a position to specify certain amendments.
- He would prefer to continue the item.

Commissioner Tauber provided the following comments:

- She asked about the implications should the Commission choose not to act on these amendments.
- It might be better to go to the Council with something that would be improved at a later date.

City Attorney Lai stated the current telecommunications ordinance does not cover small cell facilities. The FCC said in its most recent order that there is an anticipated compliance date of April 15th. She would expect the City to adopt at least design development aesthetic standards that are compliant with Federal law. There is specific Federal law that prohibits local government from regulating wireless facilities. Chair Ziesing asked if there were any penalties if nothing is done by April 15th. City Attorney Lai stated if nothing is done then there would be no guidance if someone submits an applicant. Planning Director Toft stated the ordinance itself adds a lot of submittal requirements.

Chair Kunstler provided the following comments:

- He does not want to leave the City exposed.

- Maybe the solution would be to recommend that the Council adopt what is presented with the caveat that it will come back to the Commission to incorporate all the concerns.
- A continuance would be a “slam dunk” if they had more time.
- They need to get something on the books to provide some protection.

Commissioner Tauber provided the following comments:

- She did not like the notion of leaving the City exposed.
- The proposal is a better solution than not doing anything.

M/s, Kunstler/Tauber, motioned and the Commission voted 4-0 to adopt Resolution 03-19 recommending the City Council adopt the draft ordinance replacing Chapter 18.51 with the proviso that the draft resolution be remanded back to the Planning Commission for further consideration and amendments within 90 days.

BUSINESS ITEMS

1. Appointment of Planning Commissioner to General Plan Update Steering Committee

Planning Director Toft stated there were about two to three more study sessions. The committee usually meets on a Monday or Tuesday evening.

M/s, Kunstler/Tauber, motioned and the Commission voted 4-0 to appoint Commissioner Tsang to the General Plan Update Steering Committee.

2. Planning Commissioner Reports

There were no reports.

3. Approval of minutes of Planning Commission meeting on March 12, 2019

M/s, Tauber/Kunstler, motioned and the Commission voted 4-0 to approve the minutes from the March 12, 2019 meeting as submitted.

The meeting was adjourned at 8:55 p.m.

Respectfully submitted

Toni DeFrancis,
Recording Secretary

I HEREBY CERTIFY that the foregoing minutes were duly and regularly adopted at a regular meeting of the Larkspur Planning Commission on April 23, 2019.



Neal Toft, Planning Director