

South Bethany Charter and Code Committee Meeting
Thursday, November 29, 2018; 2:00 PM
South Bethany Town Hall

Minutes

Agenda Item 1. Call Meeting to Order – John Fields called the meeting to order at 2:05 PM. Committee members present were; John Fields, Jimmy Oliver, Tim Shaw and Joe Hinks. George Junkin participated remotely by telephone.

Agenda Item 2. A review of the proposed 5G Ordinance sent to C&C by Joe Hinks.

- John said that the Small Wireless code addition would be Chapter 111.
- John set the ground rules that we review the draft ordinance one section at a time.
- George pointed out that we needed a section – “**§111-1 Authority**. This chapter is authorized by § C-4B(29) of the Town Charter.”
- There was a lot of discussion on **§111-2 – Purpose**. The committee felt that there should be no wireless facilities allowed on right-of-ways that exist on private property. This would be taken care of by the definition of right-of way. **John Fields** was assigned to rewrite this definition. The committee also felt that the Town should allow wireless facilities on Town property. Currently the body of the ordinance only looks at facilities in the right-of-way. Tim Shaw was assigned to look at this in more depth.
- The only issue in **§111-2 - Definitions** was relative to right-of-way as discussed above.
- The only issue in **§111-4 – Permitted Use; Application and Fees** was that the fees paragraph should be moved to **§111-9 –Rates**.
- The following comments apply to **§111-5 – Action on Permit Applications**
 - Give Joe Hinks 30 days instead of 10 days to respond. *[George Junkin comments as he was documenting the minutes. See 47 CFR 1.40001(c) (3) (i) and (iii) below. It says that we get 30 days for the first notice about missing documents and 10 days relative to supplemental submissions. We should probably incorporate 47 CFR 1.40001(c) to cover Action Required on Permit Applications instead of writing new words for what is already required by law.]*
 - Delete **§111-5(B) Review of Eligible Facilities Requests**. Notwithstanding any other provision of this Chapter, the Code Enforcement Constable or his or her designee shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).
 - 47 CFR 1.40001(c) is copied below for information.

(c)Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1)Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may

require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2)Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3)Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

*(iii) **Following a supplemental submission**, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.*

(4)Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5)Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

- George Junkin was asked to rewrite **§111-6 – Small Wireless Facilities in the ROW** to specify the maximum and minimum allowable heights.
- The consensus was that paragraphs **§111-6 B, C and D** be removed. These are copied below. These items are already covered by the existing code.

- B. Design Requirements. Any specific requirements imposed by the Code Enforcement Constable or his or her designee relating to design or placement of small wireless facilities will be reasonable, non-discriminatory, objective, and published in advance.
 - C. Zoning. Any wireless telecommunications provider that seeks to construct or modify a utility pole, wireless telecommunication support structure or wireless telecommunications facility that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements. In all other instances, no discretionary zoning approvals shall be required for projects which comply with the terms of this Chapter and a small cell building/work permit shall be issued.
 - D. Undergrounding Provisions. Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way without prior approval by Code Enforcement Constable or his or her designee in areas zoned for single family residential use, provided such requirements shall not prohibit the replacement of existing structures or result in an effective prohibition of service.
- In **§111-7 Section 6 – Effect of Permit** a time limit of 24 months to complete construction was added.
 - In **§111-9–Rates and Fees** the \$20 annual fee was increased to \$150.
 - No changes were made to **§111-11 Section 10 – Miscellaneous**.
 - **§111-12 Section 11 – Effective Date** was deleted. Effect date is covered in the ordinance paperwork.
 - All suggested changes have been document in a track changes Word document titled “Small Wireless Facility Draft-2---2018-11-29”

Agenda Item 3. Public Comment – There was no public present at the meeting to comment.

Agenda Item 4. Adjournment. At 4:00 PM George Junkin made a motion to adjourn. The motion was seconded by Jimmy Oliver and was passed unanimously.

Minutes submitted by George Junkin.