

**New Castle Planning and Zoning Commission Meeting
Wednesday, October 28, 2020, 7:00 p.m., Town Hall**

Due to concerns related to the Coronavirus, the meeting was held as a virtual meeting only. Commission Members and the Public attended by phone, computer, smart phone or tablet.

Call to Order

Commission Chair Apostolik called the meeting to order at 7:01 p.m.

Roll Call

Present Chair Apostolik
Commissioner Bourquin
Commissioner Lucio
Commissioner McDonald
Commissioner Riddile
Commissioner Sass via ZOOM

Absent Commissioner Westerlind

Also present at the meeting were Town Administrator Dave Reynolds, Town Planner Paul Smith, Assistant Town Attorney Haley Carmer, Deputy Town Clerk Mindy Andis and members of the public. All persons attended the meeting via phone computer, smart phone or tablet.

Meeting Notice

Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting in accordance with Resolution TC 2020-1.

Conflicts of Interest

There were no conflicts of interest.

Citizen Comments on Items NOT on the Agenda

There were no citizen comments.

Items for Consideration

Consider Resolution PZ-2020-10 Recommending Approval of an Amendment to The New Castle Municipal Code to add Chapter 17.74 Wireless Communications Facilities and Equipment

Town Planner Paul Smith said communities across the country and around the world were facing the next wave of communications technology broadly referred to as "5G" (5th Generation mobile network). 5G technology can utilize higher frequencies, or shorter, "millimeter wave" with the capability to accommodate significantly higher data needs than current 4G/LTE technologies. The physical limits of some of the higher frequencies require that the transmitters be installed at a much reduced spacing, and may ultimately be roughly 300 feet, which was similar to the spacing of streetlights or fire hydrants rather than 2+/- mile or

greater distances that 4G/LTE technologies accommodate. The result of the physical need was that the public rights-of-way were often the optimal location to install the required equipment. Importantly, the new network has the potential to impact the safety, aesthetic values, and enjoyment of our community in a manner and to a degree that was far more extensive than cellular phones and other types of recent technology.

In September of 2018, the Federal Communications Commission (FCC) adopted the Declaratory Ruling and Third Report and Order, known as FCC 18-133. The Order outlines the extent to which local agencies may or may not regulate the installation of small cell facilities within the public rights-of-way and the use of existing public infrastructure.

In July of 2017, more than a year before the adoption of the FCC Order, House Bill 17-1193, the State of Colorado, Small Cell Facilities Permitting and Installation Act (the Act), became effective. In general, the Act specifies how local authorities throughout Colorado, may regulate the attachment of small cell facilities.

Similar to the advent of the telephone which required extensive wires, switch boxes, poles and other structures to provide these services, small cell communications technology will ultimately require a structure to mount a transmitter approximately every 300 to 600 feet most often with fiber optic cable and power conductor cable connections to each one.

Absent the adoption of standards to assure that installations are context sensitive, service providers would be free to install equipment with no concern for the visual impact that they create. This ordinance seeks to accommodate the implementation of the new technology while assuring that the new infrastructure is installed using context sensitive solutions which limit interference with safety, aesthetics, and the general wellbeing of the community. (Adapted from City of Aspen Design Guidelines).

Planner Smith reviewed the proposed council ordinance.

Planner Smith explained **Wireless Definitions**.

All words used in this Chapter, except where specifically defined herein, shall carry their customary meanings when not inconsistent with the context. Definitions contained elsewhere in this Code shall apply to this Chapter unless modified herein.

Accessory Wireless Equipment. Any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Alternative Tower Structure. Man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are intended to be compatible with the natural setting and surrounding structures, and camouflage or concealment design techniques so as to make the presence of

antennas or towers compatible with the surrounding area pursuant to this Chapter. This term also includes any antenna or antenna array attached to an Alternative Tower Structure and a Replacement Pole. A stand-alone Monopole in the Public Right-of-Way that accommodates Small Cell Wireless Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this Chapter.

Antenna. Any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations. Any exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

Base Station. A structure or equipment at a fixed location that enables Federal Communications Commission ("FCC") licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower. Base station includes, without limitation:

(1) Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Town pursuant to this chapter has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks) that, at the time the relevant application is filed with the Town pursuant to title 16 of the Code has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the application is filed with the Town under this chapter, does not support or house equipment described herein in sub-paragraphs 1 and 2 of this definition.

Camouflage, Concealment, or Camouflage Design Techniques. A WCF is camouflaged or utilizes Camouflage Design Techniques when any measures are used in the design and siting of WCFs with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes Camouflage Design Techniques when it (i) is integrated in an outdoor fixture such as a flagpole, or (ii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree) or is incorporated into (including, without limitation, being attached to the exterior of such facilities and painted to match it) or is integral within,

incorporated on or replaces existing permitted facilities or vertical infrastructure located in the right-of-way (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

Collocation. (1) Mounting or installing a WCF on a pre-existing structure, and/or (2) modifying a structure for the purpose of mounting or installing a WCF on that structure. Provided that, for purposes of Eligible Facilities Requests, "Collocation" means the mounting or installation of transmission equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible Facilities Request. Any request for modification of an Eligible Support Structure that does not Substantially Change the physical dimensions of such Eligible Support Structure involving: (i) collocation of new Transmission Equipment, (ii) removal of Transmission Equipment, or (iii) replacement and/or addition of Transmission Equipment.

Eligible Support Structure. Any Tower or Base Station as defined in this Section, provided that it is existing at the time the relevant application is filed with the Town under this Chapter.

Existing Tower or Base Station. A constructed Tower or Base Station is existing for purposes of this Chapter if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

Micro Cell Facility. A small wireless facility that is no larger than 24 inches in length, 15 inches in width, 12 inches in height, and that has an exterior antenna, if any, that is no more than eleven inches in length.

Monopole. A single, freestanding pole-type structure supporting one or more Antennas.

Public right-of way. Any public way or public thoroughfare dedicated or devoted to public use, including street, highway, road, alley, lane, court, boulevard, sidewalk, public square, mall or like designation.

Replacement Pole. An Alternative Tower structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light poles or other similar structure of proportions and of equal height to a pre-existing pole or structure in order to support a WCF or Small Cell Facility or to accommodate collocation and remove the pre-existing pole or structure.

Small Cell Facility. A WCF where each Antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an Antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are

no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. Small cells may be attached to Alternate Tower Structures, Replacement Pole, and Base Stations.

Substantial Change to a WCF. A modification substantially changes the physical dimensions of an Eligible Support Structure if after the modification, the structure meets any of the following criteria:

- (1) For Towers, other than Alternative Tower Structures or Towers in the Right-of- Way, it increases the height of the Tower by more than ten percent (10%) or by the height of one (1) additional antenna array, with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other Eligible Support Structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;
- (2) For Towers, other than Towers in the Right-of-Way, it involves adding an appurtenance to the body of the Tower that would protrude from the Tower more than twenty (20) feet, or more than the width of the Tower Structure at the level of the appurtenance, whichever is greater; for Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;
- (3) For any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or
- (4) For Towers in the Right-of-Way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinets associated with the structure;
- (5) For any Eligible Support Structure, it entails any excavation or deployment outside the current Site;
- (6) For any Eligible Support Structure, it would defeat the concealment elements of the Eligible Support Structure. For purposes of this definition, any change that undermines concealment elements of an eligible support structure shall be interpreted as defeating the concealment elements of that structure; or
- (7) For any Eligible Support Structure, it does not comply with conditions associated with the siting approval of the construction or modification of the Eligible Support Structure equipment, unless the non-compliance is

due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (1), (2), (3) and (4) of this Definition. For purposes of determining whether a Substantial Change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

Tower. Any structure that is designed and constructed for the sole or primary purpose of supporting one or more any FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers, monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

Transmission Equipment. Equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Wireless Communications Facility or WCF. A facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or Smart City, Internet of Things, wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an Antenna or Antennas, including without limitation, direction, omni-directional and parabolic antennas, support equipment, Alternative Tower Structures, and Towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand-held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded from the coverage of this Chapter.

Town Planner Smith explained **Design Standards.**

The requirements set forth in this section shall apply to the location and design of all WCFs governed by this section as specified below; provided, however, that the Town may waive these requirements if it determines that the goals of this

Chapter are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding area and to maintain the character and appearance of the Town, consistent with other provisions of the Code.

A. *Camouflage/concealment.* All WCFs and any transmission equipment shall, to the greatest extent possible, use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, undergrounding, landscaping, or other design options that will blend the WCF to the surrounding natural setting and built environment. Design, materials and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on the same parcel and adjacent parcels.

(1) Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where WCFs are located in areas of high visibility, they shall (where possible) be designed (e.g., placed underground, depressed, or located behind earth berms) to minimize their profile.

(2) The camouflage design may include the use of alternative tower structures should the Town Planner determine that such design meets the intent of the Code and the community is better served thereby.

(3) All WCFs, such as antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

B. Wall-mounted WCFs shall not extend above the roofline unless mounted to a penthouse.

C. Roof-mounted WCFs shall be approved only where an applicant demonstrates a wall-mounted WCF is inadequate to provide service and shall be evaluated for approval based upon the following criteria:

(1) Roof mounted whip antennas shall extend no more than 12 feet above the parapet of any flat roof or ridge of a sloped roof or penthouse to which they are attached;

(2) Roof mounted panel antennas shall extend no more than seven feet above the parapet of a flat roof or ridge of a sloped roof to which they are mounted; and

(3) Other roof mounted related accessory equipment shall extend no more than seven feet above any parapet of a flat roof upon which they may be placed, and shall not be permitted on a sloped roof.

D. *Hazardous materials.* No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.

E. *Siting.*

(1) No portion of any WCF may extend beyond the property line of the lot upon which it is located.

(2) *Collocation.* WCFs may be required to be designed and constructed to permit the facility to accommodate WCFs from at least two wireless service providers on the same WCF unless the City approves an alternative design. No WCF owner or operator shall unfairly exclude a competitor from using the same facility or location.

(3) WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel less than Code standards.

F. *Lighting.* WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Approved lighting shall be shielded and directed downward to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

G. *Landscaping and fencing requirements.*

(1) WCFs shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel, below Code standards.

(2) WCFs shall be landscaped with a buffer of plant materials that effectively screen the view of the WCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.

(3) In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived altogether by the Town Planner.

(4) Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large, wooded lots, natural growth around the site perimeter may be a sufficient buffer.

(5) No trees larger than four inches in diameter measured at four and one-half feet high on the tree may be removed, unless authorized by the Town Planner. To obtain such authorization the applicant shall show that tree removal is necessary, the applicant's plan minimizes the

number of trees to be removed and any trees removed are replaced at a ratio of 2 to 1.

H. *Noise.* Noise generated on the site must not exceed the standards permitted in the Code, except that a WCF owner or operator shall be permitted to exceed Code noise standards for a reasonable period of time during repairs, not to exceed two hours without prior authorization from the Town.

I. Additional design requirements shall be applicable to the various types of WCFs as specified below:

(1) *Base stations.* If an antenna is installed on a structure other than a tower, such as a base station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.

(2) *Alternative tower structures and small cell facilities.*

- a. Shall be designed and constructed to look like a building, a component of a building, a facility, or structure typically found in the area;
- b. Height or size of the proposed alternative tower structure or small cell facility should be minimized as much as possible and shall be subject to the maximum height restrictions of the zoning district in which they are located, with a maximum height limit of 45 feet;
- c. Shall be sited in a manner that is least obtrusive to residential structures and residential district boundaries;
- d. Shall take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses;
- e. Shall be compatible with the surrounding topography, tree coverage, and foliage;
- f. Shall be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
- g. Visual impacts of the proposed ingress and egress shall be minimized.

(3) *Alternative tower structures and small cell facilities located in the right-of-way, (requirements in addition to those set forth herein sub-section I.2).*

- a. Shall be no higher than 35 feet.

- b. Shall be no more than 10 feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within 500 feet of the pole or structure.
- c. Any new pole for an alternative tower structure or small cell facility shall be separated from any other existing WCF facility by a distance of at least 600 feet, unless the new pole replaces an existing traffic signal, street light pole, or similar structure as determined by the Town Planner. These separation requirements do not apply to attachments made to existing alternative tower structures. The Town Planner may exempt an applicant from these separation requirements if:
 - i. The applicant demonstrates through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or
 - ii. The Town Planner determines, when considering the surrounding topography, the nature of adjacent uses and nearby properties, and the height of existing structures in the vicinity, that placement of a WCF at a distance less than 600 feet from another small cell facility will meet the intent of reducing visibility and visual clutter of small cell facilities to the greatest extent possible.
- d. Pole-mounted components shall be located on an existing utility pole serving another utility; or be located on a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives; and
- e. Shall be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the alternative tower structure will be located.
- f. Shall to the greatest extent possible, be consistent with the size and shape of pole-mounted equipment installed by communications companies on utility poles near the alternative tower structure; and
- g. Shall when located near a residential property, be placed in front of the common side yard property line between adjoining residential properties. In the case of a corner lot, the facility must be placed in front of the common side yard property line adjoining residential properties, or on the corner formed by two intersecting streets.

- h. Shall be designed such that antenna installations on traffic signals are placed in a manner so that the size, appearance, and function of the signal will not be considerably altered.
- i. Facility antennas, mast arms, equipment, and other facilities shall be sized to minimize visual clutter.
- j. Any ground mounted equipment shall be installed in an underground or partially underground equipment vault (projecting not more than 36 inches above grade), or co-located within a traffic cabinet of a design approved by the Town Planner.
- k. Shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way. Must comply with the federal Americans with Disabilities Act and all applicable local, state, and federal law and regulations. No alternative tower structure nor small cell facility may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the right-of-way that disrupts or interferes with this use by the Town, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare.

(4) Towers.

- a. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards, be painted a neutral color so as to reduce visual obtrusiveness as determined by the Town;
- b. Tower structures should use existing land forms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment;
- c. Monopole support structures shall taper from the base to the tip;
- d. All towers, excluding towers in right-of-way, shall be enclosed by security fencing or wall at least six feet in height and shall also be equipped with an appropriate anti-climbing device. No security fencing or any portion thereof shall consist of barbed wire or chain link material; and
- e. Towers shall be subject to the maximum height restrictions of the zoning district in which they are located, subject to a maximum height limit of 60 feet. Towers in right-of-ways shall not exceed 35 feet in height and shall meet all of the design requirements of alternative tower structures in the right-of-way;

- f. Towers should be sited in a manner that that is least obtrusive to residential structures and residential district boundaries where feasible;
- g. Towers should take into consideration the uses on adjacent and nearby properties and the compatibility of the tower to these uses;
- h. Towers should be designed utilizing design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
- i. Visual impacts of the proposed ingress and egress shall be minimized;
- j. No new towers shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Town that no existing WCFs can accommodate the needs that the applicant proposes to address with its tower application. Evidence submitted to demonstrate that no existing WCF can accommodate these needs may consist of the following:
 - (i) No existing WCFs are of sufficient height and are located within the geographic area required to meet the applicant's engineering requirements;
 - (ii) Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
 - (iii)The applicant's proposed WCFs would cause electromagnetic interference with the WCFs on the existing WCFs or the existing WCF would cause interference with the applicant's proposed WCF; and
 - (iv)The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for colocation.
- k. A tower, located outside of the right-of-way, shall meet the greater of the following minimum setbacks from all property lines:
 - (i) The setback for a principal building within the applicable zoning;
 - (ii) Twenty-five percent of the facility height, including WCFs and transmission equipment; or
 - (iii) The tower height, including antennas, if the tower is in or adjacent to a residential district or residential zoned property.

- (iv) Towers over 40 feet in height shall not be located within one-quarter mile from any existing tower that is over 40 feet in height, unless the applicant has shown to the satisfaction of the Town that there are no reasonably suitable alternative sites in the required geographic area which can meet the applicant's needs.

(5) *Related accessory equipment.* Accessory equipment for all WCFs shall meet the following requirements:

- a. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
- b. The total footprint coverage area of the WCF's accessory equipment shall not exceed 350 square feet;
- c. No related accessory equipment or accessory structure shall exceed 12 feet in height;
- d. Accessory equipment, including but not limited too remote radio units, shall be located out of sight whenever possible by locating behind parapet walls or within equipment enclosures. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

Commissioner Lucio asked there would be a requirement to place the structures on the backside of buildings where they would be out of view from the general public.

Town Planner Smith said the town can't inhibit companies from placing the structures in town right of ways. It would be a good idea to have strategic places for the structures. The town may contact a consultant to get a better idea for strategic placement of the structures.

Commissioner Bourquin asked if the code would apply to private property or town owned property.

Attorney Carmer said it would apply to both. The structures wouldn't go onto private property without the owner's approval. What you would see in right-of-ways would be light poles and traffic lights. The camouflage and screening requirements may apply for both private and right-of-way. Certainly with respects to heights, roofs, property boundaries, fencing and landscaping is more private property. Putting a tower on town hall or the community center is not an automatic approval that the company can do. The company would still need to get approval from the town and go through the process.

Attorney Carmer said there have been other municipalities that have tried to ban wireless communications facilities and equipment and been sued by the telecommunication companies. The bases for those lawsuits were health and safety concerns. Which most of the science so far that it's not a hazard. At this point there is not much municipalities can do at all to prohibit the infrastructure but what the

town can do is what the commission is doing with the proposed resolution and ordinance. For now the town can have some restrictions on placement, how the infrastructure is installed and what it looks like. Until there are court rulings on whether it's permissible to prohibit, the town is doing what it can to make sure the infrastructure fits within the town. The town can't make the restrictions so restrict that the infrastructure couldn't be placed anywhere in town. The state law did was make small cell facilities a permitted use in every zone district in the state. Therefore, the town couldn't make the small cell facilities a prohibited use which has been regulated at the state level.

Commissioner Sass asked if the wireless communications facilities needs to be closer than the current 4G towers the town currently has.

Planner Smith said in the long term there would be talk about retrofitting from 4G to make it work with 5G. The structures look like stop lights or light poles heights were the retrofitted boxed antennas on those types of structures. The structures would be closer. There wouldn't be 100's of 100 or 50ft towers all over town, there would be a handful of towers placed strategically around town. There might be 100 small cell facilities throughout town as a network much closer together.

Commissioner Riddle asked if the companies coming into town to place the structures be similar to what the town does with Xcel Energy as a franchise.

Attorney Carmer said that could be one way. Also, the guidelines the commission is look at would at least make the company who would be installing the structures in the town right-of-way would have to get a license from the town to install. It would depend on the size of the company that would be coming in that is a startup company may be installing as a street by street basis. There certainly be a written agreement in place with whomever would come in, may not necessarily be a franchise. But certainly have a licensed agreement from the town to authorize the use of the right-of-way.

Town Planner Smith explained **Application Review Procedures.**

No new WCF shall be constructed and no Collocation or modification to any WCF may occur except after a written request from an applicant, reviewed and approved by the Town in accordance with this Chapter.

- A. *Review Procedures for certain WCFs, including Base Stations, Alternative Tower Structures, and Alternative Tower Structures within Public Rights-of-Way, but excepting Eligible Facilities Requests, and Small Cell Facilities in the Right-of-Way.*

In all zone districts, applications for these WCF facilities shall be reviewed by the Town Planner for conformance to this Chapter. For WCFs in the rights-of-way, except for Small Cell Facilities in the Right-of-Way, that are found to have a significant visual impact (e.g. proximity to historical sites, obstructing views) or be incompatible with the structure or surrounding area, or not meet the intent of these provisions, the Planning Department may refer the application

to Planning and Zoning Commission or Historic Preservation Commission, as applicable, for a conditional use review.

B. Review Procedures for Towers.

In all zone districts, Towers, other than those defined or excepted in A above, must apply for conditional use approval. These WCFs shall be reviewed for conformance using the procedures set forth in Chapter 17.84. All applications for Towers shall demonstrate that other alternative design options, such as using Base Stations or Alternative Tower Structures, are not viable options as determined by the Town.

C. Review Procedures for Eligible Facilities Requests.

(1) In all zone districts, Eligible Facilities Requests shall be considered a permitted use, subject to administrative review. The Town shall prepare, and from time to time revise, and make publicly available, an application form which shall require, among other things, submittal of information necessary for the Town to consider whether an application is an Eligible Facilities Request and payment of the applicable application fee as set forth in the Town's fee schedule. Such required information may include, without limitation, whether the project:

- a. Constitutes a Substantial Change; or
- b. Violates a generally applicable law, regulation, or other rule codifying objective standards reasonably related to public health and safety.

The application shall not require the applicant to demonstrate a need or business case for the proposed modification or Collocation.

(2) Upon receipt of an application for an Eligible Facilities Request pursuant to this Section, the Town Planner shall review such application to determine whether the application so qualifies.

(3) Timeframe for Review. Subject to the tolling provisions of subparagraph 4 below, within 60 calendar days of the date on which an applicant submits a complete application seeking approval under this Section, the Town shall approve the application unless it determines that the application is not covered by this Subsection, or is otherwise in non-conformance with applicable codes.

(4) Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the Town and the applicant, or in cases where the Town Staff determines that the application is incomplete:

- a. To toll the timeframe for incompleteness, the Town must provide written notice to the applicant within thirty (30) days of receipt

of the application, specifically delineating all missing documents or information required in the application;

- b. The timeframe for review begins running again the following business day after the applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
 - c. Following a supplemental submission, the Town will notify the applicant within ten (10) days that if 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 paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing information or documents that were not delineated in the original notice of incompleteness.
- (5) Failure to Act. In the event the Town fails to act on a request seeking approval for an Eligible Facilities Request under this Section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The request becomes effective when the applicant notifies the Town in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
- (6) Interaction with Telecommunications Act Section 332(c)(7). If the Town determines that the applicant's request is not an Eligible Facilities Request as delineated in this Chapter, the presumptively reasonable timeframe under Section 332(c)(7) of the Telecommunication Act, as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the Town's decision that the application is not a covered request. To the extent such information is necessary, the Town may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

D. Review Procedures for Small Cell Facilities in the Public Right-of-Way.

- (1) Small Cell Facilities in the Public Right-of-Way may be approved pursuant to a Master License Agreement or similar form of authorization or individually in accordance with the provisions of this subsection.
- (2) Within ten (10) days of receipt of an application for Small Cell Facilities in the Public Right-of-Way and payment of the applicable application fee set forth in the Town's fee schedule, the Town Planner shall provide written comments to the applicant determining completeness of the application and setting forth any modifications required to complete the application to bring the proposal into full compliance with the requirements of this Chapter.

- a. The Town Planner shall review the completed application for conformance with the provisions in this Chapter and may approve or deny an application within 90 days of the date the application is submitted for new stand-alone facilities or 60 days for facilities collocated on Town infrastructure.
- b. To toll the timeframe for incompleteness, the Town must provide written notice to the Applicant within ten (10) days of receipt of the application, specifically delineating all missing documents or information required in the application;
- c. The timeframe for review resets to zero (0) when the Applicant makes a supplemental written submission in response to the Town's notice of incompleteness; and
- d. Following a supplemental submission, the Town will notify the Applicant within ten (10) days 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 paragraph (a) of this subsection. In the case of a second or subsequent notice of incompleteness, the Town may not specify missing information or documents that were not delineated in the original notice of incompleteness.

(3) Consolidated applications. The Town shall allow a wireless provider to file a consolidated application for up to six (6) small cell facilities and receive a single approval for the consolidated application. The Town's denial of any individual small cell facility is not a basis to deny the application as a whole or any other small cell facility incorporated within the consolidated application.

E. General.

Except for applications under subsections C and D above, the applicant shall conduct a pre-application conference with the Town Planner. The Planner shall then prepare a pre-application summary describing the submission requirements and any other pertinent land use material, the fees associated with the reviews and the review process in general. A pre-application conference is not required, but is recommended, for Eligible Facility Requests or Small Cells in the Right-of-Way.

F. Administrative review.

Except for applications under subsections C and D above or as otherwise provided in this Chapter, after the pre-application summary is received by the applicant, said applicant shall prepare an application for review and approval by the Town Planner and any necessary Town consultants, including the Town Engineer. In order to proceed with additional land use reviews or obtain a

development order, the Town Planner shall find the submitted development application consistent with the provisions, requirements and standards of this Chapter.

G. Decision.

Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by substantial evidence in a written record. The applicant shall receive a copy of the decision.

H. Appeal of Planner's determination.

The Town Planner may apply reasonable conditions to the approval as deemed necessary to ensure conformance with applicable review criteria. If the Town Planner determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Town Planner, the applicant may apply for conditional use review (Chapter 17.84) by the Planning and Zoning Commission and such application must be made within fifteen (15) calendar days of the day on which the Town Planner's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Section 16.08.050 of this Code.

I. Historic Preservation Commission review.

With the exception of Eligible Facilities Requests and Small Cell Facilities in the ROW, proposals for the location of WCFs or equipment on any historic site or structure, shall be reviewed by the Historic Preservation Commission (HPC). Review of applications for WCFs and/or equipment by the HPC shall replace the need for review by the Town Planner but shall not replace the need for any conditional use review required under this Chapter. In the event HPC review is required under this Subsection I for an application subject to conditional use review, the HPC will review the application and provide a recommendation regarding the same to the Planning and Zoning Commission. Likewise, if the HPC determines that the proposed WCFs and equipment do not comply with the review criteria and denies the application or the applicant does not agree to the conditions of approval determined by the Historic Preservation Commission, the applicant may appeal the decision to the Town Council, and such appeal must be filed within fifteen (15) calendar days of the day on which the Historic Preservation Commission's decision is rendered. All appeals shall require public hearings and shall be noticed by the applicant in accordance with Section 16.08.050 of this Code.

J. Building Permit.

A Building Permit, shall be submitted concurrently with the Land Use Application. Depending on the nature of project, a full Building Permit may be necessary, or, as would be the case for most Eligible Facilities Requests, an Electrical Permit. A contractor for the proposed work must be identified with the submitted application. A Building or Electrical Permit without an identified

contractor will be deemed incomplete - and the application will be tolled until the contractor is identified.

K. Right of Way License.

For all facilities located or to be located in the public right-of-way, a evidence of a licenses agreement or other permit from the for use of such right-of-way shall be submitted with the application. If the applicant has not previously been granted a right-of-way license or permit, a request for a license from the Town to locate such facilities in the public right-of-way shall be submitted concurrently with the Land Use Application. Any such request shall be reviewed and approved by Town Council in its discretion. A contractor for the proposed work must be identified with the submitted application. Any such application submitted without an identified contractor will be deemed incomplete - and the application will be tolled until the contractor is identified. Additionally, an Electrical Permit shall be required for any installation that involves line voltage.

L. Conditional Use Review.

An application requesting a variance from the review standards as set forth in this Chapter or an appeal of a determination made by the Planner, shall be processed as a conditional use review in accordance with the procedures set forth in Chapter 17.84 of the Code. A request for a variance from the design standards set forth in this Chapter shall be submitted to the Board of Zoning Adjustment and processed according to Chapter 17.12. The conditional use review or design standard variance request shall be considered at a public hearing for which notice has been posted and mailed, pursuant to Section 16.08.050.

Chair Apostolik asked if there was an "out" for the town. For example a structure is put in and the town finds out after the fact how extrusive the structure has become. Can the structure be taken down and modified. Because as it looks now once it's approved it's approved.

Attorney Carmer said for that reason the commission needs to be particular about the kind of information is provided as part of the application. So, if it mean submitting plans, diagrams and visuals so the town can understand what the structure will look like and where it will go. That would need to be provided up front, if the install doesn't match what was approved. Then the town can take action under the code for enforcement.

Attorney Carmer said the application for the administrative approval is where the town would want the visual to be part of the application process. Its matter of the town being detailed in the application submission material requirements. The point of the regulations is to govern what the structure will look like because the town can't keep the structures from going certain places.

Town Planner Smith said the application has been left open for amendments. There would be a design manual created which would be very specific as to alternative

towers that are permissible and locations. Otherwise it would be up to the town planner and or the town administrator to decide what is compatible.

Planner Smith said he will be creating a check list to go with the application which would include all the required documents such as plans, diagrams and visuals.

Attorney Carmer said the town may approve or deny an application within 90 days of the date the application is submitted for new stand-alone facilities or 60 days for facilities collocated on Town infrastructure. Time limits are federally required.

After some discussion Planner Smith said he would change the wording in D3 in the application process of the ordinance from "The Town shall allow a wireless provider to file a consolidated application for up to six (6) small cell facilities and receive a single approval for the consolidated application", to read "The Town shall allow a wireless provider to file a consolidated application for multiple small cell facilities and receive a single approval for the consolidated application".

Chair Apostolik closed the public hearing at 8:19 pm.

MOTION: Commissioner Riddile made a motion to approve Resolution PZ-2020-10 a Resolution of the New Castle Planning & Zoning Commission Recommending Approval of Amendments to the New Castle Municipal Code to add Chapter 17.74 Wireless Communications Facilities and Equipment as amended. To change D3 in the Application Review Procedures. To state "The Town shall allow a wireless provider to file a consolidated application for multiple small cell facilities and receive a single approval for the consolidated application". Commissioner McDonald seconded the motion and it passed on a roll call vote: Commissioner Lucio: Yes; Commissioner Riddile: Yes; Commissioner McDonald: Yes; Commissioner Bourquin: Yes; Commissioner Sass: Yes; Chair Apostolik: Yes.

Items for Next Planning and Zoning Agenda

Planner Smith said the next Planning and Zoning meeting is November 11, 2020 which is Veterans Day, therefore that meeting will be cancelled.

Planner Smith said Castle Valley Ranch Filing 11 is still scheduled for November 25, 2020 which is Wednesday before Thanksgiving.

Commissioner Bourquin asked what is the process to change the meeting to another date.

Attorney Carmer said she can reach out to the applicant to find out if they were comfortable with changing the date. Then, Planning and Zoning Commission would need to hold a special public meeting to change the date since the original date was set in a public meeting.

Staff Reports

There were no staff reports.

Commission Comments and Reports

Commissioner Riddile stated his term is up on the commission at the end of October.

Commissioner Sass asked about the signage that has recently went up at VIX Park for the trails.

Town Administrator David Reynolds said the signage was a result of a license agreement with the land owner. The land owner was in a position where his attorney approached him to protect his liability on the property. The town worked with the property owner and CVR Investors to come up with a license agreement which works in the protection and interest of the property owner, so the property owner wouldn't have to post signs of "No Trespassing". Also, to keep in the trails open for public use since the trails do go onto private property.

Commissioner Bourquin asked about the Port-A-Potty at Alder Park that was burnt. Was there and insurance claim to replace the Port-A-Potty?

Administrator Reynolds said yes there Was a claim, however it takes time with the insurance to process claims. Should be spring to have it rebuilt.

MOTION: Chair Apostolik made a motion to adjourn the meeting. Commissioner Riddile seconded the motion and it passed unanimously.

The meeting adjourned at 8:28 p.m.

Respectfully Submitted,




Chair Chuck Apostolik


Deputy Town Clerk Mindy Andis, CMC