

**Minutes of CITY OF DALTON GARDENS
REGULAR MEETING OF THE PLANNING & ZONING COMMISSION
MONDAY, NOVEMBER 9, 2020 @ 6:00 PM**

The meeting will be conducted both in person and remotely using ZOOM:

- ❖ *To participate via web conferencing:*
<https://us02web.zoom.us/j/89580290722?pwd=d0lxd3AzdE5ydXFCV3U0eS84VGJGUT09>
- ❖ *To participate or listen via telephone dial 1-(253)-215-8782 OR 1-(301)-715-8592,*
 - ❖ *Webinar ID: 895 8029 0722; Password: 414426*

CALL THE MEETING TO ORDER @ 6:00 PM by Chairman, Mike Becker

ROLL CALL

Commissioners: Tyler Drechsel, Ron Sampert, Caitlin O'Brien
Chairman Mike Becker
City Planner Rand Wichman
City Attorney Caitlin Kling
Deputy Clerk Teresa Janzen

1. APPROVAL OF MINUTES: ACTION ITEM

*Motion to approve the minutes of the regular meeting held September 24, 2020: TDrechsel;
Second: RSampert*

ROLL CALL

Comm O'Brien: YES Comm Drechsel: YES Comm Sampert: YES Chair Becker: YES
Motion Carries.

2. 2021 PROPOSED MEETING DATES: ACTION ITEM

November 25, 2021 to be rescheduled to November 30, 2021. December 23, 2021 may be a skipped meeting date or may be rescheduled. We are required to meet 9 times in a calendar year.

Motion to adopt 2021 proposed meeting dates with the change for November meeting from the 11/25/21 to 11/30/21: RSampert Second: TDrechsel

ROLL CALL

Comm O'Brien: YES Comm Drechsel: YES Comm Sampert: YES
Motion Carries.

3. MT CARROL TRACTS SHORT SUB-DIVISION APPLICATION: ACTION ITEM

2-lot short subdivision request from Dobler Engineering, on behalf of property owner Stach Construction Company, LLC. The application is being processed in accordance with Title 6, Chapter 6 of the Dalton Gardens Municipal Code. The 3.25 acre property is located on the east side of Mt. Carrol Street, approximately 500 feet north of the intersection of Wilbur Ave. and Mt. Carrol St. No address has been assigned to the property. The parcel number for the property is D-1400-25-122-AA.

City Planner RWichman summarized the staff report and clarified that per City Code it is not required for short sub-divisions to be a public hearing or to have public notice.

Public Hearing Opened by Motion made by: RSampert; Second: TDrechsel

Vernon Church- 7351 N Mt Carrol St: Property Owner across from proposed short sub-division. Concerned he did not receive notice of short sub-division.

Joe Myers- 7424 N Mt Carrol St: Property Owner to the north of the proposed short sub-division. Requested for the codes applicable to the sub-division be read into the official record.

Chairman MBecker called out that 'Title 5, Chapter 5- This Chapter contains requirements for lot size and street frontage, setbacks and allowed uses' is in the packet.

City Planner, RWichman reviewed that residential setback requirements are 10' on the side and rear, 25' in the front, accessory buildings have a different setback. All setbacks are subject to change with an amendment from the City Council. The newly divided lots will be subject to the setbacks and height restrictions that are in place at the date of a building permit application. Code does not require this short subdivision application to be a public hearing so there was no notice given to the paper or to residents in the surrounding area.

Chairman Becker closed public hearing.

Motion made to approve the Mt Carrol Tracts Short Sub-division: TDrechsel Second: RSampert

ROLL CALL

Comm O'Brien: YES Comm Drechsel: YES Comm Sampert: YES

Motion Carries.

Chairman Becker Read:

VI. CONCLUSIONS OF LAW

6.01 The proposal as presented **DOES** warrant approval for the following reasons:

1. The proposed lots **MEET** all established lot size and width
2. Adequate water supply and sewage disposal **ARE** available to serve the proposed lots;
3. The decision to approve the short subdivision **WILL NOT** be contrary to the public interest;
4. **Not applicable:** Newly dedicated roads **are / are not** improved and paved according to standards set by Lakes Highway District.
5. No cul-de-sacs or dead end streets were proposed with this request.

VII. DECISION BY THE COMMISSION

Based on the Findings of Fact and Conclusions of Law set forth in this document, the Commission hereby **APPROVES WITH CONDITIONS** the application for a short subdivision in accordance with Title 6, Chapter 6 of the Dalton Gardens Municipal Code.

VIII. CONDITIONS IF APPROVED:

- 8.1 The applicant shall obtain a “will serve” letter from Dalton Water Association that indicates that they have the capacity and willingness to serve water to the 2 lots of this subdivision, and outlines any system improvements that are required. Any water system improvements, other than the setting of meters, required by the Dalton Water Association to provide water service to the lots of this subdivision shall be completed prior to submission of the final plat to the City for signature.
- 8.2 The applicant shall comply with the requirements of the Panhandle Health District and shall have the sanitary restriction lifted prior to submission of the final plat to the City for signature.
- 8.3 The subdivision plat shall be recorded within one year from the date of the written Planning Commission decision, or such approval shall be considered null and void.

4. PUBLIC HEARING: ACTION ITEM

AN ORDINANCE OF THE CITY OF DALTON GARDENS, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 5, CHAPTER 1, SECTION 4 TO ADD DEFINITIONS; AMENDING TITLE 5, CHAPTER 3, SECTION 1 TO ADD A NEW ALLOWED USE TO THE COMMERCIAL ZONE AND TO CLARIFY REQUIREMENTS FOR A SPECIAL USE PERMIT; AMENDING TITLE 5, CHAPTER 3, SECTION 14 TO DELETE WIRELESS COMMUNICATION FACILITY; AMENDING TITLE 5, CHAPTER 4, SECTION 1 TO REVISE THE USES ALLOWED IN THE UTILITY ZONE; AMENDING TITLE 5, CHAPTER 5, SECTION 1 TO ADD A NEW ALLOWED USE IN THE RESIDENTIAL ZONE; AMENDING TITLE 5, CHAPTER 5, SECTION 2 TO CLARIFY USES WHICH REQUIRE A SPECIAL USE PERMIT; AMENDING TITLE 5 TO ADD A NEW CHAPTER 13 FOR STANDARDS FOR SPECIFIC USES AND A NEW SECTION 1 TO SAID CHAPTER TO ADD STANDARDS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES, PROVIDING SEVERABILITY, REPEALING CONFLICTING PROVISIONS, AND PROVIDING AN EFFECTIVE DATE.

City Planner RWichman gave overview of proposed amendment to the City Code to address small cell and distributed antenna systems as they are not currently addressed as all. Currently we regulate wireless use facilities in the commercial district, they are not allowed at all in the residential district. We have incorporated the changes from the October 2020 workshop in the draft you see as well as the Staff memo and the City Attorney memo.

City Attorney CKling reviewed her memo dated 11/05/202 to the Commission highlighting the 3 FCC orders issued in 2018 pertaining to the deployment of small cell wireless technology (referred to by these orders as “5G” technology). The FCC issued the orders after finding that regulations from local governments “materially inhibited” the deployment of 5G by excessive local regulations, particularly with respect to fees and aesthetic requirements. The orders are pretty sweeping. If the City wants control to regulate aesthetics, number of units per lot, or distance between units, we will need an ordinance. Wireless providers can also approach private homeowners directly.

Public Hearing opened:

John Stenburg- 1216 E. Wilbur Ave: Feels 5G is moving in too quickly ignoring safeguards by FCC & NEPA review. Concerned with the effects on children, especially the reproductive system of girls. Feels it is not needed in Dalton Gardens and the ordinance should be used to protect the community.

Mike Chase- 7512 N. 4th St: Feels the ordinance proposal does not protect the health, safety, or interest of the City of Dalton Gardens. He questioned why the setback is less for small cells than it is for wind power generating towers.

Dr. Brooke Baggett-Milbourne- 7743 N. Mt Carrol: Opposed to the ordinance. Read parts of article regarding the blood-brain barrier effects from MWF, effects on reproductive ability, bone density, fetal health. Very concerned about the effects of microwave radiation on the health and development of children.

Rhonda Sand- 2711 Silver Beach Rd, CdA: Opposed. Feels the ordinance is missing all protections from the NEPA well thought out strategies. Feels the FCC gave the City the right to decide if we use small cell. Claims Title 1 (telephone & text) and Title 2 (internet & gaming) from the FCC ruling was withheld. Feels the ordinance is not ready to be submitted to the City Council.

Rich Munroe- 601 S. 12th, CdA: Opposed. Feels it is an unsafe and intrusive technology by corporate giants- like big Pharma, Monsanto, Big Telecom- trying to overrun small communities. Fiber optic is doing the job well. Some communities have taken the high ground and rejected this dangerous technology. Asked the commission to look into smaller, alternative information sources .

Ann Wilder- 349 Primrose Lane, Priest River: Opposed. Read several Title 47 sections excerpts as it relates to Keetoowah v. FCC.

Susan Green- 7501 S. Greensferry Rd, CdA: Opposed. Liability incurred by construction and operation on public and private property. General liability pollution exclusion. City of Dalton Gardens should require specific pollution insurance by a 3rd party.

Tonya Osterson- 1919 N. 9th St, CdA: Opposed. Read excerpts from Keetoowah v. FCC that every new wireless facility requires NEPA review. NEPA requires studies to determine environmental and public health impacts. Telecom industry is misrepresenting the law.

Scott Strong- 9099 N. Baldwin Ct, Hayden: Opposed. Feels ordinance is not ready for City Council as it's insufficient and should better address height, number of towers, set backs, engineering studies, and EMF radiation.

Anna Strong- 9099 N. Baldwin Ct, Hayden: Opposed. Coeur d' Alene ordinance allows small cells every 1000' feet but 20' from houses. She showed a diagram of what that spacing would look like in a Maryland neighborhood had it not been stopped by the residents. Could not identify where in Maryland the neighborhood was.

Ingri Cassel- 2045 Downing Loop, Hayden: Opposed. Feels that ordinances should be created by the City Council/Mayor and not the City Planner and that residents should be involved in ordinance development.

Shane Johnson- 1680 Garfield Bay Rd, Sagle: Opposed.

Doug Williams- 7255 N 4th St: Opposed.

Simona Moijzis- 1235 E. Wilbur Ave: Opposed. She is a Registered Nurse and is very concerned about the health risk to the children. Feels there is better, safer, options to small cell. Small cell has not been proven safe in residential areas.

Jade Hugenot-1387 Hailey Ct,CdA: Very concerned about the health impact on children and pregnant women.

Sue Supp- 7024 N. 16th St: Opposed. Feels the ordinance is incomplete and doesn't protect the residents of Dalton Gardens. Feels the ordinance should distinguish from Title 1 facilities (unregulated) and Title 2 facilities (regulated). Important to adopt an ordinance and master plan to outline statement of intent, and to clearly regulate something that has not previously been regulated. Telecommunications Act of 1996 – city cannot stop the development of broadband facilities in the City. It does have provisions to allow the City to require development in a responsible way that protects the health and safety of the residents.

Public Hearing was closed at 7:37 PM

City Planner RWichman- at the workshop we went as far as we legally could to regulate these facilities. We are specifically preempted legally from dealing with health issues resulting from small cell, distributed antenna systems. He has not received any proposal for 5G to come to Dalton Gardens. Verizon has indicated their plan is to supplement 4G not 5G, they felt the 4G network was overloaded. It not legally necessary that a utility provide demonstration of need. The City has not been approached for 5G installation. In fact, Verizon has said that it will be many years before 5G is brought to this area.

City Attorney CKling- will always need an encroachment permit for work or operation in the Right of Way (ROW). ROW always requires insurance and payment performance bonding to cover any work in the ROW. Without an ordinance, we have no governance mechanism to regulate installation on private property.

Commissioner RSampert- Our objective when we started this was to have something in place that protects the residents.

City Attorney CKling- we can certainly add to an ordinance but the following items we can request on the permit/application

1. Shot Clock triggers- applicant must take the first step by written documents. Clearly state what is required and what triggers the shot clock.
2. Co-location encouraged- proof why can't co-locate if a new site is requested. Proof of Avista consent to co-locate.
3. Aesthetic concealment design plan
4. Require standards of FCC are met- Engineer, Federal Codes met for radio frequencies in Title 47

5. Distancing- up to us to set reasonable guideline. Doesn't have the same range as macro cell. Can't space out small cells more than their maximum range.
6. Insurance Requirements- would be in license agreements. Common is \$500,000 per occurrence/\$1 mil in the aggregate. Certificate of general liability, 30 days notification of drop in policy, and bonding.
7. Fees would be set by the fee resolution at the City Council level. FCC has already set limits on fees but we are allowed to recover our costs.

Commissioner discussion included potential noise prohibition ordinance, the City is neither responsible nor equipped to perform annual radio frequency testing, and if preemptive items can be revisited if the FCC changes their orders.


Commission sent the ordinance back to Staff to add additional provisions to the ordinance and will set a future public hearing to revisit the issue.

ADJOURN – ACTION ITEM


Motioned: TDrechsel; Second: RSampert.

All in favor. Motion carries.

Adjourned at 8:19 PM



Mike Becker, Chairperson



Teresa Janzen, Deputy Clerk