***Summary Minutes***
**City of Sedona**
**Planning & Zoning Commission Meeting**
**City Council Chambers, 102 Roadrunner Drive, Sedona, AZ**
**Tuesday, August 1, 2017 - 5:30 p.m.**

**1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL**

Chair Losoff called the meeting to order at 5:30 p.m., led the Pledge of Allegiance and requested roll call.

**Roll Call:**

**Planning & Zoning Commissioners Present:** Chair Marty Losoff, Vice Chair Kathy Levin and Commissioners Randy Barcus, Eric Brandt, Avrum Cohen, Larry Klein and Gerhard Mayer.

**Staff Present:** Lauren Brown, Warren Campbell, Roxanne Holland, Audree Juhlin, Cari Meyer, Karen Osburn, Robert Pickels Jr. and Donna Puckett

**Councilor(s) Present:** Mayor Sandy Moriarty

**2. ANNOUNCEMENTS & SUMMARY OF CURRENT EVENTS BY COMMISSIONERS & STAFF**

*There were no announcements*

**3. PUBLIC FORUM: (This is the time for the public to comment on matters not listed on the agenda. The Commission may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.)**

*Chair Losoff opened the public forum at 5:31 p.m. and, having no requests to speak, closed the public forum.*

**4. CONSIDERATION OF THE FOLLOWING ITEMS THROUGH PUBLIC HEARING PROCEDURES (CONTINUED FROM JUNE 1, 2017 PUBLIC HEARING):**

**a. Discussion/possible action regarding a recommendation to the Sedona City Council regarding amendments to the Sedona Wireless Communications Facilities Ordinance, Sedona Land Development Code, Article 17, Wireless Communications Facilities, to be consistent with changes in federal regulations. PZ17-00005 (LDC) Applicant: City of Sedona**

**b. Discussion/possible action regarding a recommendation to the Sedona City Council regarding the draft Sedona Wireless Communications Master Plan. PZ17-00006 (MP) Applicant: City of Sedona**

Chair Losoff explained that this is a continuation of the public hearing held on June 1st. At the time of that meeting, we had a public open forum and there were many comments, and the public forum was closed, so there will be no more public comment, and we will continue with the meeting. Robert Pickels Jr. agreed that the public comment period was closed at the conclusion of the last meeting, so this is the opportunity for the Commission to discuss, deliberate and potentially make a recommendation to the City Council, which is what is being asked of the Commission. Karen Osburn added that as the next step after the Commission makes its recommendations, they will be forwarded to the City Council, and when the Council does their deliberations, they will also have public hearing processes as part of those discussions, so there will be additional opportunity for the public to comment to the City Council.

Chair Losoff opened items 4.a.and b. and indicated that he sympathizes with everybody, some of the things we are hearing and that are being suggested just don't make any sense, but we aren't here as a Commission to argue against or protest the Federal or State Government, since the governor said that these towers can go in rights-of-way; those weren't our decisions, so it limits our ability as a Commission to make recommendations to the Council, and we have to stay within those limitations. The Commission's job is to make as much of an impact as possible on a lousy situation and to minimize any negative effect the Federal or State Government has on these issues, so he would ask Commissioners to limit discussions and not get into a lobbying effort or a Federal or State Government pro and con or even a governor pro and con.

**Staff Comments:**
Karen Osburn indicated that staff does not have a presentation, since this is a continuation from the last meeting, but she did want to update the Commission on some of the changes in the packet since that meeting. Based on some of the discussion that took place on June 1st and the direction and requests from the Commission, the draft ordinance has been modified to include some additional specifications about where to find how the Federal Government defines radio frequency emission levels, so when we talk about them having to comply with those levels in the ordinance, it gives some references as to where those levels and restrictions can be found. The other thing that the Commission requested was to provide some additional definitions to provide some clarity around noise coming from these sites, so there have been some decibel levels and where you measure from what property line also included, and finally, the Commission asked for maps that showed each of the 20 city-owned properties that were proposed to potentially be included in the Master Plan document, and to show them in a GIS map where you could see the surrounding parcels and their zoning classifications. The pink represents residential properties and the blue represents commercial properties, plus there are some other classifications.

**Commission Comments:**
Chair Losoff pointed out that there are some recommendations to the City Council on pages 7, 8 and 9, so if there is anything we can add to or modify in those recommendations; how do we want to begin our discussion?

Commissioner Barcus indicated that as he has agonized over this topic since the meeting on June 1st and all the new information we have about what House Bill 2365 allows, we need to go forward with recommendations for city-owned properties, even though he doubts that many, if any, carriers will opt to locate towers in those specific areas, unless they just feel like that is something they want to do. We should give them that opportunity to locate on city-owned properties, but because House Bill 2365 is now signed into law, there is a blanket open cell facility option for any carrier that wants . . . Chair Losoff interrupted to say for the sake of education, you might describe what the Bill is, and Commissioner Barcus explained that it allows wireless carriers access to all of the City's rights-of-way. Chair Losoff then commented that is a state mandate and Commissioner Barcus indicated that is correct, it is a state law.

Commissioner Barcus then continued to state that as we were told at the June 1st meeting, there is a fee that will be paid to the City, but that is also imbedded in the state law, and if his recollection is correct, that fee is $50 per year. That is why wireless carriers will be reluctant to negotiate with the City to put towers on city-owned property at fees that are similar to what they have been paying in the past. These are business decisions that these folks are going to make, and he doesn't think they will be irresponsible to their business owners. He heard the public loud and clear, and he recognizes that there are people in the community who suffer from radio frequency hypersensitivity, so by identifying city-owned properties, the only modification he would make to the city-owned property criteria would be that he would want to keep a tower at least 100 ft. from the property line of any residential property; 100 ft. is a good compromise. If we went to 300 ft., it might eliminate all of the city-owned properties, and because radio frequency declines at a factor of 100, when you go 10 ft. from the tower to 100 ft. from the tower, the amount is 1/100th, and beyond 10 ft. is considered by the American Cancer Association and the FCC to be safe. He is not making comments as to whether they are making the correct decision, but one percent of

that allowance is probably an adequate compromise in terms of distance, although he would be open to other recommendations from other Commissioners,

Chair Losoff asked if that could be a condition and Karen Osburn stated yes. Commissioner Cohen asked if a second to the motion was needed, and Commissioner Barcus stated that he was not making a motion; he was just making a comment.

Commissioner Mayer indicated that our hands are tied and the city-owned properties would be his preference, and he can only follow Commissioner Barcus' remarks regarding distance and other remarks. He wishes they would decide to go for city-owned properties and respect the 100 ft., if that is a feasible distance from any residence, but what can he say. He sees the crowd here; they are concerned and he is concerned too, but what rights do we have? There is very limited input from us or at least from him.

Commissioner Brandt understands that cell companies can place their towers anywhere, and the City is trying to manage their placement, but the plan is also an endorsement showing a preference of locations, and we shouldn't endorse a commercial use in a residential zone. The plan already prohibits towers in the National Forest and the trailheads are de facto National Forest, and in his note from two months ago, he suggested the Little Elf property as a trailhead. He has some specific recommendations, but it kind of follows what Commissioner Barcus said about 100 ft. The Cancer Association says that towers are usually 80 ft. to 200 ft. tall and the emitter is at the top, and since the signals are emitted across the land, they deem that distance away to be safe. Following what Commissioner Barcus said, including people having sensitivity to radio frequencies, 100 ft. is probably realistic, probably more like 200 ft. There are properties like this one we are sitting in that are more than 200 ft. and could be designated. If you are at one side of the property, you are across the street from residential, but if you are at the other side of the property, you are more than 200 ft. away, so the location on the property does have bearing, although he would like to hear what others have to say.

Chair Losoff stated that he visited relatives in Seattle, and there was a light pole with a poster saying "Stop cell towers", so apparently the City of Seattle is going through the same thing and had a big poster about the same issues we have heard from the public – safety, noise. This particular cell tower was going up across from a school, and they wanted to limit it in that location. He talked to the person who was promoting the protest, and he said he didn't think it was going any place, because he had been told by various local, state and federal officials that there is not much you can do.

Commissioner Klein stated that after so many of the members of the public spoke about their concerns regarding radio frequency emissions, he did a lot of research on it and there is an attorney in Michigan who wrote about a 90-page article on cell phone tower law titled, *Cellular Tower Zoning and Siting: Federal Developments and Municipal Interests* in 2012, and his name is John Pestle. The Commissioner indicated that he spoke with him, and Mr. Pestle referred him to a guy in Los Angeles named Johnathon Kramer, who is an RF Engineer and an attorney that gives presentations to municipalities about cell towers, and according to Mr. Kramer, there was a thing put out by the FCC in 2000 called, A *Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance*, which the Commissioner read. Mr. Kramer stated that he had co-authored it and edited it, so a lot of the information Commissioner Klein had gotten is from reading that stuff and from Mr. Kramer.

Commissioner Klein indicated that the one thing that is the most important thing we can do is to make sure that the cell towers comply with the FCC requirements on radio frequency emissions. As part of the application process, and it is in our draft Land Development Code, but he has something that is a little different. We can require anyone who wants to put up a new tower or collocate on an existing tower to certify that the tower will comply with the FCC limits on radio frequency emissions, and that can apply to every application for a cell tower – new or collocation. Currently, the Land Development Code draft says that the owner of the tower will certify that the

tower complies with the FCC requirements on radio frequency emissions, and it sets forth the various publications and talks about the way these are measured. These are measured by something in centimeters squared, and we use the number 580. He is not sure where that number came from, because when you look at the FCC requirements on cell tower emissions, he finds it very confusing, so he doesn't know where the 580 came from. Vice Chair Levin stated, microwatts, and Commissioner Klein agreed – microwatts per centimeter squared.

Commissioner Klein then continued to state that when he talked with Mr. Kramer, he asked what he is advising all of his client municipalities to put in their code to ensure that these towers comply with the FCC requirements, and Mr. Cramer indicated he wasn't going to give the Commissioner his work product, but he referred the Commissioner to look up the code of three cities. The Commissioner looked up one for the City of Brentwood, CA, which is what he provided tonight, but he could only find a draft online, which he presumes is what they adopted, and the main difference from our current Land Development Code draft is that our Code says that the owner can certify that it complies with the FCC emission requirements, and it says in paragraph six that it requires an RF Exposure Compliance Report, prepared and certified by an RF Engineer acceptable to the City, that certifies that the proposed facility as well as any collocated facilities will comply with applicable federal RF exposure standards.

Commissioner Klein indicated that the Commission should discuss if we are we okay with having the owner of the company do it, who may not be an engineer, or is it better to say that we want a Compliance Report prepared by an RF Engineer acceptable to the City? The Commissioner stated that he talked with the City Attorney who talked with our consultants, and they said anyone can call themselves an RF Engineer, which is true, but there are agencies that certify RF Engineers, like the Institute of Electrical and Electronics Engineers Communications Society that offers the Wireless Communications Engineering Technology Certification in several specialty areas, including RF Engineering, so there are societies that do certify these people and it seems that he would rather have a statement that the tower complies with the FCC requirements on emissions from a RF Engineer acceptable to the City of Sedona versus the owner of the tower, so the Commission may want to consider putting that in there instead.

Commissioner Klein then stated that another thing Johnathan Kramer told him was that you have to acquire everything in the application process, because you only get one bite at the apple to deny an application, so in item 8 of the one from the City of Brentwood, it requires a noise study prepared and certified by an engineer, and in our materials, there is nothing in the application regarding noise. Noise appears in a different section, but not in the application section, and if it is not in the application, according to Johnathan Kramer, it may not mean anything. We have something in the Code about noise, but it seems that we need to transfer that to this section dealing with the application process, to ensure that we have a valid requirement for compliance with noise standards in Sedona.

Commissioner Klein indicated that the other issue is do we want to require retesting of these towers; we can require that all towers be certified, and this is before they are built. Based on what they are going to be doing and the equipment, etc., they can determine the radio frequencies that will be emitted, so we could do that with every tower. Then, do we want to require retesting? The City of San Francisco requires a retesting every two years to say that they comply with the FCC emission requirements, because in 1996, after Congress passed the Telecommunications Act, the FCC set forth a bunch of proposed regulations in 1997, and one of them was that the municipalities could not ask the cell tower owners to show that they complied with the FCC emission requirements, and the cities objected to that. The City of San Francisco, in opposition to that proposal, tested 100 of the towers and 40 to 50 towers did not comply with the FCC emission requirements, so they now require that the towers be retested every two years, to determine that they are in compliance with the FCC emission requirements. There are certain towers that are categorically excluded and those are towers with the bottom of the antenna 10 meters above the ground or on a rooftop with the bottom of the antenna 10 meters above the rooftop, once the initial certification is made, that is it. It is presumed that those towers will

comply with the emission requirements and you can't require retesting; however, he found two cases that say that the preemption doctrine does not apply to city-owned property, so his interpretation is that if someone sites a tower on city-owned property, the preemption doctrine doesn't apply, so we have much more control over towers on city-owned property, and that would include retesting. You can also retest a tower that is not categorically excluded, so the Commission should decide if we want to require that at certain periods of time, the owner of the tower must retest these, because look at what happened in the City of San Francisco when they did their testing – 40% to 50% of the towers were not in compliance with the FCC emission requirements, and retesting is not in our proposed Land Development Code, so the Commission might want to consider that.

Robert Pickels Jr. clarified that regarding the preemption doctrine and its applicability to government-owned properties, that was mostly correct; the only distinction he would make is that the preemption doctrine still applies to regulatory activities, so the adoption of a Land Development Code would include those components, but you can negotiate within a proprietary function, so if we were to lease our property and negotiate a contract with a wireless provider, we could negotiate terms, as the Commissioner described, into the contract, but it wouldn't be something that we would include in the regulatory framework of our Code.

Chair Losoff asked if the consultants would find anything different than what we just heard, and Robert Pickels Jr. pointed out that there were a lot of things mentioned, and asked the Chair if there was anything in particular the Chair wanted to comment on. Chair Losoff stated that he appreciates Commissioner Klein's research, but if you talked to five other consultants or attorneys, you might get different viewpoints; he was just curious. Robert Pickels Jr. stated that there is some really valuable information and he appreciates the extensive research that Commissioner Klein has done and shared with him. He was particularly interested in Mr. Kramer's work and that can be instructive, but it is in interpretative document based on his thoughts, and you are going to get a lot of different opinions from different people involved.

Chair Losoff stated that before making any decisions, it seems that we have four recommendations so far -- the 100 ft. from residential, the FCC radio frequency emission certification, the noise, and the retesting.

Commissioner Klein stated that in the document that the FCC put out, they have a chart that says, "Estimated 'worse case' horizontal distances that should be maintained from a single, omni-directional, cellular base-station . . .", and the distance that they recommend is 48 ft. for the most powerful antenna. Also as a point of interest, he watched a video of Dr. Johnathan Kramer's presentation to one of the cities, and he asked, "How you explain where the FCC set their requirements for the allowable limits of radio frequencies?" To alleviate anybody's concerns about the radio frequency emissions, it was interesting that if you take a ruler, zero is no emissions - no transmissions, and 12 is the point at which they can measure a change in heat sufficient enough to cause physiological changes in humans, so Dr. Kramer explained that the FCC set the limits on a scale 0 to 12 at one-quarter of an inch or 2% of what would be the point at which the radio frequencies would get hot enough to cause physiological changes in humans, but that is not saying whether or not cell towers cause problems, because in the materials from staff, there is three studies from Israel, Brittan and Scandinavia that show an increase in cancer around these towers, but it is interesting that the FCC set a pretty low level of allowed emissions.

Commissioner Barcus asked if these rules on certification, noise and retesting apply to rights-of-way applications under the new state law. Are rights-of-way city-owned properties or something else? Robert Pickels Jr. explained that our rights-of-way are city-owned properties, but with the new legislation, the developers are entitled to access those rights-of-way by right, so there is very limited regulatory authority. We can only regulate public safety issues, aesthetic issues and things of that nature, so the limitations we have discussed . . ., Commissioner Barcus interrupted to ask if retesting could be considered a public safety issue, and Robert Pickels Jr. explained that he would like to comment on retesting and make some other some comments on some of the

things that Commissioner Klein raised, but he thought he would wait until everyone . . ., and the Chair interrupted to say yes, why don't we do that.

Commissioner Cohen stated that there seems to be three different kinds of venues for cell towers, one is the state right-of-way, one is city right-of-way – city property, and the third is private property. How do the things you were talking about affect the state right-of-way and private property or do they at all? Commissioner Klein indicated that the new statute that the governor signed doesn't apply to the state, and in staff's materials, it says that the property along S.R. 179 and S.R. 89A would be excluded from that statute, but again, his understanding is that just because the cell tower companies can now put in a tower in the City rights-of-way, they still have to comply with the FCC requirements on emissions.

Karen Osburn stated that one thing we tried to clarify with the consultants regarding the new legislation is the RF emissions related to a small-cell type of infrastructure, versus a macro facility, and her understanding from the consultants is that the emissions are much less for the small-cell facilities, and those are the only types of facilities that have this by-right access to the City rights-of-way, so although it is the new wave of technology and still has those emissions, it is not the same level of emission that you might get from the types of macro towers that you might see at the airport, etc.

Chair Losoff asked for clarification as to if towers in the rights-of-way on S.R. 179 and S.R. 89A are excluded, and Karen Osburn clarified S.R. 179 and S.R. 89A are excluded, with the exception of the 89A through Uptown, which is City rights-of-way.

Commissioner Cohen indicated that he didn't have much to add to what has been said, because the Commissioners have expressed frustration with the limited ability we have to do anything with this, and it will be frustrating to our City Council, which is taking this very seriously also. He then thanked staff, Karen and Audree, for their work; it is pretty complicated and hands-tying.

Vice Chair Levin thanked the public for writing letters, signing petitions, providing medical and scientific information that they thought would be valuable to the Commission, because it turns out this is the single most important issue within the wireless proposed revisions to the Land Development Code and the Master Plan, and it is one over which we have little or no control and that is disturbing to all of us. She also thanked the two Commissioners who made proposals that will tighten perhaps regulatory authority that the City will have to address some of the health concerns that have been raised by the public. If we were to vote no, it would be worse than making a recommendation forward, because these two regulatory instruments allow us decisions around location, aesthetics and types of infrastructure that will be in place, so if we don't recommend it, there will be no oversight of the wireless industry. She thought it was important to reiterate that, so you would understand the position the Commission is in, when it makes its recommendations. Again, she thanked the other Commissioners for doing excellent research to broaden our capabilities to have greater local control and, with the concurrence of the City Attorney, perhaps we can make these recommendations as addendums to the proposed staff motions in our packet.

Chair Losoff agreed that we have done a lot of good legwork on this, and he is very impressed with Commissioner Klein's research and others' comments. The best we can do is just mitigate any negative impact we can on this kind of silly ordinance that we have to deal with. He was very disappointed; we were moving forward with some great recommendations until the state passed the right-of-way issue. That took the steam out of our sail; we were going forward with some pretty good recommendations, and we still can and need to consider what we heard today.

Commissioner Mayer asked, if a cell tower owner decides to build on city-owned property, who will pay for the certification and the follow-up in three years if that is passed. Karen Osburn stated that, as typical with all of the requirements from an applicant, they are typically responsible. All of these applications also go through an outside expert review, because

internally our staff doesn't have the expertise to review these kinds of applications, because they are very technical and complex. Therefore, we do engage with an outside expert for review and they are also responsible to pay those fees as well, so she would assume these would be treated the same way. Commissioner Mayer then asked if it is on somebody else's property, is it still the same, and Karen stated yes. The Commissioner then asked if we know the cost, and Karen stated no.

Commissioner Brandt indicated that he wanted to follow-up on what he stated earlier and specific recommendations that could be entertained in the draft Land Development Code for wireless. He then referenced page 11 of the draft Land Development Code under "Location by Zoning District" that says, "Generally no wireless service facility shall be allowed in National Forest or neighborhood commercial districts. No wireless service facility shall be allowed in any open space district, except as provided in Subsections . . .", and the portion there about no wireless service facility shall be allowed in National Forest, he supposes is aesthetics; it is just a commercial use within the forest, so there are certain recommended sites for endorsement by the City that should be deleted, and those are A1, A2 and O. Those are trailheads, so that is National Forest-appearing, and it is also recreation use; and M is residential site. Vice Chair Levin asked if he is including M, and Commissioner Brandt stated to delete A1, A2 and M. The Vice Chair then asked if he said O, and the Commission stated that O is a residential site, and the City should not be endorsing commercial use in residential zones.

Commissioner Brandt then indicated that he had the sites backwards and clarified that the trailheads are A1, A2 and P, which is Back O'Beyond. The residential-zoned sites that aren't used as parking or anything like that; they are just currently undeveloped are O and M, and then there is Posse Ground that is recreational, but it has a residential zone. Those could probably stay in there as long as there is the 100 ft. or 200 ft. setback to residential-zoned property. There is also the parking at the museum that is residential-zoned, but as long as that stays parking, it seems that would be acceptable, so it is kind of a gray area.

Commissioner Brandt then noted that site Q is the treatment buildings that are in the county, and that is included. Site Q should be restricted to the community facility storage treatment buildings area, not anywhere beyond that. Additionally, in general, faux trees should be restricted to 40 ft. tall to align with the heights of the tallest native trees in Sedona. Most piñons are 25 to 35 ft., but some cypress do grow that tall, although they are usually in washes, but visually 40 ft. tall could fit in. In item 6, the tower's base station should be painted in earth tones, not to match the background, which is the recommendation in the draft. If it matches the background, it could be a blue or gray sky; it should be earth tones.

Robert Pickels Jr. stated that starting with the question about requiring the owner to certify or attest to the compliance issue or rely on a third party RF Engineer, from our perspective legally and in talking with our consultant, we want to ensure that the owner is on the hook. We want to make sure the owner is the one taking responsibility for whatever the facility is emitting, and if we are going to take action at a subsequent date, whether in the form of revocation of a permit or some other kind of action, we are going to take that action against the owner, not the RF Engineer. He doubts that insurance companies even underwrite policies for Arizona emissions on an RF Engineer that doesn't have a formal certification structure along with it. He doesn't know that they don't, but he doubts that they do. Therefore, he doesn't' think that when we look at potential liability or ultimate responsibility, we are going to be looking at that third party, as we would against the owner. We want to make sure that we hold the owner accountable. That being said, he is not suggesting that we can't utilize the opinion of a so-called RF Engineer if we so desire, but if that is what the Commission would entertain in the form of a recommendation, he would suggest doing both and not one over the other.

Commissioner Cohen asked if we could require the owner to get an RF Engineer to certify it and the owner take responsibility for it, to keep the owner on the hook. Robert Pickels Jr. indicated that he is not sure that is any different than what is being proposed. If the owner makes a

statement that the facility will be in compliance and the City is requiring an RF Engineer to provide some assurance to that effect, that still accomplishes what you are describing; however, the Commissioner stated no, what he is requesting of you at this moment is to ask that stronger; that we write into it that the owner must get an RF Engineer to certify and the owner then takes responsibility for the report from the engineer. Robert Pickels Jr. indicated that would be the case; the owner would still bear that ultimate responsibility for whatever the representations are of the RF Engineer. The Commissioner then asked if the City Attorney is suggesting that the owner has to engage an RF Engineer in order to make that proposal, and Robert Pickels Jr. clarified that he is not suggesting that. He is suggesting that if the Commission wants to recommend that component of it that it be done conjunctively, that we have both the owner identified . . ., Chair Losoff interrupted to say that he is not an attorney, but it seems that when he has dealt with things like this in the past, if you are the owner, you are responsible, and if you hire a contractor to do something, and you falsely certify or if the contractor is not competent, you are on the hook regardless; we could do both. Robert Pickels Jr. pointed out that the suggestion is that the RF Engineer be acceptable to the City, so there would be a level of oversight involved. Commissioner Cohen then stated that he liked what was just said, so that could be part of our recommendation.

Robert Pickels Jr. explained that the next question to address is the difference between city-owned properties and the right-of-way, getting back to Commissioner Barcus' question. His concern is that the way HB 2365 is laid out, it allows for the City to adopt rules and it requires that the facilities be compliant with our Code. If we were to include something like an RF Engineer Report prior to issuance of a permit for the City right-of-way, that is going to be much susceptible to a legal challenge than requiring that same kind of a regulatory or proprietary requirement on city-owned properties other than the right-of-way. The industry is probably very skeptical about the RF Engineer certification or qualifications, and we leave ourselves much more susceptible to a legal challenge on that qualification and on the necessity for that kind of requirement, when they have access to the right-of-way by right through Arizona statute, so he would recommend that we limit, if it is the desire of the Commission to recommend that layer in the form of an RF Engineer Report, that it be limited to the city-owned properties as identified in the Master Plan, and not consider recommending that be extended to the city-owned rights-of-way. We run into potential problems, if we do that, so that is his recommendation on that issue. Commissioner Cohen then asked if we could require that of private property and Robert Pickels Jr. stated yes; he is just suggesting to stay away from the city-owned right-of-way, because that is going to be the focus of the potential legal challenge by the industry.

Commissioner Cohen indicated that he follows that . . ., and Chair Losoff interjected that the Commission has heard the Commission's comments, so he is anxious to hear more of the City Attorney's comments. Robert Pickels Jr. then stated that the next issue he wanted to address is the noise issue raised by Commissioner Klein and the fact that it is not included in the application requirements, which is true, but it is still included in all of the individual development standards, and there is still a process where all of the development standards have to be identified through the application process, so there is still the ability to, even though it is not specified in the application section here. The noise component as identified in the development standards, will still have to be complied with, so he is comfortable that, because the noise decibel levels are identified in each of the component parts of the development standards, we have covered ourselves in that regard. Chair Losoff then asked about the retesting, and Robert Pickels Jr. explained that the retesting is a separate issue, and the last one that he wanted to address.

Vice Chair Levin asked to go back to that point. The revisions to Article 17 include in this latest draft a delineation of the sound levels not to be exceeded, and then she asked if Robert Pickels Jr. was talking about different regulatory development standards outside of Article 17 or the ones placed in the new draft, and Robert Pickels Jr. responded, in Article 17. Audree Juhlin added 65 decibels and Robert Pickels Jr. stated that is consistent with City Code.

Robert Pickels Jr. indicated that the last issue he wanted to comment on is the issue of retesting. He understands the desire to ensure at some later date that there is still compliance with the FCC regulations, which are very clearly identified. The reports we have seen, including one we found that we used on a prior project from several years ago where we brought in a consultant to determine the RF exposure, and the Office of Engineering and Technology within the FCC that issued a circular, OET 65, have very clearly defined parameters that are used for measuring the RF exposure and impact, so utilizing that standard on the front-end of an application for issuance of a permit is fine, but where we get on less stable ground is requiring that after the permit is issued for purposes of possible revocation of a permit already issued. He doesn't know, because of the uncertainty and the certification or qualifications required for an RF Engineer, if we required that same individual to come back later to conduct some test that may or may not be scientifically acceptable in court, and he doesn't know if it is or isn't, he is worried about that. He will not recommend that the retest be included in the process. He understands the need, but he doesn't think it is necessarily going to withstand some legal challenge if we utilize that to go forward and revoke someone's permit that has already been issued.

Commissioner Cohen asked if a permit is forever or does it have an expiration date, and Cari Meyer explained that generally a Conditional Use Permit, by Code, would expire after a year of nonuse, so if it is not used within one year, they would have to come back and get something reapproved. Generally if they use it, there are often expiration dates built into the permit, and that depends on the actual project and a lot of other factors. For things that require construction, like a cell tower, those generally do not have expiration dates, because we don't want to go back and make them tear something down – that is not reasonable, so the cell tower Conditional Use Permits that we have approved, once they are built, they don't have expiration dates, but if they don't get built, that approval would expire after one year, unless there is something else in the Conditions of Approval. Commissioner Cohen then asked what prevents us from putting an expiration date on the permit requiring re-permitting, which would allow us to do retesting, and Cari Meyer indicated that is not something that we have done in the past, so she . . ., Commissioner Cohen interjected that is not good, and Cari continued to say that whether we could do it for future Conditional Use Permits would . . . Commissioner Cohen again interrupted to ask the City Attorney if we could do it. Robert Pickels Jr. explained that there has to be a reasonable justification for it; he is not sure that . . . Commissioner Cohen interrupted to say that protecting the public is reasonable, and Robert Pickels Jr. agreed that it is; that is an exercise of our police power, but he is not . . ., Commissioner Cohen interrupted to say that one of the recommendations he would make is that permits issued not be forever, but have an expiration date when they must be renewed, which gives us the reviewing capacity – does that work? Robert Pickels Jr. stated that he doesn't know that is any different than the retest. The Commissioner asked why not, and Robert Pickels Jr. pointed out that it was devising a plan to expire the permits for the sole purpose of doing another test to determine compliance. Commissioner Cohen stated not if we are doing it also to tell them to move it, if it has created some sort of an issue that affects public safety.

Chair Losoff stated that we don't want to get into a he said, she said; he likes the idea of retesting, and there could be some legal issues, but hopefully, if this goes forward, the providers – AT&T or whoever, would negotiate in good faith and not find that to be a problem, but he is not a cell tower provider, so what is the history over the years as to how they are negotiating – are they cooperative or obstructionists; are they being fair to cities like us? Robert Pickels Jr. responded that is a loaded question and he doesn't know that staff can comment on that.

The Chair then referenced the Commission's recommendations and stated that he understands, but given Commissioner Klein's research about the many towers that did not meet requirements after a period of time, he feels comfortable with the retest, but we'll come back to that.

Robert Pickels Jr. indicated that if the Commission's pleasure is to entertain this approach of requiring the owner to state that the facility is in compliance and require an RF Engineer, he has some proposed language that would simplify that process; however, Chair Losoff indicated that

he thinks the Commission wants to refer this input back to staff to come up with some specifics. He has made notes of the Commission's recommendations to summarize them before we finish, and hopefully, we will collect them all.

Commissioner Barcus complimented Commissioner Klein on his ruler. The Commissioner then stated that he rounded up to 100 ft. Realizing that 48 ft. was the recommendation of the FCC, he figured that doubling that would be like quadruple, because of the way radio frequency emissions deteriorate with distance, one over the distance squared for the audience who want the formula, so that is how he came up with 100 ft. for macro towers on city-owned property that are adjacent to residential areas. It doesn't have anything to do with rights-of-way or private property tower negotiations, and it doesn't have anything to do with micro towers, like the one we saw on the field trip at the Church of the Red Rocks. This is for macro towers, and if you put up a tower and it falls down, it is required to fall on the property where the lease occurs, so if you have a 120 ft. tower, it has to be 120 ft. from the property line. If you have a 30 ft. tower, which would be a micro tower, it would need to be more than 30 ft. from the property line. He is recommending the 100 ft. for the large towers that have proliferated, but it is his understanding that the industry is going to be moving to these micro towers, so they can compete in that radio frequency space with other kinds of options for television and telephone, etc.

Commissioner Mayer asked what if the towers are outdated in 10 years and new technology comes in; what will happen then? Is there a requirement that they have to improve the tower with new technology or is it going to be the same technology forever? We are living in a fast-paced world and technology moves very fast too, so there could be some less-impacting towers available in 10 years or five years, whatever, so is there going to be a requirement that they have to update them? Robert Pickels Jr. stated that he doesn't think so, that is up to industry to determine what is the most economically viable for them. The Chair added, unless we put in an expiration date, and Commissioner Mayer then asked if they decide to put new technology on the tower, are they required to get another building permit? Robert Pickels Jr. explained that it depends on if there has been a substantial change to . . . The Commissioner interrupted to say that he is talking about substantial, and Robert Pickels Jr. continued to say that substantial change is a term defined by the Telecommunications Act, so there is a clear definition as to what a substantial change is.. Karen Osburn then explained that one of the things that is built into the hierarchy in the ordinance as well as the Master Plan are the City's preferences for the types of infrastructure that come into the City, and one of the things that gives preference basically is if someone who currently owns any of the non-concealed towers is willing to come in to add or expand it and make it concealed, then they would get an expedited approval process, so we have tried to build incentives in for some of those things to take place, but as far as addressing what may occur with technology in the future, the ordinance does not contemplate that.

Commissioner Brandt indicated that following up on what Commissioner Barcus was saying about the macro and micro towers, if it was all towers and you had the 100 ft. restriction, that would immediately take off any of the properties zoned Residential. Commissioner Barcus confirmed that Commissioner Brandt is referring to the list of city-owned properties recommended by staff and the consultant, and Commissioner Brandt then stated that if it was all towers, not just macro towers, then the sites he said would be excluded and we wouldn't need to consider those. Commissioner Brandt asked if it is correct that just macro towers are being proposed for the 100 ft., and Commissioner Barcus stated that the micro towers are the ones like at the Church of the Red Rocks and everything we were looking at would have to be above the tree line to function for the cell companies and at least 30 ft. to 50 ft. high.

Karen Osburn offered the fact that in the existing ordinance for macro towers or macro facilities, the ordinance already requires or the new ordinance is proposed to require that a minimum distance of 100 ft. or 100% of the tower height must be met away from a residential property, so if it was a 50 ft. macro tower, it would need to be 50 ft. away – that is the setback requirement, so if it is an 80 ft. macro tower, it is 80 ft., and that is already in the language. Commissioner Barcus

stated that he was proposing to make it a flat 100 ft., on any city-owned property, from the property line of a residential property.

Commissioner Brandt stated that he was looking at a way to streamline the recommendation, but what he is hearing is that we can't just put it in a tidy pile; we still need to restrict the recommendation or eliminate the sites he mentioned earlier.

Commissioner Cohen referenced Commissioner Mayer's comment about technology changing in 10 years and added that we are developing an interesting satellite technology, so if in 10 years, we don't need the towers, at whose cost would they come down, and does that need to be built into the contracts or legislation that we have with the tower companies for whatever reason a tower has to come down. He doesn't think it is fair to the citizens of the City to pay for it. Karen Osburn pointed out that there is language in the ordinance that requires that once it is not being utilized, it is the responsibility of the owner to remove it within a certain timeframe. It is Abandonment and Removal in Section 1708 that says within 180 days of cessation of use. The Commissioner commented that six months is a long time, but he is comfortable with Commissioner Barcus' 100 ft.

Commissioner Klein said that going back to the City of Brentwood ordinance requiring the report by the RF Engineer, we say that it has to comply with the FCC requirements, and this says the RF Report must include the actual frequency and power levels in Watts/ERP for all existing and proposed antennas at the site, so is that something we want in addition to saying they have to comply with the FCC requirements or is that sufficient or should we say the report must include the actual frequency and power levels?

Chair Losoff indicated that saying we are in compliance is sufficient. If you get too specific and things change later, we could be held accountable, so he would keep it more flexible. Commissioner Klein then referenced HB2365 and that the City Attorney is not sure they should require them to certify that they comply with the FCC emission requirements, but if he reads staff's papers correctly, under "Applicability - Collocation of Small Wireless Facilities", it says, "This outlines the standard the City is required to follow when allowing a collocation within the City right-of-way", so does the new House Bill only apply to collocations on an existing facility? Robert Pickels Jr. stated no, it applies to new poles going in the City right-of-way as well. The Commissioner then asked why it is titled "Collocation of Small Wireless Facilities" and Robert Pickels Jr. explained there are separate sections within the legislation that address each.

Commissioner Klein then asked, if a cell tower owner wants to go in the right-of-way and put up a new tower and we don't require them to certify that they comply with the FCC emissions, how do we have any guarantee that the tower complies? Robert Pickels Jr. explained that he is not suggesting that we don't still require that initial piece – the statement of the owner that they are in compliance. We still should include that. Commissioner Klein then stated that we definitely should require retesting, because if all we require is that they submit a statement at the beginning that the tower is going to comply, look at what happened when the City of San Francisco tested their towers, and since the public is so concerned about emissions, we definitely should require retesting at some point in time – now what that point in time is, two years like San Francisco may be too much, but at five years or 10 years at the most, we definitely should require retesting.

Commissioner Klein added that in the Land Development Code draft, there are a couple of things. After the application section, you have Section 1705, General Development and Design Standards, and in 1705.01E, it talks about the radio frequency emissions that you have to comply with and H. talks about sounds, and then the same thing for 1705.02, but in 1705.03, there is no paragraph about the RF emissions like there is in the ones he just mentioned, so is that an omission or is there some reason that was omitted in that section? Vice Chair Levin asked for the title and page of the section that didn't include the language and Audree Juhlin stated it is on page 22. Commissioner indicated that it is titled, "Concealed Towers, DAS, Small Cell or Nodes located in or outside of Right of Way", and there is no RF paragraph. There is a sound

paragraph, but no RF, and then in 1705.04, there is an RF paragraph, but no sound paragraph, so is there a reason for that or is that an omission? Robert Pickels Jr. stated that was not an intentional omission.

Chair Losoff noted that this is a work in progress, and Commissioner Klein then asked if we require retesting, do we need to put something in the Code to say that if you retest and it doesn't comply with the FCC requirements on radio frequency emissions, you have to stop using tower. Robert Pickels Jr. stated that there would have to be some process, but he doesn't know if immediate cessation would be appropriate, but some action toward revocation of a permit, which would lead to that would be appropriate; we would have to come up with the framework for that. Vice Chair Levin then asked if the retesting and revocation would be added into the ordinance, and the City Attorney stated that it would have to be.

Chair Losoff pointed out that he didn't want the Commission to micromanage this; we are agreeing that we want to retest. Commissioner Klein referenced pages 30 and 31, Section 1705.06 that talks about AM/FM/TV/DTV Broadcasting Facilities, and in paragraph H., it says that the radio frequency emissions shall comply . . . "The applicant shall certify that any and all new services shall cause no harmful interference to the existing City of Sedona public safety Communications equipment." The Commissioner then stated that he likes that paragraph, but it may not be a valid paragraph. In his research, there is a case called "In the matter of Singular Wireless", which dealt with a County of Anne Arundel ordinance. It is a different case than we were talking about, and in that ordinance, they required certification that there would be no harm to existing public safety, and that was preempted. The FCC held that was preempted by federal law, but he doesn't think we should take it out. He is just pointing out that he doesn't know that it would hold water if it were ever challenged.

Chair Losoff then summarized that one recommendation is to have an expiration date on whatever we approve, and Vice Chair Levin added, on the Conditional Use Permits. The Chair then stated that another is to delete several sites as recommended by Commissioner Brandt, and we can get more specific as we get into the final proposals. We also are recommending 100 ft. from residential facilities with some applications that were described, and also to consider radio frequency emissions, noise issues and retesting on both of them. We also talked about some of the issues related to the Land Development Code and to make sure that as we continue our process to revise the Land Development Code, we incorporate whatever modifications or changes we adopt here.

Vice Chair Levin pointed out that there was also the issue of color that Commissioner Brandt brought up around earth tones, and Commissioner Brandt added, fake trees with a 40 ft. max.

Chair Losoff asked staff how the Commission should proceed; he suspects we have a couple of options. One would be to continue it again and come back with what the Commission just fed back to you in proper form or we could recess for you to work on it, but it is very complicated. Robert Pickels Jr. stated that is not going to happen; it will take a considerable amount of time to go through this. The Chair then stated that we could just ask to continue this meeting and staff will come back with the recommendations we discussed incorporated. He doesn't see any point of contention; we have a pretty strong consensus on all of these issues.

Commissioner Cohen stated that he would still like to sunset the permits and Chair Losoff pointed out that we said have expiration dates, and we had some little difference of opinion on the retesting, but there is a strong feeling here to put that in the ordinance.

Audree Juhlin suggested coming back on September 5th; and the Chair requested a recommendation from the Commission to continue this meeting until . . ., Robert Pickels Jr. interrupted to indicate that we do need to go farther out than September 5th, probably the next available meeting after that, so Audree Juhlin stated that staff will have to look at the schedule. Robert Pickels Jr. then suggested continuing the public hearing to a date to be determined by the

Chair and Director . . . Vice Chair Levin interrupted to say that she thought it had to be done to a date certain; however, Robert Pickels Jr. stated that it does not for a continuation.

Commissioner Barcus stated that it seems that we are all agreed on all of these recommended changes, and if so, and we are making a recommendation to the City Council to move forward with those changes and the rest of the body of work that has been done, do these fall in the editorial change level or are they substantive? Robert Pickels Jr. stated that these are very substantive changes that we are talking about that will have to come back to the Commission.

Chair Losoff stated that he also would like to keep it simple and move it forward, but there are enough substantial changes that it might be good for all of us to see it in writing, and he would hope without a lot of debate or discussion, because we have covered it all, and a lot of research was done, so unless there is anything surprising, it should be a fairly easy read of the new changes. He doesn't disagree, but he thinks enough of the Commissioners would want to see it come back.

Commissioner Klein asked if we are being duplicative if we say we are going to retest and the permit will expire; is that one and the same or is there a difference between the two? Vice Chair Levin stated that there is a difference. Chair Losoff then indicated that will have to be sorted out from a legal point-of-view and an ordinance point-of-view.

Vice Chair Levin asked the Chair if he wanted a motion to continue this public hearing to a date to be determined, and the Chair stated yes.

***MOTION: Vice Chair Levin so moved. Commissioner Klein seconded the motion. VOTE: Motion carried seven (7) for and zero (0) opposed.***

Chair Losoff thanked staff and the Commissioners and stated that the Commission took into account the input from the public, and as Karen Osburn mentioned, after the Commission makes its recommendations, it will go to the City Council, at which point there will be more opportunity for public hearings. There is nothing to say you can't write/petition the governor or Federal Government on some of these issues, because that is where it all sits – fortunately or unfortunately. Again, thank you all for your concerns and comments; it helped the Commission make some of its decisions.

**5. FUTURE MEETING DATES AND AGENDA ITEMS**

**a. Thursday, August 10, 2017; 3:30 pm (Work Session/Site Visit)**
**b. Tuesday, August 15, 2017; 3:30 pm (Public Hearing)**
**c. Thursday, August 31, 2017; 3:30 pm (Work Session)**
**d. Tuesday, September 5, 2017; 5:30 pm (Public Hearing)**

Audree Juhlin stated that the next meeting is Thursday, August 10th at 3:30 p.m. for a site visit related to the Community Plan and Zone Change applications. Tuesday, August 15th is the public hearing for the same Community Plan Amendments and Zone Changes, so we are starting that meeting at 3:30 p.m. in Council Chambers. Commissioner Brandt indicated that he is not available for either of those meetings.

Commissioner Barcus noted that he had already notified Audree that he is unavailable on August 10th, but he will be back on August 15th. Audree Juhlin asked if everyone else would be available for the site visit on the 10th, and the other Commissions indicated yes. She also added that the meeting on the 15th will probably be a very long meeting.

Audree then stated that there will be a work session on Thursday, August 31st for a tentative Zone Change request, but we are not sure if that will be moving forward. Tuesday, September 5th is a public hearing at 5:30 p.m. on another zoning issue and a follow-up on the Land Development Code update process.

**6. EXECUTIVE SESSION**

**If an Executive Session is necessary, it will be held in the Vultee Conference Room at 106 Roadrunner Drive. Upon a public majority vote of the members constituting a quorum, the Planning and Zoning Commission may hold an Executive Session that is not open to the public for the following purposes:**

**a. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).**

**b. Return to open session. Discussion/possible action on executive session items.**

*No Executive Session was held.*

**7. ADJOURNMENT**

Chair Losoff called for adjournment at 6:58 p.m., without objection.

I certify that the above is a true and correct summary of the meeting of the Planning & Zoning Commission held on August 1, 2017.

_____ _____

Donna A. S. Puckett, *Administrative Assistant* Date