

# CITY OF DUNDEE

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**Meeting:** Planning Commission Meeting

**Location:** Meeting was held virtually via Zoom.  
City Council Meeting Chambers  
620 S.W. 5<sup>th</sup> Street  
Dundee, Oregon 97115

**Date:** June 17, 2020

**Time:** 7:00 p.m.

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## **I. Meeting called to order.**

Chairman Howland called the meeting to order. Commissioners present, which consisted of quorum, were Shannon Howland, Maria Hinoveanu, David Hinson, Doug Pugsley, Eugene Gilden, James Kay, and Ed Carlisle. City Administrator Rob Daykin, City Attorney Tim Ramis, and Interim City Planner Jim Jacks were also present.

Members of the audience included Mike Connors and Tammy Hamilton, representing the applicant; Evan Karp and Ryan Harris of Wine Country Legacy Partners, Keeley O'Brien, Susan Baird, Rebecca Minifie, Matt Frey, Saj Jivanjee, Holly Altimus, and Frank Gregory.

## **II. Introduction of New Commissioner James Kay**

Commissioner Kay introduced himself and stated why he had chosen to join the Planning Commission.

## **III. Public Comment**

Saj Jivanjee spoke and stated that his biggest issue was that most cities have urban design guidelines that are very specific about protecting other development so that any investors would have certainty about the future vision that all have "bought into". He asked that the Commissioners get down to the fine grain of urban design and have guidelines that everyone has bought into, because without them there will be a lot of conflict on subjective matter. He also felt there were a lot of generalities in the City's current development code.

## **VI. Approval of Minutes from Previous Meeting(s)**

It was moved and seconded to approve the February 19, 2020 minutes. Motion carries, unanimously.

## **V. Public Hearing**

### **CU/SDR 20-06 – Acom Communications (on behalf of Verizon Wireless)**

Chairman Howland read the statements in to record and read the list of persons having requested to testify during the public hearing.

## 1. Declarations of Ex-Parte, Bias, or Conflict of Interest

Chairman Howland questioned the Commissioners about ex-parte, bias, or conflict of interest.

Commissioner Carlisle declared a conflict of interest, stating that his engineering firm provided services for the cell tower; therefore, he stated he was not going to participate in the questioning, deliberation, or voting.

Chairman Howland declared professional relationships with Ryan Harris and Keeley O'Brien but stated that it would not cause a bias. She also declared ex-parte contact with a citizen who emailed her to express support of the proposal.

Commission Pugsley noted that he was a City Councilor when the discussions and contract negotiations with Verizon took place regarding placement of the cell tower on the fire department property; however, he stated that this prior knowledge would not affect his objectivity. His deliberations, actions, and decisions would be based only on the application at hand, testimony on record, and criteria in the development code. Commissioner Pugsley then declared ex-parte contact in that he had driven by the subject property and also stated that he had driven by the monopine cell tower on College Street in Newberg to gain a real-life perspective.

Commissioner Hinson declared ex-parte contact in that he had also driven past the subject property, driven past the monopine in Newberg, and had also driven to McMinnville to survey various towers.

Commissioner Gilden and Commissioner Hinoveanu declared ex-parte contact in that they were familiar with the subject property.

Chairman Howland then questioned if there were any objections to jurisdiction. Saj Jivanjee stated that he objected to the Planning Commission and City Council deciding on the application since the subject property was owned by the City. He felt that this was a conflict of interest and that the process was contaminated due to the direct benefit to the City if the tower was approved.

Chairman Howland asked the City Attorney to comment on the objection to jurisdiction that was noted. City Attorney Tim Ramis suggested that each planning commissioner state for the record whether the city's ownership of the property would make a difference to them with regard to their ability to make a decision based on the criteria. He felt this would adequately address the issue.

Chairman Howland stated that it did not have an impact on her decision. Commissioner Gilden stated that the city's ownership would not influence his decision. Commissioner Kay also stated that he did not believe the city's ownership would influence his ability to make a sound and fair decision. Commissioner Pugsley stated that the city ownership of the property would influence his deliberations or ability to make a decision. Commissioner Hinoveanu felt the city's ownership would not influence her decision. Commissioner Hinson stated that the city ownership of the property would not affect his ability to make a decision.

There were no further objections to jurisdiction.

## 2. Staff Report

Interim Planner Jim Jacks introduced himself, read the legal statements into record, and then provided a summary of the staff report with the Commissioners and audience.

Commissioner Hinoveanu asked, regarding the distance requirement from residences, whether any of the empty lots on Maple Street were planned to be residences. Planner Jacks responded that all of the land was zoned Light Industrial zone and clarified that the distance requirement was specific to residentially zoned land.

There were no additional questions of the Commission to staff, so the Chairman opened the floor to the applicant.

## 3. Public Testimony – Applicant

Mike Connors, an attorney with Hathaway Larson Law Firm, representing Verizon, introduced himself. He noted that the application was for an 80-foot monopine stealth cell tower. He explained that it was called a stealth tower because it was designed to mimic a tree. The actual height of the antenna tower was 74-feet, but they needed an additional 6-feet so that there could be a natural crown to the tree. He commented on the previous applications that Verizon had brought forward, but withdrew, and stated that the design for the monopine tower was in response to those previous meetings and comments received. Mr. Connors explained that the antenna height was the 74-feet because that was what they needed to achieve the objectives necessary. He went on to state that another thing different from previous applications for the tower was that the generator had been removed, so the noise barrier was no longer necessary. Therefore, they were hoping the condition for the noise barrier could be removed.

Mr. Connors then gave some background to the Commission on why the site was chosen. He stated that it was both a coverage and capacity facility. The target area was downtown Dundee and Highway 99W; the coverage was currently fair to moderate, but the issue with moderate was inadequate for in-building use. Regarding capacity, there were three towers in adjoining cities, but they were dealing with capacity issues that were causing dropped calls and slow response. The proposed tower at the fire station was strategically placed to help serve as a relay tower between all points to help increase capacity. He noted that there was an AT&T tower not located not too far away, but it was inadequate to achieve the goals and pointed the Commission to documents in their packet showing the issues with that location.

Mr. Connors stated that the reason for the conditional use is because the 45-foot building height would be exceeded. Then, he directed the Commission's attention to section 17.202.040(B) of the development code it states that certain kind of structures are not subject to the building height restrictions and one of those items is a tower, so he did not believe that the 45-foot height limitation applied. However, he did note that they had applied for the Conditional Use and believed they met the criteria. They did apply for the minimum height needed, which was a 74-foot antenna. To put the tower in perspective, he noted that the surrounding towers ranged in height from 154-feet to 170-feet. Mr. Connors then reviewed the criteria and their belief that they met it.

Mr. Connors concluded by addressing some of the testimony comments received from the public. Regarding noise, they had taken away the generator to reduce the impact. Regarding health concerns, he noted the FCC ruling prohibiting jurisdictions from factoring emissions into their

decisions. Mr. Connors pointed out the inclusion of the emissions report in the packet and noted that the tower proposed by Verizon would only meet 1% of the FCC's maximum allowed emission standards. Regarding the aesthetics, he felt that they had minimized the impacts to the extent possible. As pertaining to location, they had looked at co-location options, but none of the existing towers would work. Regarding property values, Oregon State Law requires specific code provisions- especially with regard to wireless facilities- that would make it an applicable issue. There also needed to be tangible evidence that property value would be impacted. Neither of those things was present. Finally, regarding the distance requirement from residential zoned property, they had verified it was met.

Commissioner Gilden asked Mr. Connors to clarify the improvement in coverage and capacity, specifically how far the range of coverage was currently and what the expected future coverage would be. Mr. Connors responded that it would increase coverage for the entire town and directed attention to the maps in the packet showing existing coverage and future coverage. Commissioner Gilden asked what the definition of "poor coverage" would mean to a user. Mr. Connors responded that it meant there was very unreliable coverage both inside and outside. There was additional conversation regarding percentages of dropped calls, which ended with Mr. Connors stating that the trigger point for Verizon exploring the option of a new tower was the result of customer complaints.

Commissioner Hinoveanu asked about the forecasted "near future" and how long a period that may be. Mr. Connors responded that he believed there were issues now. Commissioner Hinoveanu asked why a 4G antenna was being proposed as 5G was beginning to be constructed. Mr. Connors responded that his understanding was that 5G was a slower rollout that was mostly focused and limited to denser metropolitan areas.

No further applicant testimony; no additional proponents.

#### **4. Public Testimony – Opponents**

Chairman Howland opened the floor to opponent testimony.

Evan Karp read his statement into record, which was included in the packet as a late edition received via email June 17 at 4:36pm. Included in the letter was a request to leave the record open.

Ryan Harris spoke next and stated that there was a reason that cell towers were not allowed in the central business district, which he felt the fire station property effectively was zoned as even though the official zoning was Public (P). He noted that this was the third time Verizon had come forward with their application, but that previous attempts were withdrawn. He expressed concern regarding a potential decrease in property values. He also gave a reminder to the Commission that it was "their duty to oppose this kind of thing", as it was the Commission's duty to look out for the long-term planning of the city. He stated a belief that once the tower went up Verizon would be able to add additional equipment as there was an incentive to do so. Mr. Harris concluded by stating that he felt the monopine would dominate the city skyline and that the aesthetics of that was enough for the Commission to deny the application.

Keeley O'Brien asked the Commission to focus on the aesthetic consideration of DMC 17.4.04. He asked that the Commissioners think of the residents on the hill whose view will be of the monopine, and of the tourists visiting who may be off-put by the visual impact. He concluded by requesting that the Commission deny the application.

Matt Frey spoke, highlighting a few points in his written testimony received via email June 9 at 2:13pm. He stated concern for property values, he also noted that although the adjoining property was not zoned residential there were several residences close by. Mr. Frey expressed disappointment that the notice area had not been expanded. He concluded by asking the Planning Commission to not take the application lightly given its permanence.

Saj Jivanjee asked how far the tower would be from the Fire Department building, as he was worried about the possibility of a seismic event and the tower falling on the building. He stated that he did not mind cell towers but did not feel that one should be placed next to a fire station. He also questioned the height and setbacks, believing that the setbacks should be increased given the height of the tower. He requested that the Planning Commission look at the proposal from a life and safety viewpoint. Mr. Jivanjee stated that he wished to hear from Tualatin Valley Fire Department about whether the tower would be safe during a seismic event. He concluded by asking what Dundee was all about—whether the city wanted a huge structure dominating the skyline.

Rebecca Minifie spoke and stated that the applicant's entire search ring was in the Central Business District zone and that it was evident from the many opponents that the citizens did not want the cell tower in the middle of downtown. She noted that four former Planning Commissioners had written to oppose the cell tower and that over 40 people had written in opposition of the proposal. She felt that the city would not gain anything from the placement of the cell tower, but that it would lose the potential for a beautiful central business district, lose property value, the sense of trust in the community, and feeling of safety. She expressed concern regarding the proximity of the tower to her house. She requested that the city change the notification policies for public hearings, as the radius of 100-feet was not enough. Due to the drastic nature of the application she felt that every business owner and citizen deserved to know what was happening. Ms. Minifie concluded by reading a statement from the city's homepage and asking if the proposal fit the statement; she asked that the Commissioners deny the request.

Chairman Howland noted that the next person scheduled to testify was Wendy Stec, however she had emailed to state she was unable to attend. Chairman Howland noted Ms. Stec's opposition for the record.

Holly Altimus spoke and voiced her opposition. She felt her concerns were the same as the persons before her, and expressed bewilderment that health was not able to be a consideration as she was also worried about those effects. She hoped that more clarification could be given to emission standards. She concluded by restating that she did not want the tower to be built.

Susan Baird introduced herself and asked the Planning Commission to deny the application mainly based on the aesthetics. She expressed an exception to the idea that aesthetics is simply an impact to be mitigated, and that DMC 17.404.030 states that aesthetics can be used as criteria to make a decision. She stated that people in the city had been working to beautify the city and that placing a cell tower seemed counter to that effort. Ms. Baird also noted that the public zone provided for public and semi-public uses "when such used do not unreasonably disrupt or alter other areas of the community". She felt that the tower would certainly disrupt the surrounding community and businesses, especially when one of the tenants of the CBD zone is to "encourage a walkable and attractive downtown". Accordingly, she felt the tower should be denied because it failed to meet the purpose of uses allowed in the public zone. Ms. Baird also expressed concern with the noise that the tower would generate and how it would affect the personnel working at the fire station. She

concluded by asking that the Commission listen to the pleas of the citizens that have submitted comments and deny the proposal.

The hearing was paused for a five-minute break.

## **5. Proponent Rebuttal**

Mike Connors spoke and addressed some of the comments. Regarding the compliance with the 300-foot requirement, he stated that the code applies specifically to residentially zoned property and not right-of-way. Concerning impacts to property values, he restated that in order for that to be applicable to the decision making process it would need to be specifically listed in the code as criteria, and that it is not in Dundee's code. He addressed a comment about Dundee increasing its building height limitation and noted that the code already allows for that under the conditional use process. Mr. Connors reiterated that his interpretation of the development code was that cell towers were exempt from the height limitation but noted that they had filed for the conditional use anyway. He also noted that this was not a variance request.

Mr. Connors acknowledged testimony about cell towers not being allowed in the CBD zone, but noted that this was not correct, and that the CBD zone did allow them through a conditional use process. He recognized the comment about seismic concerns and stated that they would be required to comply with the structural code and go through the building permit process. Mr. Connors responded to Ms. Altimus question about emissions guidelines and directed her to the submittal that was included in the planning packet.

Mr. Connors stated that they had done their best to mitigate the aesthetic impacts by proposing the stealth design. He felt that Verizon had done all they could to work with the city and the citizens based on previous hearings, as well as contract negotiations with the city. Finally, he believed that the city had taken into consideration the fire department employees as they were negotiating the contract proposal. He concluded by stating that there had been a request to keep the record open and expressed a desire to submit a closing argument if the Commission chose to do so.

Chairman Howland asked Tammy Hamilton of Acom Communication if she had anything she wanted to add. Ms. Hamilton responded that she did not have anything to add.

Chairman Howland acknowledged the request for continuance and asked City Attorney Tim Ramis to let the Planning Commission know their options. She also requested that he speak to process and where the Commission should halt the hearing process.

City Attorney Ramis responded that the continuance could take place in writing on an agreed upon schedule, with the applicant having the final rebuttal. He stated the second option was to continue the hearing to a date certain. With respect to final comment from the staff, if this would be the last evening of oral testimony then the staff could give their recommendation. However, if the hearing would be continued to a date certain then staff could give their recommendation at that time.

Chairman Howland asked the Commissioners to express their preference on the continuance. A discussion regarding the 120-day rule and expiration date took place. There was a request of the applicant to extend the deadline. Mr. Connors stated that he could verbally agree to a two-week

extension, but that anything longer would require consent of the applicant. He stated that he would get in touch with them and respond with an answer when available.

It was the unanimous consent of the Commissioners to continue to a date certain.

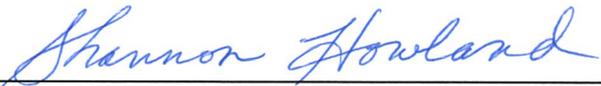
It was **moved** and seconded to continue the hearing to July 1, 2020 at 7:00pm for the purpose of allowing new information and additional public testimony. Motion passes, unanimously.

**VI. Planning Issues from Commission Members.**

CA Daykin reviewed the Commissioners meeting schedule with them and gained acknowledgement that there would be another meeting on the regularly scheduled meeting date of July 15.

**VII. Adjournment**

The meeting was adjourned.

  
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Shannon Howland, Chairman

ATTEST:

  
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Melody Osborne, Planning Secretary