

# 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:** July 1, 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 Gildea, James Kay, and Ed Carlisle. Interim City Planner Jim Jacks was also present. Attorney Tim Ramis joined later.

Members of the audience included Mike Connors and Tammy Hamilton, representing the applicant; Susan Baird, Camille Kern, Rebecca Minifie, and Evan Karp of Wine Country Legacy Partners were also in attendance.

## **II. Public Comment**

There was no public comment.

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

It was moved and seconded to approve the June 17, 2020 minutes. Motion carries, unanimously.

## **V. Public Hearing**

### **CU/SDR 20-06 – Acom Communications (on behalf of Verizon Wireless) continued from 6-17-20**

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 reminded the Commission that he had declared a conflict of interest previously and would continue to abstain from the hearing.

There were no 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 July 1, 2020 staff report with the Commissioners and audience.

There were no questions of the Commission to staff.

## **3. Public Testimony – Applicant**

Chairman Howland asked the applicant if he had any new information to submit, or if he would be comfortable saving his comments for proponent rebuttal.

Mike Connors stated that they had submitted a letter dated June 29 with attachments that responded to some of the comments made prior to and during the June 17 hearing. He confirmed with the Chairman that they would be able to save most comments to rebuttal, but that there was some new information to highlight. Mr. Connors noted an updated noise study that was submitted. He stated that the previous report included some ambiguous language that they had wanted clarified; also, he noted a noise barrier would be part of the design and they wanted that included in the report. He stated that the new noise study demonstrated that, with the elimination of the generator and the addition of the noise barrier, the noise level would comply with daytime and nighttime standards. The second piece of information had to do with the distance from residentially zoned property. He stated that they had a surveyor come out and, out of an abundance of caution, he measured the distance from the tower to the closest residentially zoned property and it was 328-feet.

Chairman Howland clarified that the information Mr. Connors had just mentioned were noted in the June 29 rebuttal letter. Mr. Connors affirmed.

There were no additional requests of proponents to testify.

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

Chairman Howland opened the floor to opponent testimony.

Susan Baird asked the Commissioners to deny the application based on the following reasons—1) aesthetics considerations, 2) the proposal violates the purpose statement of the public zone, 3) the noise would violate the daytime and nighttime requirements, 4) citizen involvement, and the large outcry of the public requesting the denial.

Camille Kern stated that she had just moved to Dundee and chose Dundee due to health considerations having to do with cell towers. They had purposely chosen a home that would be at least a mile from any cell tower. She was also worried about property values and aesthetic considerations as well, however, her main concern had to do with health and safety of the people living and working nearby. She concluded by noting various studies on wireless radiation and possible health impacts.

Rebecca Minifie testified next. She thanked the Commissioners for their diligence in reading all the material, and stated objection to Verizon having sent an attorney to represent them. She stated a

belief that he was sent to dictate and intimidate the Commission into a belief of what Dundee's Development Code meant and requested that the Commission look past the "bullying" tactics of Verizon. Ms. Minifie noted that the Commission also needed to consider the testimony of the citizens and business owners who were against the tower.

Saj Jivanjee had requested to testify, however he did not appear to have logged in to the meeting. After many requests to have him identify himself, the Chairman moved on to the next person.

Evan Karp with Wine Country Legacy Partners spoke and thanked the Commission for continuing the hearing so that additional people could comment. He stated that he concurred with Ms. Baird's comments regarding taking aesthetic considerations into account. He reminded the Commission that they were "fully empowered" to deny based on aesthetic considerations. Next, he noted agreement with Mr. Jivanjee's concerns of seismic risk and setbacks. He felt the applicant had not proven that the tower would withstand a seismic event; and they think setbacks should be increased given the height of the tower. Mr. Karp stated that he believed there was a conflict of interest regarding the city reviewing the application; disappointment with the city following the minimum legal standards for notice; shock at the city failing to notice Verizon that their application was incomplete; and, that the lease between Verizon and the City was signed prior to Verizon submitting their application. He closed by stating that they strongly opposed the cell tower.

## **5. Proponent Rebuttal**

Mike Connors responded to the testimony heard that evening. He stated that the Dundee Development code defines a wireless communications facility/tower as a public use, and the public zone is predominately intended for public and institutional uses. The code also allows the tower as a special use. Most of the other zones require a conditional use regardless of the height, here it is only required because of its height. He stated that the purpose statement is meant as a goal, and respectfully disagreed there was anything in the purpose statement that would make it approval criteria.

Mr. Connors also talked about property values, and reiterated reasons given by case law that this could not be used as a criterion. Regarding the noise study, the study is very clear that they comply with the daytime and nighttime criteria (53 decibels). With respect to aesthetics, the code does not state that it needs to meet any specific aesthetic, the code states that measures need to be taken to mitigate and/or minimize impact. He believed that, due to the failure of anyone to offer any reasons that they fail to meet the aesthetics, the code dictated that they satisfy the criteria. He noted that the cell tower was not the only utility use that would have aesthetic impact. Based on the definition being used, the argument could be made that none of the utility poles would comply. There were already utility uses there that had impacts, and while the tower would have an impact, they would be minimized by the mitigation they are taking. He believed that Verizon had gone above and beyond to minimize the impact.

He addressed emissions and noted once again that Federal Law prohibited this as criteria. He noted that they would have to comply with building codes to ensure that the structure would have integrity to withstand a seismic event. Mr. Connors addressed Mr. Karp's statement regarding conflict of interest and the City having entered into a lease with Verizon. He stated that cities throughout the state and country have development on property they own and frequently enter into leases and go through similar processes. There is code that dictates the process, and no "behind

the scenes” shenanigans are taking place simply because a city is following code to process an application.

Regarding the statewide goal concerning citizen input, he noted that when people are opposed to something they show up, however people who are for an application tend to not be vocal.

He responded to the comment about him trying to intimidate the Commission into a belief and stated that he hoped the Commission did not feel that way. He was involved because applications like this often trigger legal issues and it was helpful to have him involved. He also noted that he wasn't trying to push the commission into a belief, and that city staff agreed that the application met the criteria and had offered reasons for that.

He concluded by stating that they hoped the Commission would evaluate the code and criteria and approve the proposal.

Chairman Howland asked whether the Commission had any clarifying questions. Commissioner Hinson asked if there would be a light on the tower. Both Mr. Connors and Ms. Hamilton responded no. Commissioner Hinson asked if there would be microwaves on the antenna. Mr. Connors stated that there would be some microwave antennas, but that there would not be 5G. This would only be 3G and 4G. Commissioner Hinson asked if Verizon had considered any other sites in town. Mr. Connors responded that they had reviewed the AT&T tower and that it had not met the criteria. There were other properties in the search ring, but they were all in the CBD zone. Commissioner Hinson asked about Mr. Jivanjee contacting Verizon to offer his property. Mr. Connors responded that they had looked at the property, but it was both outside the search ring and much closer to residential property.

Chairman Howland moved on to closing legal statements. Planner Jacks reminded the Commission that they needed to base their decision on the criteria, and then talked a bit about process once a decision had been made. He concluded by stating that the staff recommendation was to approve the conditional use and site design request. He stated that the staff report included criteria for the approval, however if the Planning Commission chose to deny the application they would need to provide statements so that the findings could be changed to explain why the criteria was not met.

Chairman Howland asked if the Commissioners had any clarifying questions of staff. Commissioner Hinoveanu asked a question about process, which Planner Jacks answered. Chairman Howland then closed the public hearing.

## **6. Deliberation**

Chairman Howland began deliberation by stating that she agreed to certain aspects that were brought up in testimony and the application—that they were unable to deliberate emissions, health, or property value. However, she wanted to open up discussion regarding aesthetics and whether this criteria had been met.

Commissioner Pugsley stated that he felt they did not meet the aesthetic criteria. For the proposed location, he felt that the mitigation efforts did not work. Chairman Howland stated that she had not seen a monopine in person, so she was not sure whether it was met, however the photos submitted as part of the application made it difficult to see what the monopine would truly look like. Further,

she felt that it was not up to the Commission to figure out how to make the tower work or not work, but the aesthetics did seem to be a concern.

Commissioner Gilden stated that he agreed with Commissioner Pugsley, and that though aesthetics were largely a subjective point of view, he felt that the extraordinary weight of public testimony fell on the side of the tower being un-aesthetic.

Commissioner Kay also stated agreement with the view that the tower did not meet the aesthetic criteria, and that the tower would not beautify the downtown. He felt that, even though the tower was needed, the proposed location was not the best location for Dundee. Commissioner Pugsley responded that he was not using the necessity for coverage as one of his criteria for denial, but he found it interesting that there was no citizen or business owner testimony stating that the tower was necessary. Commissioner Kay replied that he did consulting, and in his job function he was aware of a drop in calls and conference calls. Additionally, with COVID-19 more people are at home using cell service, so he could see the need; however, he did not think it needed to be in the middle of downtown. Chairman Howland did state that she believed there was written testimony both stating a need and stating that there wasn't a need. Planner Jacks also noted a letter that was received claiming a need. Commissioner Gilden stated that, since there was no address on the letter, he didn't know if the tower would help that person because they didn't know whether the person lived in the zone that would be improved. Commissioner Pugsley reiterated that he did not plan to use coverage as part of his reasoning and apologized for sidetracking the Commission.

Commissioner Hinoveanu also stated that she did not believe the aesthetic issue had been mitigated. There was brief discussion regarding Mr. Connor's statement about the city going through the process of developing the fire station and what the meaning of the statement had been.

Commissioner Hinson stated that taking in account the position of the tower and the bulk of the monopine the tower would stand out.

Chairman Howland brought up the criteria for placing a wireless tower for discussion during deliberation and read the criteria into record. She felt that the application had addressed most of the criteria, but that she felt "visual analysis and impact" had not been sufficiently addressed. Commissioner Pugsley agreed, and stated that he believed they had failed in their mitigation for that particular site.

Planner Jacks stated that it appeared the Commission was leading toward a motion to deny and that for a proper finding the "why" needed to be addressed. The Commission needed to explain why the applicant's proposal did not meet the aesthetics issue. Commissioner Gilden stated that this was a very difficult thing to do and did not believe that the Commission needed to give explanation since the criteria was subjective. Just as Mr. Connors had stated that "he *believed* Verizon met", the Planning Commission "*believed*" differently. Additionally, he felt the mass of the tower was grossly out of scale with regard to everything around it. There was much testimony about the mitigation done for the part of the tower on the ground that no one would be able to see, but that there wasn't anything done for the part people would. Planner Jacks asked, if the tree portion was the issue, what about the tree was not aesthetic. Commissioner Gilden replied that whether the tower would look like a tree was in the eye of the beholder and that there was no guarantee that Verizon would try to make it look like a tree. Commissioner Pugsley stated that yes, Verizon is trying to make it look like a tree and while it may work in an area with other trees this was an area where no other

trees were nearby. He also believed that the overwhelming testimony from the public that this did not meet the aesthetic criteria could be used as a reason too. Commissioner Hinoveanu agreed with Commissioner Pugsley's statement, that the monopine did not match the surrounding area.

Chairman Howland stated that she did not believe it was the Planning Commission's duty to find a solution, however she wondered if the Commissioners would want to consider adding on conditions of approval that might allow the tower to meet the criteria. Planner Jacks asked the Commission to expand on the aesthetics issue by separating location, as it seemed location was being substituted for aesthetics. In other words, if the tower were in a different location would it meet the aesthetics criteria. Commissioner Gilden responded that this was difficult to do since there was no way to see what the hypothetical surroundings looked like. He also believed that if conditions were put on the proposal, they may be preventing Verizon from crafting a solution.

It was moved to deny the application based on criteria 17.404.030 - the location of the bulk does not mitigate sufficiently to meet the aesthetic consideration. Seconded.

Chairman Howland asked if the motion should be amended to include criteria 17.203.170(c).3. Commissioner Pugsley said he would be happy to add it but did not feel it was necessary.

Motion carries unanimously with Commissioner Carlisle abstaining.

Chairman Howland asked Attorney Ramis to weigh in on anything the Commission may have missed. Attorney Ramis responded that he believed they had done everything needed.

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

Chairman Gilden wondered if it would be appropriate to examine the process by which leases on public property are entered into and consider not simply entering them if significant Planning Commission review is going to be needed. He questioned whether the plan may be vetted by the Commission first. Attorney Ramis responded that it was necessary to receive the property owner's approval before entering an application for the use. There was not a process by which you could feel out whether it might work ahead of time. This means there are two legally separate processes that needed to happen. Planner Jacks also noted that if there was a process that took place prior to the lease and the Commission pronounces an opinion an opponent could claim bias later due to the ex-parte contact prior to the formal application.

Commissioner Hinoveanu questioned an aesthetic requirement that may have been removed approximately 12 years prior and wondered if it shouldn't be revisited. Commissioner Pugsley responded that she may be referring to the Victorian Overlay zone and erred on the side of belief that the code should not drive any particular aesthetic. Attorney Ramis also noted that state law had changed a lot over the past decade and that cities were no longer allowed to apply discretionary aesthetic judgements. There was some continued discussion regarding the history of the Victorian Overlay and its repeal. Chairman Howland suggested that the Commission look through the code and thought a work session to look at design standards as a group would be a good idea. There was a consensus that it would be a good idea to review. Commissioner Hinoveanu also suggested that it may be good to review some of the items missing from the code, such as property value considerations. Commissioner Hinson also stated that he would like to review private streets as well. Chairman Howland noted that the Planning Commission had been dealing with some housekeeping issues with the code and believed the private street was part of that work. Attorney Ramis suggested that the Commission

look at the evolution of design in downtown Portland, as they have a design advisory process. Chairman Hinoveanu requested that the Commission look at property impacts and asked the attorney if this would be possible. Attorney Ramis stated that he believed there was information that could be procured.

## VII. Adjournment

The meeting was adjourned.



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Shannon Howland, Chairman

ATTEST:



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Melody Osborne, Planning Secretary