

**CITY COUNCIL MEETING
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August 4, 2020**

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City of Dundee
City Council Meeting Minutes
August 4, 2020

Call to Order

Mayor David Russ called the meeting to order at 7:01 P.M. over ZOOM teleconferencing meeting platform.

Council and Staff Attendance

Attendance Via ZOOM: Mayor David Russ; Councilors Tim Weaver, Storr Nelson, Jeannette Adlong, Kristen Svicarovich, Ted Crawford and Patrick Kelly. Staff Attendance via Zoom: Rob Daykin, City Administrator; Tim Ramis, City Attorney; Jim Jacks, Interim City Planner; Greg Reid, City Engineer; Chuck Simpson, Public Works Superintendent; Melody Osborne, Administrative Assistant; and Melissa Lemen, Administrative Assistant.

Public Attendance

Attendance Via ZOOM: Mike Connors, Attorney at Law, Hathaway Larson, LLP, 1335 NW Lovejoy, Suite 950, Portland, OR 97209; Tammy Hamilton, Acom Consulting; Fred Gregory; Rebecca Minifie; Barb Jones; Camille Bahar; Raj Bahar; Jamie Davis; Todd Dallof; as well as four unidentifiable callers who listened to the meeting.

Agenda Changes

An Executive Session was added to the meeting agenda: In accordance with ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Following the Executive Session, City Council will reconvene to discuss a business item regarding the interim fire chief position.

Public Comment

None.

Public Hearing: Appeal of Planning Commission Decision on Verizon Wireless Cell Tower Application CU/SDR 20-06

Mayor Russ opened the public hearing at 7:02 P.M.

Call for Declaration of Conflict, Bias, or Ex-Parte contact by any members of this body:

Councilor Crawford declared that there was some brief discussion at the Tourism Committee meeting on July 22, 2020, about potentially composing a letter in opposition of the cell tower. He stated that he explained to the Committee that the topic could not be discussed and that if the Tourism Committee members individually wanted to submit letters they could do that, though it would not be discussed by the Committee as a whole.

Councilor Svicarovich declared that she has driven past the subject property as well as the monopine pole located in Newberg. She stated that she is also a member of several Facebook community groups where she has read social media posts. She stated that her deliberation and decision tonight will be based on materials, testimony and the Development Code.

Councilor Weaver declared that one nonresident citizen contacted him though he stated that he referred that person to the meeting tonight where City Council would consider from testimony and evidence submitted.

Mayor Russ stated for the record that Rebecca Minifie did begin providing some brief testimony at the July 7, 2020 City Council meeting during regular public comment; all City Council members were present. It was also noted that all City Council members have driven past the subject property given its location.

There were no objections to a Councilor participating in this hearing or objections to the jurisdiction of the City Council to hold this hearing.

Staff Report: Interim City Planner Jim Jacks read the legal statements into record, and then provided a summary of the staff report with the City Council and audience. Planner Jacks reviewed that the conclusion of the Staff Report is that the criteria are met and Staff are still recommending that the cell tower be approved; the issue tonight is the Planning Commission denial based on aesthetics, visibility and building mass. Planner Jacks reviewed City Council's options tonight in detail. He explained that the issues of aesthetics, visibility and building mass are subjective and that different parties can come to different conclusions about subjective criteria. Planner Jacks reiterated that the Staff recommends that the City Council not affirm the Planning Commission decision and instead approve the cell tower application with the conditions of approval set forth in the Staff Report. Planner Jacks stated that all of the material in the packet for tonight's meeting is entered into the record.

C. Crawford inquired about whether a proposal by Verizon to present a different cell tower design would be discussed at the meeting tonight. Planner Jacks explained that this would be up to the City Council; the information is contained in the packet of materials. Planner Jacks next briefly reviewed the three potential options provided for the cell tower by the applicant, as well as offered clarification that City Council would also have the ability to request and/or include other appropriate conditions of approval if they so desired.

Applicant Presentation: Mike Connors, Attorney at Law, Hathaway Larson, LLP, 1335 NW Lovejoy, Suite 950, Portland, OR 97209, introduced himself as well as Tammy Hamilton, Acom Consulting, who prepared and submitted the application and is present and available to answer questions.

Connors provided some background information on the site before he addressed the appeal issue before Council. He discussed that this is a proposal for a wireless communications facility at the Dundee Fire Station. Connors reviewed that earlier this year Council authorized the execution of a ground lease for this site pending approval through the land use application process. He discussed that Verizon identified the need for a new facility to address both a significant gap in capacity and a significant gap in coverage. Connors explained that a gap in coverage means that there are certain areas within the City where there are moderate to weak signals that will result in break-up in coverage while using a device, dropped calls, inability to make calls or receive a signal. He explained that capacity addresses the volume of calls and data. He discussed that increasingly over the years our reliance on wireless facilities has increased exponentially; that increase in volume has significantly increased the volume of data that needs to be transferred over the system in order for it to be able to work. Connors explained that in this case there is a significant gap in capacity in the sense that the system is overloaded. There are three towers that are located nearby in Newberg, Dayton and Lafayette that are over capacity; this tower is intended in part to offload some of that capacity. He explained that, similar to a coverage gap, if there's an overload in capacity there are similar results including dropped calls, inability to get a signal, and there may be interruption in internet service on a device being used for something other than a call, etc. Connors discussed that especially in today's world, and with the COVID-19 pandemic situation, people are more and more relying on these kinds of devices working from

home and places outside of their normal office where there may be a land line. He discussed that there are also important considerations for things like the need to have reliable 911 access, especially since for many people their cell phone is their exclusive phone line that they have; it is important that both coverage and capacity have reliable coverage on a consistent basis.

Connors discussed that one thing they introduced late is that they did a quick text campaign to Verizon users in the Dundee area zip code yesterday. The results showed 42 people who responded to the text asking whether they felt there was a need for improved wireless coverage in the Dundee area, and noted that this issue was before the City Council. The results showed 42 in favor and 3 said no. Connors reviewed that these results show that there is some flavor for the fact that there are people in the community that do want to improve their coverage. He explained that part of the reason that they do the text campaign is for those people who oppose these kinds of facilities, they are going to make sure that they are in attendance at a hearing and their voice be heard; a lot of people who support it assume that it will be handled by he and Verizon and they don't necessarily take the time to show up for a hearing like this and so they like to complete a text campaign.

Connors reviewed that once Verizon determined there was a need for a facility here, the next step was selecting a site. He explained that the first part of the site selection process is their radio frequency (RF) engineers determine based on the need where the tower needs to be located to address the coverage and/or capacity need. Connors discussed that their search ring was concentrated in the downtown area because it is best for it to be in an area of denser population where there would be the highest amount of usage. In the selected location there is both a higher density and also, it's in close proximity to Highway 99 where the largest concentration of the use is among those two areas. He also discussed the importance of proper spacing as it relates to a capacity issue; proper spacing for the other towers that this particular tower is going to be supporting. Connors explained that the RF engineers try to locate that sweet spot that provides enough separation so that it can avoid both of those issues. He discussed that once it was determined where the search ring was, the first thing that Verizon does is to look at alternatives to building a new tower. He explained that they looked first at some collocation options and unfortunately here the closest existing tower is an AT&T tower approximately 1.3 miles from the site which is too far outside of the search ring and not able to meet the objectives of the site. Connors explained that next they looked at existing buildings and utility poles to see if there was an opportunity to collocate on one of them. He reviewed that there are not very many building at the height needed; the utilities similarly are from 20-60 feet and are below what is needed though additionally are not structurally able to handle Verizon equipment on the poles nor the ground equipment required. Connors explained that this lead to Verizon selecting the Dundee Fire Station site for a few reasons including the fact that it's located well within the search ring, it's surrounded by the railroad tracks, light industrial and commercial zoning and has some buffers from the residential zone which he stated that they typically try to stay away from and the City code encourages them to do so. He explained that the particular zone for the fire station is the public (P)-zone; wireless communication facilities and towers are allowed as a special use in this zone. He also pointed out that this is one of the few zones where a tower is allowed as a special use whereas almost all of the other zones require there be a conditional use. Connors informed that they do have a conditional use application that's part of the package here because, although towers are allowed in the P-zone as a special use, and although City code specifically exempts towers and similar unoccupied structures from the height limits, it does require that a tower that exceeds the 45 foot height limit of the base zone be required to go through a conditional use process. He explained that another consideration is that they have a willing property owner; the City was willing to lease Verizon a portion of the property. Connors pointed out that they thought this was a good site because they would be able to locate the tower behind the Dundee Fire Station at least screen a portion of the tower from certain viewpoints. He explained that

moving forward with their application, they took a couple of opportunities to go through the Planning Commission process in an attempt to try to have a proposal that they could support. He reviewed that their first proposal was for a 95 foot monopole tower (which is not a stealth designed to look like a tree nor a more visually intrusive lattice tower), a slender pole with the antennas located at the top. He explained that during the public process for that original application proposal they received a lot of push back and concern from the public and the Planning Commission, so they went back to the drawing board and came back with a new proposal for a 74 foot monopole (the height of the antenna tip), which was determined to still achieve the coverage and capacity objectives but at the minimum height. Connors discussed the feedback they received during that Planning Commission process including that it was too utilitarian as well as an issue related to the noise because there was an emergency generator (typical for their facilities) and there was some concern that was going to create some noise impacts. He reviewed that next they came back and moved forward with the proposal that was before the Planning Commission, a tower with a 74 foot antenna tip height and designed as a stealth monopole, which was a proposal they thought would be responsive to the requests and concerns that were heard at the prior hearing. He pointed out that the emergency generator was also removed to take the noise issue off the table. Connors explained that at the Planning Commission they found that Verizon met basically all of the approval criteria except determined that they did not satisfy Section 17.404.030(A1). He explained that this is part of the conditional use general approval criteria, which basically requires a finding that the site is adequate based on a variety of factors including mass, visibility and aesthetics. Connors reviewed that the Planning Commission determined, after hearing all of the testimony, that they failed to satisfy that criteria because they felt that the tower was not appropriate based on its mass, visibility and aesthetics. Discussion ensued. Connors explained that the reason that they filed the appeal this time instead of going back to the Planning Commission is because they have really tried all of the mitigation options that are available. He noted that Planning Commission didn't provide a lot of feedback or questions about potential pole options and they didn't realize that was how they felt until deliberation took place. Connors discussed that they have taken their best effort to try to address the issues at the Planning Commission and have come before the City Council to lay out some of the options which they've identified that can be selected from to determine which of the design options they believe is most appropriate to fit in in this particular location. He explained that the scope of the appeal in front of Council is really limited to that one issue of satisfying that conditional use criteria based on the mass, visibility and aesthetics, which they believe that it does. Connors explained that Staff had concluded that they satisfied the criteria before the Planning Commission. He also referenced additional information contained in the Staff Report and provided by Planner Jacks which recommends that City Council approve the application and that they comply with the criteria. Connors stated that the reason they believe that they do comply with the criteria and that Council should support their appeal and approve the application begins with the zone. He reviewed that it's a public use zone, a special use, and one of the few zones where a conditional use is not required for all towers. He also pointed out his belief that this is really the crux of the flaw in the Planning Commissions' reasoning and essentially the opponents as well who have submitted their letters, the belief that the particular property in question is not an appropriate property for this kind of a use. Connors discussed that they presume that Council does not necessary feel that there is no way to design a tower to satisfy the criteria because if that is how Council felt the City would not have authorized executing a lease with Verizon for this; but it's also a position that they believe is inconsistent with the Code. He reiterated that the Code specifically allows these kind of facilities, exempts them from the typical height restriction of 45 feet, and allows for those that exceed 45 feet to be permitted as a conditional use. Connors explained that if the Planning Commission and the opponents in the community have expressed concern are basically saying that there is no way to design this in a way for this tall of a tower to be appropriate on this location they are really saying that the Code shouldn't permit this but it does. Discussion ensued. He also discussed that if the conditional use

criteria itself is reviewed, one must look beyond only subsection A-1 in isolation because subsection A-2 and subsection B also talk about visual impacts; those codes discuss the need to reasonable mitigate or minimize the visual impacts. Connors emphasized that it is impossible to construct these kinds of facilities in a way that will have no visual impact. Discussion ensued and Connors pointed out that the real question under City Code is have they reasonably minimized or mitigated the visual impacts, which they believe they have and done so to the greatest extent that they can and still be able to meet the objectives for the site. He reviewed that they are proposing a minimum height tower in this case, which the Code does not require them to do. He offered clarification that for the monopine design, the overall structure is 80 feet; the antenna tip is at 74 feet with the crown of the tree placed on top of it. Connors discussed that if this is compared with some of the towers in the surrounding area, such as the ones that they are looking to offload through this capacity purpose in Dayton, Newberg or Lafayette, those towers range from 154 feet to 170 feet in height. He discussed their belief that they have minimized the visual impact to the maximum extent possible by going with the minimum height that can achieve their objectives, and a height that is significantly shorter than other towers in the area.

Connors discussed the stealth design and noted that a lot of jurisdictions like to see that design; this design can be more expensive to build and more difficult to maintain though Verizon was willing to do that in this case in the hopes that this would address some of the concerns that they heard during the public process. He referenced photos provided in the appeal packet which show some actual photographs of actual monopine facilities, including one in Newberg. He also explained that they have provided options which they felt would be available for Council to choose over a standard monopine if they desire. Connors described the first option, a more slender design of the monopine. He explained that the monopine that they originally proposed is a little bit fuller because it's intended to look more like a realistic tree; following comments received from the Planning Commission and community members during that hearing process talk about the mass and the visual impacts, they are now offering the more slender monopine design option that's available, as shown in the example from Newberg. Connors reviewed that the other option they have proposed is the monopole, which is basically that more slender pole variation with the antennas at the top. He explained that this option provides the least mass and the least visual impact.

In addition to the design of the tower, Connors explained that there are other mitigation measures that were proposed. He discussed that placing the tower behind the fire station to try to provide a little bit of a buffer though they understand this does not obscure the tower altogether given its height, though the photos do show the visual buffer at least for the lower portion of the tower. Connors discussed that they also agreed to place some robust landscape buffering here which is a significant amount more (perhaps almost double) of what is required by the Code, and to provide a little bit of a visual buffer at the base of the tower where equipment is located. He pointed out that they also made sure that the tower was well in excess of the setback requirements as well. Discussion ensued. Connors discussed that based on all of those elements as part of their proposal, they believe that they truly have mitigated the impacts to the greatest extent that they think is possible. He pointed out that when looking at the visual impacts, these also have to be looked at within the context of the surrounding landscape and the visual impacts of today; there are a number of utility poles and lines which can really be seen in some of the photos provided. He encouraged Council to review the photos provided. Connors also shared his belief that similar to the utility poles, once the tower is in place for awhile it will blend in more with the landscape and won't be as significant of an issue. Discussion ensued and Connors discussed that they feel they have done basically everything they possibly can to mitigate concerns, and pointed out that there has to be some means to be able to approve a wireless communications tower in this location; if they have done everything possible and somebody can't suggest what else they would need to do and still be able to meet their objectives, then he suggested that what he thinks they are

really saying is that no tower could ever be allowed on this property, and that there is no way to design or propose this in a way that would satisfy the criteria which they don't believe is consistent with the Code. Discussion ensued and Connors pointed out that what he thinks that a lot of those who are opposed to the project, and what was seen at the Planning Commission, was not so much that there was something in the Code that says they can't place the tower, but is really just more of a personal opinion of it not being the right site for this. Connors stated that this is a Code rule based driven decision; if the evidence is applied to the rules in this case, they believe that they do comply.

Connors discussed the Federal Telecommunications Act which provides some local jurisdictions some discretion, though there are limits to the discretion. He explained that one of those limits are that a local jurisdiction cannot decide an application in a way that has the effect of prohibiting wireless service in the City. He discussed that if Council were to adopt the Planning Commissions' rationale, he feels that it would violate the Federal Telecommunications Act and preclude being able to satisfy the criteria in any way. Connors reviewed that comments were received about alternative sites outside of the City and he explained why those alternative sites don't work because they don't achieve the objectives which is the whole purpose of building the tower. He asked Council to review the evidence, look at the Code, and appreciate and hopefully believe that they have done everything they can to mitigate the visual impacts while also providing some options for Council to choose from. He reviewed that the Planning Commission determined that they complied with all of the other criteria and the Staff believes they have already complied with all of the criteria; Council has a basis to approve the project and he asked that they would do that.

Mayor Russ inquired about capacity and connectivity and asked about when they start to have capacity issues if that affects connectivity to which Connors affirmed. He also inquired about whether the proposed tower signal would reach to the river; Dundee will be expanding that direction and residents in that area would also need coverage. Though Connors indicated it is his belief that it will, though noted he is not the RF engineer. M. Russ inquired about whether Verizon ever considered the water reservoir at the top of the hill which could also be projected off of the backside. Connors discussed that this was considered though referenced their application and noted that the search ring area is located right in the town proper; anytime they have gone back to their RF engineer to discuss other alternatives, including the water reservoir which is well outside of that search ring area, they have basically said that would not address or achieve the objectives for the site.

Councilor Svicarovich asked for verification that the monopine pole in Newberg is the slender version of this type of tower which Connors affirmed. C. Svicarovich also inquired about the height of the monopine tower in Newberg. Connors indicated that the tower is somewhere between 154-170 foot range, though he cannot recall specifically. C. Svicarovich asked for confirmation that this would mean that roughly speaking, the tower in Newberg would be twice the height of the one being proposed in the City of Dundee to which Connors affirmed. C. Svicarovich asked for confirmation, with regard to the utility poles, that they are indeed 60 feet in height – above ground height of the transmission poles that are on 99W and that doesn't include the embedment depth of the 60 foot pole. Connors confirmed that this is correct and apologized that he misspoke that the range of the height for the utility poles is anywhere from 20-60 feet, though the ones referenced are the larger poles. C. Svicarovich discussed that the larger poles in the downtown are the transmission lines and recalled several discussions at Council; she stated that it is her belief that these poles may never be able to be undergrounded and are pretty much a permanent fixture in the downtown. She pointed out that the proposed tower would then be approximately 20 feet above the existing transmission lines which Connors also confirmed.

Councilor Adlong inquired about whether Verizon had any other kinds of designs that were a stealth design beside a pine tree design. She stated that the pine trees proposed, both the thin version and the original version, basically don't exist in this part of Oregon which makes it stand out as something different. She supported that if it looked more similar to a Douglas fir tree it would blend in better. Connors discussed that Verizon doesn't manufacture the stealth trees themselves; independent companies make them, and he doesn't know the reason why there are a limited range of options which are available. He explained that monopine is the typical kind of option that they use in this particular geographic area and is what the same type as the tower located in the City of Newberg. He pointed out that this is the type of stealth tree design which they think is the best and most appropriate in this area. Additional discussion ensued. C. Adlong inquired about the additional landscaping they've proposed to add at the base as a screen. She discussed that there was some kind of evergreen landscaping included and asked if there is an intent to make those large trees eventually or remain shorter on the ground to screen the fencing. Connors confirmed that the landscaping would be provided to predominantly screen the ground area; there is no intent to have the trees grow over time where they would provide more of a screen for the tower itself.

Councilor Crawford referenced the diagram shown on page 70, a non-tree version of the tower, he inquired about whether a 5G antenna ray is included between two others. Connors explained that the tower is a 4G facility only with no 5G associated with this tower.

Councilor Weave referenced statements about the back-up generator for the tower being removed and inquired about what will happen when the power goes out. Connors explained that removing the generator was a decision that Verizon made because the issue that was created with the emergency generator was that it made it difficult for them to be able to comply with the noise standards. He discussed that although the generator would only be infrequently or periodically turned on, mostly just to test it and keep it running, the noise standards are written such that you have to satisfy those standards at the highest noise level that would be possible. He explained that they tried a number of different designs to try to attenuate the noise and it just was proving too difficult and was a controversial aspect of the project and so a decision was made to remove that in order to avoid having to deal with some sort of noise variance or people having another issue that they would have concern with. C. Weaver pointed out that the fire station is an emergency services building and does have a back-up generator as well. Connors explained that part of the issue is that when Verizon has an emergency generator, they only have the equipment cabinet and have limited capability to buffer that noise; more buffering can be provided with a building.

Councilor Nelson asked what the nighttime lighting emissions would be for the tower facility. Connors explained that there is no light on the facility; the lighting is just in the equipment area itself and is downward facing so that the lighting doesn't protrude out to neighboring properties. There is no aviation related lighting for this kind of facility, in part because of its shorter height.

Public Testimony

Rebecca Minifie, 809 SE Elm Street, introduced herself and stated that by her account 86 residents of Dundee wrote in opposition letters, including the major business owners in the central business district. She referenced the text message that Verizon sent to their customers this week asking if they would approve of a wireless facility at the fire station, and voiced concern for this "misleading" text with no mention of the actual cell tower or proposed height. Minifie asked Council to take into consideration the difference in effort that it takes to respond "yes" to a text versus taking the time to write a letter to the City. Discussion ensued and Minifie pointed out that the cell tower opponents took the time to write in about a permanent change to the aesthetics to the City. Minifie stated that Verizon also neglected to provide the names and addresses for each

of the citizens who responded. She pointed out that if opponents were required to provide this information to the City it should be required of Verizon as well and asked that Council not allow a double standard. Minifie stated that the cell tower will affect each and every citizen that lives in Dundee, not only Verizon customers. She stated that the cell tower would be a huge and permanent mar on the downtown we have worked to beautify for years. She shared with Council that this proposal and the cell tower meetings have been very stressful for her and her family this summer. She discussed the importance of this decision to she and her family and will impact whether her family stays in the City or moves; Minifie stated that she can't in good conscience raise her two children three blocks from a cell tower. She voiced her opinion that this decision will affect Dundee families and businesses, and the beauty of Dundee for decades to come and asked the Council to uphold the Planning Commissions' decision.

Fred Gregory, introduced himself and his wife, Viola, and indicated that they have lived in Dundee for two years. He explained that Dundee appealed to them because of its charm and rural setting. Gregory discussed that they live on the hill and stated that the proposed cell tower would be an eye sore that would never go away from their perspective. He explained that they are Verizon customers and did not receive the discussed text. He stated that had their family received the text Verizon would have received 3 more no votes. He stated that they very much oppose the proposed cell tower, not from a legal perspective, as he stated that he is sure that they have met all of what is legally required, but from a human perspective of what's right and what's good for the community as well as what's appealing to those who love Dundee. Gregory stated that just because it's legal, doesn't necessarily mean that it's right. He asked Council to reject this appeal for the cell tower in the middle of Dundee which he stated will forever change its complexion.

Keeley O'Brien had previously requested to provide public testimony at the hearing but was not found to be in attendance.

Applicant Rebuttal of Testimony Presented

Connors recognized the text campaign versus opposition form letter and discussed that while he feels it's important to understand that there are going to be people on both sides of the issue, it's not a popularity contest or a matter of determining where more people stand on this issue. He discussed that it's not really a matter of what's popular or taking a poll to find out who wants what, it's really a matter of does the applicant satisfy the approval criteria that City Council has established in the Code. He discussed that there must be some infrastructure to provide service to the increasing number of those using available wireless devices; a system must be built to accommodate all of the traffic that we all need. With regard to design options, Connors encouraged Council to express their concerns and desires, though feel they have provided all of the options that they thought would mitigate the visual impacts.

Connors asked that if Council does decide to approve the application, he would request an opportunity to be able to draft some findings for their consideration. He explained that it's fairly common in Oregon as an applicant and noted that there are a number of different parties who have indicated that, if necessary, they would appeal any kind of approval beyond the City.

Closing Legal Announcements

City Attorney Ramis stated that his only comment is to agree with the theme that Mayor Russ touched on initially, which is that this is a decision based upon previously adopted criteria. He stated that the responsibility of the Council is to apply the criteria; it is not an opportunity to rewrite the Code. C. Atty Ramis explained that if Council does not like the way that the Code is written or think that there should be different provisions with respect to a cell tower regulation, that needs to be in a separate legislative proceeding and your not able to rewrite the Code in this proceeding. Brief additional discussion ensued.

M. Russ inquired about whether C. Atty Ramis has found that the applicant has misstated the Dundee Municipal Code or the Federal Telecommunications Act in any of their statements to which C. Atty Ramis indicated that he has not.

Final Comments from Staff and Recommendations

Planner Jacks discussed that as indicated in the Staff Report to the City Council for this evening, Staff recommends that the application for the conditional use be approved, and that the application for the site development be approved with a couple of conditions included in the Staff Report addressing minor issues.

C. Svicarovich reviewed that the applicant mentioned wanting to be a part of writing any findings related to the decision that would be made tonight. She inquired about whether that is considered a common practice and something that Planner Jacks would be comfortable with and something that Council should consider. C. Atty Ramis explained that if the applicant had not suggested it, he would be suggesting it. He explained that it seems to him that because the burden of defending the case (if there were a LUBA appeal) falls on the shoulders of the applicant, it makes the most sense to have the applicant bear the labor in drafting those findings. C. Atty Ramis explained that from his perspective it's typical practice and he would be comfortable with it.

Mayor Russ closed the public hearing at 8:18 P.M.

Council Deliberation

C. Svicarovich provided a point of clarification regarding C. Adlong's previous comment about the monopine. She pointed out that pine trees are native to the Willamette Valley and discussed that there is a Willamette Valley ponderosa pine that is actually located in several places in the Willamette Valley, including a conservation restoration effort to have those trees come back into the valley. C. Svicarovich discussed that there is actually a large stand of Willamette Valley ponderosa pines off of Hwy 18 near the Willamette Valley Vineyard. She pointed out that pine trees are native to the valley and noted that the size of the pine tree that's being proposed is actually in kind to the pine trees that are native to the valley; the trees that grow in the valley typically reach a height of up to 110 feet. C. Svicarovich discussed that pine trees have always been in the valley, though many have been removed as part of farming practices, but there are several stands across the valley.

M. Russ stated that he's heard these arguments before and that his opinion is that if a cell tower must be placed, just a regular tower tends to blend into the sky more than a metal tree. He discussed that he personally opposes making decisions outside of the law in order to gain notoriety; discussion ensued. M. Russ pointed out that the applicant has been very cooperative and seems very committed to provide the cell tower not only in the best way they can provide it to us, but just to do it. He discussed that the downtown area uncharacteristically has few trees so there is not a lot to blend with. He stated his belief that in the end, placing the tower behind the fire station which provides some height, and as the downtown fills in the cell tower will disappear into the landscape. M. Russ stated that considering the laws as they stand and the Dundee Municipal Code which exempts towers, he feels this indicates an intent of the writers that they wanted to make opportunity available for people in the City. M. Russ suggested Council give consideration to the mitigation options provided by the applicant. He also expressed concern about the increased demand for cellular service, a critical utility, and expressed his belief that people on the west side of town are having some issues with their cell service. He acknowledged the importance of wireless communication for students and tourists as well, and voiced support that if the law allows for the towers, it needs to be supported.

C. Adlong discussed that what is at hand is a conditional use that has different items which need addressed. She explained that one of the uses is a subjective decision having to do with the mitigation and aesthetics of the town. Discussion ensued. C. Adlong indicated her belief that the Planning Commission understood what they were doing when they made their decision and voiced her respect of that decision. She shared her belief that whatever decision the City Council takes tonight will be within the law.

C. Nelson voiced that he agrees with C. Adlong. He explained that if the City laws and codes didn't think that these subjective qualities of aesthetics (including building mass and visibility) were important, they wouldn't have included them in the Code. He stated his belief that the vast amount of opposition received regarding this is a clear indication that this is a very important part of that Code. He discussed that though the energetic last minute group of opposition caught the applicant off guard with their denial, he believe it does affirm that the aesthetics, the building mass and the visibility is a very important criteria and it is subjective but allows Council to make these decisions.

C. Weaver voiced that he agrees with everyone tonight. He discussed that it appears to him that Verizon has made some significant strides forward in trying to make compromise on this tower; detailed review of some of their mitigation efforts provided. C. Weaver voiced concern about wireless services being compromised and expressed concern about the generator situation if the power goes out. He discussed the importance of communication for EMS as well the importance of communication for everyone as the future continues to move in this direction. He pointed out that the cell tower issue is inevitable and noted that he wouldn't be surprised to see this issue surface again in the City because of added use. He voiced appreciation of the testimony provided tonight. C. Weaver voiced support of the cell tower location at the fire station, at an emergency services center location.

C. Crawford voiced support that if a communication array is to be placed in Dundee, next to the fire station would be one of the most obvious places. He discussed that around the County at police departments and fire stations there are communication rays sticking 40-50 feet above every one; and at the McMinnville Fire Station there is a tower likely 120 feet tall right in the middle of town. C. Crawford pointed out that this is a relatively small communication array and discussed his belief that it will not stick out given all of the visual clutter that is around the fire station now. He also explained that he is a big advocate for beautifying Dundee and is the Chairman of the Tourism Committee. He voiced support that placing the tower behind the fire station will not be a major detraction to what Dundee looks like. He voiced that he is not in favor of the pine tree variety and would support the slender tower and making the smallest footprint possible.

C. Kelly discussed that he has been listening on and off and is still on the road at present. He noted that he was impressed with all of the turnout from the citizens and he was glad to hear them vocalize their concerns with the tower. He voiced that though the size of the proposed tower isn't as tall as some, he does not agree with the placement of it in the center of the City.

C. Nelson discussed that the City has spent a lot of time, effort and money to underground utilities when and were it is feasible. Though he voiced that he realizes the PGE poles and Verizon will not ever be underground, he pointed out his belief that the aesthetics, the building mass and the visibility aren't in line with what the City wants and needs there. C. Nelson suggested that perhaps Verizon's design criteria are in excess of what would be allowed ultimately on this site; maybe two smaller towers in different locations could suffice. He expressed appreciation for the efforts Verizon has made in lowering the height and the additional screen, though voiced his opinion that this isn't the site for a large structure like this.

C. Svicarovich voiced her belief that the Code pretty well outlines in the wireless communication facility section that collocation is preferred over two locations. Discussion ensued and she pointed out that Verizon would be providing additional space on that pole for someone else to collocate, which she can't help but think is also requiring them to have a taller pole. Though she voiced that she can appreciate the concept of two poles, she firmly believes the Code is dictating that it shall be one pole and there needs to be space for collocation on that pole which is making that pole even taller.

C. Adlong voiced her disappointment that Verizon is not present tonight and try to provide a bit more though she did voice appreciation of the mitigation efforts. She voiced that her hope is that Verizon try to reciprocate by trying to use more technology to get the pole even lower.

M. Russ discussed that in the City code there is an exemption from height restrictions for the towers. He pointed out that this clearly implies that the code writers intended to allow towers of some sort. Discussion ensued.

C. Crawford inquired about whether it is known when the height exemption was put into the Code for cell towers. C.A. Daykin discussed that the exemption to the building height standards for projections predated the regulation that was developed in 2007 for wireless facilities. Discussion ensued and C. Crawford discussed his belief that a cell tower cannot be blocked solely for aesthetic reasons included in the Telecommunications Act. C. Atty Ramis explained that the issue is the effect; if the effect of an aesthetic standard is to prevent service in the area, though simply having it in the Code is not itself prohibitive. C. Atty Ramis informed that an application can be denied based on aesthetics; if the effect, however, is to prevent service in the area then there would be a problem under the Federal Act.

A motion was made and seconded to not affirm the Planning Commission condition and approve the application with the conditions of approval set forth in the Staff Report to be modified by the applicant in preparation for defense. A detailed discussion ensued about the type of pole favored by Council. **The motion** was amended to include the monopole design with a matte gray finish diminish reflection. C. Nelson inquired about why Council didn't see more public support for the proposed cell tower. M. Russ shared that from his personal perspective, people that are positive or in favor of something aren't inclined to voice their support as much someone in opposition might. M. Russ pointed out that public opinion isn't the important factor in this situation, the law is the important factor. C. Nelson asked for confirmation that M. Russ is saying that the part of the law that includes subjective aesthetics, building mass and visibility isn't as important as other parts of the law which M. Russ voiced he does not agree with. **The motion** passed 4:3 with M. Russ, C. Weaver, C. Svicarovich and C. Crawford voting in favor; C. Adlong, C. Nelson and C. Kelly voting nay.

C. Atty Ramis suggested the Mayor choose a specific date in the future for a final adoption for the findings and the final order and ask the applicant to prepare findings for Council's consideration. C.A. Daykin explained that the City is running up against a 120-day modified rule and requested that the applicant also provide the City additional time to complete the process which Atty Connors agreed to do. He suggested choosing a date to consider adoption of the written decision and based on that available date select what kind of extension would accommodate that. C.A. Daykin indicated that the next City Council meeting is August 18, 2020.

C. Weaver noted that his preference would have been to hold the public hearing in-person in a public place rather than via Zoom teleconferenced meeting, and voiced appreciation of Staff for organizing tonight's City Council meeting and voiced appreciation of those in attendance. M. Russ thanked those in attendance.

Consent Agenda

A **motion** was made and seconded to approve Consent Agenda Item 5.1 City Council Minutes, July 21, 2020 and Item 5.2 Financial Report Ending June 30, 2020. **The motion** passed unanimously.

Old Business

H&H Paving Change Order No. 1

C.A. Daykin informed that the paving contractor began work on Red Hills Drive this week. C.E. Reid detailed a couple of issues that occurred. He explained that there was a private storm drainpipe which hadn't been identified and was buried in the brush which will be redirected. C.E. Reid also discussed that at the drainage crossing Red Hills Road across at the bottom where it meets Ninth Street there was a thrust block for the water system; the block was impeding the pipe in such a manner that the pipe crossing Red Hills Drive at Ninth Street wasn't able to be lowered as low as he'd hoped. He explained that this affected where he was able to place the ditch inlet to accept the drainage coming down Red Hills Drive. Discussion ensued. Though there have been some drainage changes in that location he is hopeful that the swale idea will still make it a little bit further around the corner and do a good job; there may be a little bypass on that ditch inlet which would go into the Ninth Street ditch likely during very extreme rain events. C.E. Reid informed that no soft spots were found on Red Hills Drive and there was also no base rock. He pointed out that they are now ahead 4 inches of base rock in the bid to regrade (mostly for regrading down low), but the material is so hard and dense that he's recommending only using the 4 inches over the native material that's there, especially given budget constraints due to other projects. It was noted that this would still provide a street which will last a long time. C.E. Reid discussed the change order and explained that it is for repairing asphalt areas outside of the Red Hills roadwork area and primarily just where there are soft spots which are starting to alligator and fall apart, and to accomplish the repair work before the areas are slurry sealed.

C. Nelson pointed out that the change order costs seem appropriate compared to the small nature and size of a lot of the repairs. C.E. Reid discussed that one of the big repairs is located on Dogwood Drive. He explained that when the area was paved approximately 4 years ago there were a couple of driveways on the uphill side where the asphalt was applied a little too high; there is now a little drainage that is crossing over Dogwood Drive and impacting some of the downhill driveways. C.E. Reid discussed that part of the change order costs include repairing those areas in order to achieve a better cross slope and hopefully keep drainage from crossing Dogwood Drive and impacting the downhill residences. **A motion** was made and seconded to authorize Change Order No.1 to H&H Paving for asphalt street repairs estimated at \$14,450.81. **The motion** passed unanimously.

C.E. Reid discussed that the lighting materials for the highway streetlight project have been delayed until mid-August for the poles as well as some of the other parts of the materials. He explained that NorthStar has apologized for the delay and indicated the delay is as a result of the manufacturer. C.E. Reid discussed that all of the electrical meter bases have been installed and the undergrounding completed to get the power over to the lighting system now. He explained that the base across from Second Street at the driveway to Arco is a new base sticking up out of the ground; he asked them to raise it because he's planning for the future sidewalk and planter area which will be present after ODOT completes work in that area next year. C.E. Reid also explained that the second meter base at Tenth Street will be installed to tie in that side of town. He noted that presently they are just waiting for materials from the manufacturer. C.E. Reid discussed that the new bases have already been installed at the fire station and confirmed that all of the other bases that were in question will work. Additional brief discussion ensued. C.E. Reid

pointed out that the new inflated price of the banner arms seems extreme; NorthStar has indicated that banner arms purchased from other manufacturers will look very nice on the poles and be obtainable at a much better price which C.E. Reid will pursue.

Upland Reservoir Property ROW Dedication

C.A. Daykin discussed the details contained in his agenda report beginning on page 33 of the packet. He explained that in an effort to remedy the complexity of the property ownership in the described location, City Staff is proposing dedicating a portion of that property to right-of-way purposes by way of the proposed Dedication Deed. C.A. Daykin explained that in order to complete the process, a proper survey description of the property will need to be completed. Additional discussion ensued and C.A. Daykin explained that if City Council approves this concept, he would like to consolidate the two different tax lots (01003 and 02400) first, next take the information to complete the dedication process, and then provide that information to complete the initiative that City Council supported to have the zone changed to the P-zone for that property.

M. Russ inquired about whether parking issues could then be enforced on the City property. C.A. Daykin explained that this could be done depending on how Council would like to proceed: the area could be fenced off, signs could be placed, or even tickets could be issued on vehicles violating parking restrictions in the area.

Upon review of the plat map provided, C. Adlong pointed out that she is now aware that the property owner at 02300 removed the vegetation that existed between it and lot 01003, though the vegetation was actually located on lot 01003. She explained that the removal included some beautiful madrone trees and noted that an RV is now being parked in this area. Brief additional discussion ensued regarding the properties in this area. C. Adlong suggested that a walking path connecting Upland Drive down to Seventh Street would be a great addition to the community. It was noted that the property along the driveway is jointly owned by the three neighboring properties to connect to their driveways.

A motion was made and seconded to authorize the Mayor to sign the Dedication Deed of a portion of City owned property as public right of way. **The motion** passed unanimously.

C. Adlong raised the topic again of parking on the reservoir property. C.A. Daykin explained that adding some security fencing on the reservoir has been discussed. He also explained that during his research he found that the reservoir was built in 1963-1964; at a Council meeting in 1964 there was discussion about placing a fencing on top of the reservoir. C.A. Daykin pointed out that securing the property is important per Federal guidelines. Chuck Simpson discussed that parked cars in the area make it difficult for them to access the reservoir for emergency repair work on the well. He explained that up near the well house there is an extended parking area that's not shown on the plat map; this parking area would allow access for a well truck when maintenance work is required. M. Russ suggested that the addition of a couple of bollards and a chain across that area could prevent people from accessing that area. Simpson explained that there are two water lines and a storm line, and PGE has routed power through the area which reaches the short section of Red Hills Drive as well. M. Russ suggested that bollards and a chain installed in the area of the tree removal (which C. Adlong was concerned about) could be accomplished in this area as well. C. Svicarovich supported that once the area is surveyed and property lines identified, a conversation with property owners may be helpful prior to the City taking the more definitive action of placing a fence. C.A. Daykin offered to complete additional research and provide Council with additional options once the information is obtained. C.A. Daykin affirmed that Staff did speak with the homeowner briefly when they first started completing some excavation work which was not located on their property.

C. Adlong voiced the importance of providing some consideration in the future for having the area be an access point for some sort of a pedestrian path. M. Russ discussed that he does not support a fence in this location as he feels it would not be aesthetically pleasing in this location and somewhat intrusive as well; bollards would allow for people to walk past as well as bicyclists and animals. C. Svicarovich also voiced support of a pedestrian path connection point in this location as well. C. Crawford inquired about whether one possible option might be to bring the private driveway into the street system in exchange for a pedestrian trail right-of-way in this location. M. Russ indicated that he could talk to the two adjacent property owners (his neighbors) who share the private driveway to find out their opinions on the idea.

New Business

Sewer Manhole Repair Quote

Chuck Simpson, Public Works Superintendent, discussed that there are a couple of cracked manholes which are leaking profusely in the wintertime and briefly reviewed his memo on page 43. A **motion** was made and seconded to approve the repair of two sewer manhole covers by Underground Tech in the amount of \$6250. **The motion** passed unanimously.

Council Concerns and Committee Reports

C. Nelson voiced his appreciation of Council's input and participation at tonight's meeting.

Mayor's Report

None.

City Administrator's Report

C.A. Daykin informed that the \$300,000 funds transfer was made to PERS for establishment of a side account for the City that is eligible for the 25% match amount from the State. He explained that just prior to the deadline he received an email from the PERS representative indicating that there would soon be state legislation which would repeal that legislation. C.A. Daykin explained that fortunately for Dundee, he had already begun the process and the transfer processed successfully; those who are waiting until a later date to make their transfer may not be able to as the State may be withdrawing those incentive funds for other purposes.

Executive Session

The City Council entered into Executive Session at 9:20 P.M. in accordance with ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. Executive Session ended at 10:15 P.M. and City Council reconvened.

Interim Fire Chief Position

C.A. Daykin discussed the proposal being brought to City Council to continue an interim fire chief position. He explained that Amy Hanifan has been filling the position from the City of McMinnville Fire Department though has responsibilities and duties she needs to return to at the end of this week. C.A. Daykin explained that he did contact the Western Fire Chiefs Association to assist the City of Dundee in the process of finding a replacement interim fire chief. He discussed that they have always done a placement of permanent fire chiefs but have only recently begun placement of interim fire chiefs as well; the City of Dundee will be one of the first to participate in this new program. C.A. Daykin discussed that Brent VanKeulen is associated with the organization and is present tonight. A copy of the proposal was received and was emailed to City Council members prior to the meeting tonight.

Brent VanKeulen introduced himself and explained that the Western Fire Chiefs Association (WFCFA) is a division of the International Association of Fire Chiefs and represents California, Oregon and Washington and is the main network for fire chiefs within the State. He informed that he has been a member for 6-7 years. VanKeulen explained that WFCFA sent him to provide a recommendation for an interim position in Dundee, as well as to consider the position while completing the initial needs assessment. He reviewed that he has provided a needs assessment as well as a proposal to be the Interim Fire Chief for the City of Dundee. VanKeulen discussed that the primary method he used in determining the needs assessment was interviews; he also reviewed some documents pertaining to budget, response and volume. VanKeulen explained that he is familiar with the Dundee Fire Department because in his former job at Tualatin Valley Fire & Rescue; he was the Chief Officer that handled all aspects of the Newberg Discovery Session, the functional consolidation contract period and the implementation of service to Newberg. He noted that he is also familiar with Dundee because he did a lot of work with WAACA and the City of Newberg's dispatch center around the communications. VanKeulen explained that he's pretty familiar with Dundee operationally. He noted that part of what he found that is still true is that the Department has the capability to respond with a single engine company to most service requests. He pointed out that in his opinion and experience it is pretty impressive how fast the first unit gets out the door with a volunteer and partial daytime paid staff. He explained that the staff present during the day augments the volunteer availability during the work week, which he noted is a national trend; it is becoming more and more difficult for volunteer firefighters to be available during the work week.

VanKeulen discussed that the Dundee Fire Department is in a place of increased administrative needs, driven primarily by McMinnville Fire Department leading a consulting report evaluating consolidations of several different fire agencies within Yamhill County, including Dundee as a participant in that Study. He explained that he broke out the needs of the Dundee Fire Department into the two categories of administrative needs and operational needs. VanKeulen reviewed the highlights of each category, as contained in his report. He discussed that the Dundee Fire Department is in a really good position right now to maintain some flexibility while there are changes going on in the County. He discussed his belief that having an interim fire chief and not making any permanent decisions right now really will serve the community well so that as the City looks forward strategic decisions could be made to potentially change the course of where the fire department is headed into the future that could align it for the greatest community good. VanKeulen explained that to support the present operational needs in Dundee, his assessment is that only a part-time administrative Chief is needed. He discussed that in his proposal he has proposed a rate that leaves some funding available to help support the operations. He explained that it is his belief that some supervision is needed during the day which would be like a station Captain in a very traditional role. VanKeulen discussed that most of the paid staff is working all in one position, and there are more duties and jobs within the fire department which are outside of that position. He voiced support for the need of continuation of volunteer coordination and discussed that his proposal is for about a 3 to 4-month window where things can continue to be evaluated and the best strategic decisions can be made from there.

M. Russ inquired about whether Interim Chief Hanifan agrees with VanKeulen's assessment to which she affirmed. Chief Hanifan explained that while she does feel she was able to fill both duly as an operational responder and as a Chief, she acknowledged that there is another method to that which she also voiced support of. M. Russ inquired about VanKeulen's proposed rate which he explained is based on the present scope of work and the time required of him; as things evolve and get more or less complicated (as the scope of work changes) then he would make the necessary adjustments. He also noted that he does have some flexibility in his schedule which would allow for him to increase his hours, if needed. C.A. Daykin explained that in addition to

what VanKeulen is paid, the City would also be paying an additional 10% fee to WFCFA, though the fee would stop if the term of employment extends beyond 12 months. C.A. Daykin offered clarification that there would be a separate agreement with Brent VanKeulen and a separate agreement with WFCFA. M. Russ voiced support of the proposal. C.A. Daykin discussed that if Council is favorable of this proposal, VanKeulen would likely start this week working alongside Interim Chief Hanifan during her final days at the Department.

The consensus of Council was to move forward with both Agreements at this time. C.A. Daykin discussed that he would need to execute these separate agreements. He explained that though there is a draft copy of the WFCFA Agreement, he has not been presented with VanKeulen's employment contract yet. C.A. Daykin explained that upon being presented with the contract, he would review it with the City Attorney and make sure that it meets the needs of the City.

C. Crawford inquired about where VanKeulen will be traveling from to which he noted to be West Linn; his travel expenses to and from the Department were noted to be covered as well.

C.A. Daykin explained that he has also asked VanKeulen to review the job descriptions for the Department given that there are firefighters and a Chief position only at this time. VanKeulen had previously explained to C.A. Daykin that there are a lot of different positions in between given the myriad of duties and responsibilities. C.A. Daykin pointed out that now they may wish to elevate one of the firefighters to be a station Captain and thus a job description would need to be created for the position as well as a fair wage determined. C.A. Daykin explained that this would be brought back to Council for their approval.

Public Comment

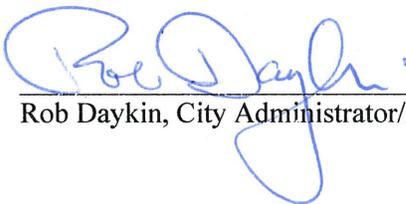
None.

The meeting was adjourned at 10:33 P.M.



David Russ, Mayor

Attest:



Rob Daykin, City Administrator/Recorder