# Additional Written Public Testimony 08.02.2020

## Melody Osborne

**From:** maiabenner@gmail.com
**Sent:** Friday, July 31, 2020 7:55 PM
**To:** Melody Osborne
**Subject:** No to Dundee cell tower

Hi Melody,

As a resident of Dundee, I am writing to let the city council know that I oppose the building of a cell tower in our town. I received a very misleading text from Verizon this week asking me to text back yes if I wanted improved cell service in Dundee, but not clearly notifying me that they intend to build a cell tower, only a “wireless facility.” Here is a copy of the text:

“ Verizon Msg: To further improve wireless service in Dundee, reply "Yes" to this text. Add a message to tell the Dundee City Council you support a wireless facility at the Dundee Fire Station. Include your email address for updates.”

I fear that Verizon is now going to come to the city council meeting with a list of “yes” responses from people who received this message, but didn’t actually understand what Verizon was asking. I’m a Verizon customer and it disgusted me that the company would sink to manipulation. This deceit from Verizon, the health issues associated with the tower, and the fact that it will ruin the beauty of our little tourist town are all reasons why I strongly oppose the cell tower. We will try to attend the zoom meeting, but have young kids going to bed at that time so we might not make it. Please include my email as a strong “NO” to any Verizon wireless facility in Dundee.

Thank you!
Maia Benner

## Melody Osborne

**From:** Susan Baird <susan@bairdlawoffices.com>
**Sent:** Saturday, August 01, 2020 2:43 PM
**To:** Melody Osborne
**Subject:** Verizon Appeal
**Attachments:** Microsoft Word - Dundee City Council Letter re Verizon Appeal.docx.pdf

Hi Melody,
Please add my attached submission to the record in opposition to the Verizon cell tower.

Thank you,
Susan

Susan Baird
Attorney at Law

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Dundee City Council
Via email to: melody.osborne@dundeecity.org

August 1, 2020

Re: Type III Appeal Application
Conditional Use Permit and Site Development Review
File No. CU 20-06/SDR 20-07 – Verizon Cell Tower

Dear Dundee City Councilors:

The City of Dundee has already received over 45 written and oral comments from the public, objecting to the proposed Verizon cell tower, primarily because the proposed tower's aesthetic considerations fail to comply with Dundee Municipal Code ("DMC") 17.4040.030(A)(1). **The Planning Commissioners *unanimously* agreed**.

As the appellate authority in this matter, please review all the public comments submitted in opposition to the tower as you fulfill your duty under Oregon Revised Statutes (ORS) 227.180(1)(a)(C) to consider the Planning Commission record. Your task is to determine whether to uphold a decision the Planning Commissioners did not make lightly. The Commissioners heard the concerns of the public and they thoughtfully reviewed, evaluated, and debated this issue over the course of two separate hearings. Please do not let their efforts have been in vain.

In their appeal, Verizon claims "the Planning Commission's decision would preclude any tower at this site." This is not true. A 20-foot tower would not be precluded. A 30-foot tower would not be precluded. Many, shorter, more appealing towers would not be precluded. Verizon's tower was not denied simply because it's a cell tower, but because it's an *80-foot* cell tower designed to look like a central Oregon pine tree and proposed in a location where no other building or tree stands 80-feet tall and where there are no other pine trees to camouflage it. It was denied because *this* tower in *this* location would absolutely dominate the landscape and forever mar the beauty of our small town. **It is both the incongruent monstrous size of Verizon's tower and the fact that it fails, in any way, to blend into the surroundings of the proposed site that make it aesthetically inappropriate for the proposed location**.

Despite Verizon's claims, the Planning Commission did correctly interpret DMC 17.404.030(A)(1). The Commissioners all found the proposed site was not adequate for an 80-foot tower, given the tower's aesthetics. Verizon, however, claims the Commissioners applied the Code backward. Instead of considering whether the proposed tower's "traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations" were appropriate for the proposed site, Verizon thinks the Commissioners should've considered whether the proposed site's pre-existing "traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations" were adequate for Verizon's proposed use. This makes absolutely no sense. When would a City ever have the duty to choose the best site for a proposed project? That's not how it works. The applicant selects a site and applies to the City for permission to use that site; then the City determines whether or not the applicant's proposed use of that site is appropriate – and that's exactly what happened.

The Planning Commission's decision is also consistent with Table 17.202.020. As Verizon noted in their appeal, most of the zones require cell towers to receive conditional use permit (CUP) approval. Just because Verizon's proposed 80-foot tower in the heart of Dundee failed to satisfy CUP approval requirements does not mean all cell towers would fail throughout the City, nor does it mean that all cell towers would fail in the proposed location. **The Planning Commission never made such sweeping generalizations**. The Commission appropriately limited its evaluation and decision to the proposal at hand and found *this* cell tower, designed to look like a pine tree in an area without other pine trees and projected to be 80-feet high in an area without other 80-foot structures or trees, failed to meet aesthetic considerations for *this* proposed site.

Verizon claims the Planning Commission failed to consider Verizon's attempted mitigation measures. The Planning Commission was under no obligation to discuss mitigation measures because the Commission correctly found the application failed to satisfy the CUP approval criteria. Verizon has indicated that because the "stealth" version of the proposed tower would be so much more expensive and less unattractive than the original version, that this somehow satisfies the mitigation requirements of the Dundee Code. This is not the case. The Dundee Code does not allow a use simply because the applicant throws a lot of money at it or because the applicant proposes a design which would be less in violation of the aesthetic considerations than a cheaper alternative. **A lesser violation is still a violation**.

Verizon claims the Planning Commission should have approved Verizon's proposal because Verizon "limited the tower to the minimum height necessary *to achieve its objectives*." (Verizon Appeal, page 1) However, Verizon's objectives are not part of the DMC approval criteria. If that were true, then any applicant could say they've done the most they can to comply with the DMC while still meeting their own needs

and therefore they deserve to have their project approved, regardless of whether or not they actually meet the Dundee Code approval criteria. That would be madness. It's not enough for an applicant to *try* to meet the DMC approval criteria. They either meet it or they don't. **The applicant's own objectives don't exempt the applicant from fully complying with the Dundee Code**.

Despite Verizon's implication, neither the Planning Commission, nor the opponents (nor the City Council) is obligated to "explain what else Verizon could have done to make the tower comply with the building mass, visibility, and aesthetic considerations." (Verizon Appeal, page 2) **The applicant bears the burden of proof.** Verizon has a duty to *prove* that their design complies with the Code. If the Planning Commission and the City Council find it does not comply with the Code, then the applicant can go back to the drawing board and try again. The City's job is to apply the City Code; the City's job is not to dream up new architectural renderings, landscape designs, or better "stealth" tree designs for the applicant, nor is the City expected to figure out how to best "meet Verizon's objectives." That burden belongs to the applicant.

Please note that the proposed tower would also violate the stated purpose of the Public Zone. According to DMC 17.202.010(I), the Public Zone "provides for public and semi-public uses, where such uses do **not unreasonably disrupt or alter** other areas of the community." An excessively tall cell tower dominating the skyline in the heart of downtown Dundee would violate the purpose of the Public Zone by unreasonably disrupting surrounding uses in the Central Business District (CBD), especially since DMC 17.202.010(G) requires that uses in the CBD "encourage a walkable and attractive downtown." Even though it's not worded as an approval criteria, the Oregon Land Use Board of Appeals (LUBA) had held that decision-makers have an affirmative duty to consider such a purpose statement. See *Concerned Homeowners Against the Fairways v. City of Creswell,* LUBA Nos. 2006-053, 2006-054, 52 Or LUBA 620, 628–629 (2006), *aff'd without opinion,* 210 Or App 467 (2007). Accordingly, the City Council has an affirmative duty to consider whether the proposed cell tower would unreasonably disrupt or alter other areas of the community.

Finally, Verizon claims the "Planning Commission failed to provide Verizon an opportunity to address its concerns about the monopine design." (Verizon Appeal, page 2) Yet, as Verizon noted, Verizon has already had the opportunity for three separate public hearings before the Planning Commission. In addition, Verizon had plenty of opportunity to review the many public comments (made before, during, and after both 2020 Planning Commission hearings) regarding aesthetic concerns. Verizon now says they will provide the Council design "options" and "allow the Council to determine which of the designs is the most aesthetically pleasing." (Verizon Appeal, page 2) **Councilors, please do not be bullied by this tactic**. **You are under no obligation to choose the lesser of two evils.** You do not have to pick

any one of Verizon's proposed designs. You are not limited by what Verizon purports to "allow" you to do. Just because one design is less unattractive than another does not mean it satisfies the requirements of the Dundee Code. The Planning Commission, along with many Dundee citizens, have made it clear that a massively tall cell tower in the heart of Dundee, without the camouflage of similarly tall trees and buildings, would be an eye sore, dominating the attractive downtown landscape, in violation of DMC 17.4040.030(A)(1).

In conclusion, Councilors, please consider all the public submissions in the record, please uphold the decision of the Planning Commission, and please uphold the requirements of the Dundee Code.

Sincerely,
Susan Baird
Susan Baird