



CITY OF ALBANY
PLANNING COMMISSION
City Hall Council Chambers, 333 Broadalbin Street
Monday, July 7, 2014
5:15 p.m.
MINUTES

Planning Commissioners present: Roger Phillips, Danon Kroessin, Larry Tomlin, Sue Goodman, Daniel Sullivan, Dala Rouse, Kristin Richardson

Planning Commissioners excused: Cordell Post, Wendy Ezell

Staff present: Melissa Anderson, Planner; Mark W. Shepard, P.E., Public Works Director and Community Development Director; Bob Richardson, Planning Manager; Edene Rice, Administrative Assistant

Others present: Approximately five in the audience

CALL TO ORDER

PLEDGE OF ALLEGIANCE TO THE FLAG

ROLL CALL

APPROVAL OF MINUTES

February 3, 2014

April 3, 2014

MOTION: Commissioner Rouse moved to approve February 3rd and April 3rd minutes. Commissioner Goodman seconded it. Motion passed 7 to 0.

June 16, 2014

MOTION: Commissioner Phillips moved to approve. Commissioner Sullivan seconded it. Motion passed 5 to 0 with Commissioners Goodman and Rouse abstaining.

COMMENTS FROM THE PUBLIC:

PUBLIC HEARING: 5:22 p.m.

QUASI-JUDICIAL PUBLIC HEARING: CU-01-14 – An application to develop a 120-foot tall Telecommunications Facility.

DECLARATIONS: None

HEARING PROCEDURES: Shepard summarized the meeting procedures.

STAFF REPORT: The Staff Report was presented by Melissa Anderson, Planner (See Agenda File)

COMMISSIONER QUESTIONS ON STAFF REPORT:

Commissioner Goodman asked if the construction of this tower and facility is typical and Planner Anderson deferred her questions to the applicant.

Commissioner Rouse asked if this tower is similar in size to the one in North Albany and Planner Anderson replied that she is unsure of the height of that one.

APPLICANT:

Jim Jaggers, Verizon Wireless, 9895 Montegrino Court, Elk Grove, CA 97230

Konrad Hyle, Verizon Wireless, 22135 SW Cole Ct., Tualatin OR – Introduced an exhibit into the record, Exhibit A, a drawing from the property owner of future development plans (See Agenda File). Hyle agrees with the staff report but would like to propose a six-foot tall solid wood fence instead of the proposed chain link fence with slats and vegetative landscaping. Currently there is no plan to provide water to this parcel and to have vegetative landscape would require watering. The applicant believes a solid wood fence would be a good alternative for this criteria. The applicant also discussed the noise study that was done and is unsure if the study reflects the use of the type of generator they will be using. They would be providing a generator that is very quiet and emits hardly any noise. They would like to modify language in 5.2 to reflect that they would be providing a generator that could meet the noise standards.

The applicant went on to say that per the Federal Aviation Administration (FAA) the proposed cell tower does not need to be marked with lighting for airplanes. Regarding other safety concerns, the tower will meet and likely exceed all code requirements for wind and other weather hazards.

Commissioner Rouse asked the applicant about the solid wood fence and mentioned it would not be a noise barrier. Hyle said it would be a noise barrier and with the addition of the quieter generator, there should be little noise emitted. Rouse asked how far the wood fence would be from the generator, Hyle responded that the generator is toward the center of the proposed area, at the closest point it would be about 10 feet from the generator. Commissioner Rouse asked what utilities would be needed. Hyle said electricity and fiber. Commissioner Rouse asked if other users could use the tower, Hyle said that Verizon would cooperate and work with other carriers. Each carrier has its own needs for providing service.

Commissioner Goodman asked if this tower will be primarily servicing customers outside the city limits. Jaggers responded that the coverage area is mainly within city limits.

Commissioner Philips asked what exactly a cell tower does. Hyle responded that a cell tower provides service for cell phones for both voice and data demands. With the increased demand for both voice and data coverage it creates gaps in coverage, thus creating the need for more towers to fill in gaps in coverage and capacity.

Commissioner Kroessin asked the applicants if they were aware of Mr. Nyquist and his concern with ice or other items blowing off of towers and damaging nearby properties. They have heard of this before. Hyle said he is not familiar with any cell towers in this region having any issues. The towers are built to code and the engineers design the towers with a large safety factor built in. Verizon wants to have a lease area that will accommodate ice falling off, with it being set back 44 feet from the nearest facility. Commissioner Kroessin then asked about the access easement to the north. Jaggers said Schneider homes own both parcels.

Commissioner Sullivan asked about consecutive days of unusual weather with lots of snow and if all towers are built to the same specifications. Hyle said each state adopts their own standards, as well as the engineer's factor local weather into their designs.

Commissioner Richardson asked about the future development plans and according to the exhibit submitted if the tower is compatible with future use of a subdivision or would it be removed. The applicant said it is compatible and it would stay.

IN OPPOSITION:

Roger Nyquist, 2896 Firwood Place, Albany – Nyquist passed out exhibit B (see Agenda File). He started his testimony by saying the map on the front of the handout indicates the current location of cell phone towers in Albany with page 3 showing the applicants ring of service. With this information he stated he thinks they could collocate with another tower and the applicant should contact Union Pacific railway to use some of their property. He also stated he does not feel this cell tower is architecturally compatible with his building. The third photo is a cell tower in a non industrial area. He said that if the Commission approves this 120-foot cell tower in this mixed use zone, then the Commission will have to approve other applications of 120-foot tall cell towers in the Multi-use Commercial (MUC) zone throughout the City.

Mr. Nyquist provided information about falling ice from cell towers and how a cell phone tower collapsed in western Virginia and killed three people. He provided a thumb drive with video he submitted into the record (see video file). The Commission then viewed the provided video. It showed three different cell towers that had ice falling off of them. Mr. Nyquist has concern that ice from the proposed tower will fall onto his building or property and could cause property damage and/or hurt someone. He explained his business is a family business with about 2,000 people per week during the winter time and 10-15 birthday parties on Saturdays for kids. Last winter with the winter we had in Albany, customers would have been nervous about walking through his parking lot after watching these videos. He stated that his safety concerns have not been adequately addressed.

Mr. Nyquist stated that when the development plan was approved for the bowling alley and the Schneider Homes property, it included Willetta Street coming south and behind the bowling alley, but the proposed plan for the cell tower is inconsistent with that. It is not architecturally compatible and not compatible with the underlying zoning. This is a much bigger issue because the Commission will be stuck saying yes to any 120-foot cell tower in any mixed use zone throughout the City.

Commissioner Rouse asked if the towers in the video are lattice style and Nyquist indicated they are several different styles.

Bill Ryals, 935 Jones Ave, Albany – Ryals is in opposition because of the zoning and that the mixed use village center is not meant for this use. Mr. Ryals stated that as an architect and planner he is passionate about the mixed use village center and a cell tower in the middle of that zone, is not the appropriate use. Mr. Ryals submitted testimony from the development code that states: "*The mixed-use Village Center zoning districts are the center of neighborhood and commercial activity, providing a horizontal or vertical mix of retail and residential uses to serve nearby neighborhoods. Other uses may include offices, and community and personal services. Centers are easily accessible to nearby residences, are pedestrian-friendly, and relate to adjacent land uses. Commercial uses must fit the scale of adjacent neighborhoods and the desired character envisioned for each Village Center. The Village Center zones differ in permitted uses, development standards, and design based on the unique objectives of each center. Design standards may be adopted to define the unique architectural and streetscape features of each Village Center. Medium-density residential development that provides a mix of housing choices is located adjacent to Village Center commercial zones (ADC 5.020).*"

Ryals stated this site is a small site to create anything like a Village Center. Willetta Street was envisioned to go through and you cannot have a lot of driveways along 53rd Avenue because of the cars queuing to turn at Pacific Boulevard. All the driveways have to be linked together. He looks at this as being just like putting a knife into the heart of the Village Center. Compatibility is not just architectural compatibility; it is also scale, use, and style. Is this use compatible? What is envisioned to go in this zone is small retail, offices, live-work, and residences. We need to ask if this conditional use is compatible with any of those uses? An apartment building cannot be over 50 feet high in this zone, but the cell tower can go over 120 feet in this zone? The vision of local village centers that

support local communities is a good vision, but just because the economy had a downturn should not mean cell towers should be in these areas because they are expedient.

Ryals stated that something like this can be put in a wetlands; it just has to be mitigated. They can be put in a floodplain. Most of the subject property is floodplain and wetlands. It is just going to cost money and a permit is needed from DSL and the Corps. He would rather see the tower placed in a wetland area and have it mitigated than to see where it is being proposed.

Ryals continued by saying that Village Centers are a community resource and there is not much of that zoned in the whole town. He finds the logic odd that these things are ugly and the village center would be considered appropriate. He said village centers are a great community resource. Those properties are high value properties. A tower 120 feet tall is like a 12 to 13 story building. If the City carries Willetta Street through, this you would never be allowed, and that is part of the master plan for the area.

Tomlin commented that erecting this tower here would not preclude any other type of development.

Ryals said the problem he has is if this tower goes in and he comes back in with a development, the Commission will say we do not want the development so close to this tower because it is existing. He would have to put his apartment building 50 feet farther away from this tower because it was allowed to go in. This is really bad for future commercial development because there is not a lot of commercial land to develop.

NEUTRAL:

Dan Johnson, 5148 Willetta St. SW, Albany OR – Johnson stated he lives approximately 600 feet from the proposed cell tower and had attended earlier neighborhood meetings, and his concern is with the traffic. He would like to see possible speed bumps placed along Willetta Street.

REBUTTAL:

Konrad Hyle – Began his rebuttal by saying that collocation with an existing radio tower was ruled out by Verizon engineers because of the location. Regarding placing the tower on wetlands, Verizon was not interested in this because of the possible damage to the environment. They have done their due diligence in contacting surrounding property owners in trying to locate the tower elsewhere in the appropriate zone, but none of the property owners were interested.

In further addressing the collocation comments, Verizon would prefer to do this because of the financial savings, but nothing was available that met their needs.

Jaggers gave testimony that there were not any available parcels owned by the railroad, and that railroad right-of-way is different than an actual piece of property owned by the railroad.

Hyle addressed the Commission concerning the video that showed ice falling off of cell towers, and said that the towers are engineered with design standards that factor in these issues.

He also commented that due to federal rules, Verizon cannot be denied the ability to achieve their desired need. Hyle clarified that the Commission could deny this application but that Verizon will pursue their objective to provide coverage.

Commissioner Rouse asked about the FAA rule of collocation on an existing structure. Hyle cited recent federal law of about 1.5 years ago that compelled cities and counties to approve collocations.

Commissioner Sullivan asked about the terms of the lease. Jaggers said it would be a 25-year lease with five-year renewals.

Commissioner Goodman asked what the current height of the existing Verizon towers are in Albany, and Jaggers was unsure of the height.

Planner Anderson provided clarification regarding to the height limit. In the MUC zone telecommunication facilities 50 feet in height or greater may be considered in the zone with Conditional Use Permit approval. Regarding the issue of screening and the option of providing a solid wood fence rather than vegetative screening, ADC 8.500.9 states that “vegetative screening shall be provided around any accessory building as prescribed by Section 9.250”; however, ADC 9.250 states that screening can be provided by berming, hedges, fencing, or block walls. Staff interpreted the screening requirement be vegetative screening, but if the Commission interprets that a solid wood fence will meet the screening requirement, a fence could be considered as an alternative to vegetation. With regard to the decision-making criteria, Planner Anderson stated that Conditional Use criteria 1 and 2, as well as the Design Standards for Telecommunications Facilities criteria 6 allow the Commission a fair amount of discretion to determine whether the proposal meets the criteria. The more discretion involved, the higher the level of review is required, which is why this decision is before the Planning Commission with a public hearing.

Planner Anderson explained that Criteria 4 of the Design Standards (ADC 8.500) for cell towers lists the preferred order of location of communication facilities, which includes properties zoned “Light Industrial, Heavy Industrial, Industrial Park, and Heavy Commercial.” At this time, “Heavy Commercial” is not a zone the City has anymore. When the City went through some broad zone changes , they removed that zone and created the Light Industrial zone, the Community Commercial, and Regional Commercial zone. Staff was at a loss because there is currently no Heavy Commercial zone on the books. This site had never been zoned Heavy Commercial. Staff interpreted this criteria and reference to Heavy Commercial zone to be a Commercial zone, in general, and so there is a level of interpretation by staff in the report regarding location the Commission could consider.

Commissioner Richardson asked about what effect this will have on Willetta Street. Planner Anderson said the City’s Transportation Analyst reviewed this and did not have any concerns. Willetta Street is intended to go around and come back out on the south side of the bowling alley.

Commissioner Rouse asked Planner Anderson that if the cell tower stays there, will the development be able to move forward with the proposed layout that was submitted tonight in Exhibit A? Planner Anderson said the proposed layout for future development submitted by the applicant is not practical. Commissioner Rouse then confirmed that a wood fence could take place of vegetation and then asked if the vegetation would require watering. Planner Anderson said yes it would have to be irrigated or a letter provided from a professional landscaper or nurseryman stating the plants are drought resistant and do not need irrigation.

Discussion took place about the height of other cell towers in the city and if there are any others in mixed use zoning.

Nyquist spoke on the issue of Willetta Street, and said that as part of the code, any cell tower must be setback at least the height of the tower from a public road. This tower as proposed would prohibit Willetta from going through. The tower would have to come down or Willetta Street could not go through. He stated that his business is on a State highway and he represented to ODOT to make a good faith effort to get that through connectivity so people down in the neighborhood would not have to go out on a state highway and then come back. It was part of the master plan to have Willetta Street go through and the Commission’s action would prohibit that.

Discussion took place on the location of the cell phone tower in North Albany. Rouse said it is located on the Store n Lock property which is Commercial Zoning.

Konrad Hyle stated he does not believe that permitting this use that future roads in this area would be prohibited.

HEARING CLOSED: The hearing closed at 7:18 p.m.

PLANNING COMMISSION DISCUSSION:

Commissioner Rouse said that in the future, staff needs to give us more input on where other cell towers are located and how high they are.

Commissioner Sullivan said he is concerned about the future vision and development for the City.

Commissioner Richardson asked about the city's future of placing a public road way, Director Shepard said the City can still place a road next to a cell tower.

Commissioner Richardson brought up that a wood fence makes sense at this point but in the future if this parcel is developed, a vegetative screening should have to be required. She also does not feel that the height of the tower would be such an issue. People would get use to it and eye sight is more lateral.

Discussion took place about Willetta Street and if it could be constructed after the tower is put in.

Discussion took place about what conditions would be placed on the denial.

Planner Richardson advised the commission to look further at other criteria. He explained how the tower at 50 feet is allowed but that the Commission has discretion to say that a tower over a certain height past 50 feet does not meet the criteria.

Director Shepard reiterated that staff is neutral, not trying to direct the Commission in any direction.

Commissioner Kroessin brought up fairness if other towers of this size are in Albany, but on the other hand it is not fair to the surrounding neighborhood.

Director Shepard said the Commission needs to stay focused on the criteria of this application, not what other towers may or may have not had to follow.

MOTION: Commissioner Richardson moved that the Planning Commission grant tentative approval with the conditions of the Conditional Use Permit application to develop a new telecommunications facility as presented in the staff report for planning file CU-01-14. The Conditions of approval are:

1. Modification to allow a solid wood fence instead of vegetation or a chain link fence
2. A revised sound study shall be conducted concerning the generator. Modify 5.2 to add a revised noise study.

Commissioner Rouse seconded the motion. A roll call vote was taken. Three in favor (Tomlin, Rouse, and Richardson) and four opposed (Kroessin, Phillips, Sullivan, and Goodman) The motion failed.

RECESS: 7:56 p.m.

HEARING RE-OPENED: 8:12 p.m.

QUESTIONS OF THE APPLICANT:

Commissioner Kroessin asked why the tower has to be 120 feet, could it be shorter? The applicant responded that the height of this tower was determined by engineers to meet the objective.

Commissioner Goodman asked if the trees are blocking the signal and is this why the tower is so high. Jaggers said multiple things impact service to be provided by the tower. There are multiple reasons why the engineer said that this tower needs to be 120 feet tall.

Commissioner Sullivan asked if the proposed tower will have additional equipment on it. Jaggers said that he represents Verizon wireless and this application is to put 12 antennae's on this monopole and he cannot speak for other carriers. Commissioner Sullivan said it is reasonable to think there will be additional carriers that will collocate and that will add antennas. Jaggers said this tower could provide collocation for other carriers, but that he cannot say for sure it will happen.

Nyquist asked the Commission, how could the applicant make a good faith effort to collocate when they do not even know where the other towers are located in Albany. He said he still does not feel the safety issues have been addressed. Other properties would be available for this tower, and it is more than reasonable to ask them to research this. Commissioner Tomlin asked if South Pacific Auto sales had wanted to lease the applicant the property, would Mr. Nyquist be ok with that location. Mr. Nyquist said if it were not for safety concerns he would not be engaged at all in this discussion. Commissioner Rouse stated several other towers are at least 100 feet, and asked Nyquist if he had heard of any ice coming from those towers. Nyquist said he had not. Commissioner Richardson mentioned that a tree could be just as dangerous as a 120-foot tower.

Ryals said he feels that in the future if a development for this location comes before the planning commission it might be denied because of the liability factor of ice falling off the towers. He would rather see it being placed in the wetlands.

Hyles addressed collocation with other towers in the area. Future development is not prohibited by Verizon as long as they have access to their structure. Most of the towers in the immediate area are over 150 feet tall.

Hearing closed at: 8:30 p.m.

MOTION: Commissioner Sullivan moved that the Planning Commission tentatively deny the Conditional Use Application to develop a new telecommunications facility as presented in the staff report for planning file CU-01-14. The basis for the denial is that the application does not meet Criterion #2 for the following reasons. This tower is not compatible in size, scale, and style for the mixed use village center zone. Goodman seconded the motion.

Commissioner Richardson said that the Commission can say that the monopole is permitted but maybe not compatible.

Director Shepard summarized Commissioner Sullivan's motion to recommend denial because the proposal does not meet criterion 2 for its not being compatible in size and scale in regards to existing and future uses. Commissioner Sullivan agreed with the modified motion. Commissioner Goodman seconded.

A roll call vote was taken. Seven in favor (Tomlin, Sullivan, Phillips, Rouse, Richardson, Kroessin, Goodman) 0 opposed. The motion passed.

Activity Update:

NEXT MEETING: July 21, 2014

ADJOURNMENT

Hearing no further business, Chair Tomlin adjourned the meeting at 8:41 p.m.

Submitted by

Signature on file

for Edene Rice
Administrative Assistant

Reviewed by

Signature on file

Melissa Anderson
Planner