

Memo

DATE: June 22nd, 2010
TO: Ashland Planning Commission
FROM: Derek Severson, *Associate Planner*
RE: 1644 Ashland Street
PA #2009-01244

Background

At the May 11th Planning Commission meeting, public testimony was taken on the application and the public hearing was closed.

At the June 8th Planning Commission meeting, the Planning Commission honored requests by the applicants for Planning Action #2009-01244 as well as by two parties who had provided written comment in opposition to the application to reopen the record for an additional seven days pursuant to ORS 197.763(6)(c). The record was reopened until 4:30 p.m. on June 16th, 2010 for written submittals from any person in response to additional evidence presented after the close of the public hearing on May 11th. In addition, approximately twenty additional items (e-mails and written submittals) had been previously received subsequent to the close of the record, and the Commission voted to admit these items into the record with its re-opening.

The record closed at 4:30 p.m. on June 16th. All materials received have been posted on-line at:

www.ashland.or.us/1644ashland

Issues Raised

The primary issues raised in the record within these submittals include:

Health Impacts – A significant number of the materials provided in the record raise concern over the health impacts of wireless communication facility installation. Staff previously noted in the record that the Telecommunications Act of 1996 expressly preempts local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions [47 U.S.C. §332(c)(7)(B)(iv)].

Economic Impacts – The issue has also been raised that there are a number of neighboring business focused on holistic wellness, and that because many of their clientele have concerns over such an installation the proposal could have a significant economic impact on these surrounding businesses. In reaching a decision, the Planning Commission will need to consider these impacts in light of the Conditional Use Permit approval criteria found in AMC 18.104.050.C, most notably:



6. *The development of adjacent properties as envisioned in the Comprehensive Plan.*
7. *Other factors found to be relevant by the Hearing Authority for review of the proposed use.*

Commissioners must also consider whether they believe these impacts can be viewed separately from larger concerns over the environmental/health impacts of the facility, which the City is again preempted from considering in a decision.

Collocation – AMC 18.72.180.B.6 requires that applications include " A collocation feasibility study that adequately indicates collocation efforts were made and states the reasons collocation can or cannot occur." The Development Standards for Wireless Communication Facilities note in 18.72.180.C.2.that, "Where possible, the use of existing WCF sites for new installations shall be encouraged. Collocation of new facilities on existing facilities shall be the preferred option." The applicants have provided additional information in the record addressing the feasibility of collocation onto existing facilities at the Holiday Inn Express on Clover Lane, and opponents have submitted materials challenging this information. The Planning Commission must ultimately determine whether adequate information is included in the record that demonstrates the burden of proof has been met with respect to the feasibility of collocation.

Lease Agreement – AMC 18.72.180.B.7 requires that applications include "A copy of the lease agreement for the proposed site showing that the agreement does not preclude collocation." A lease was not provided with the application, and staff had previously recommended a condition of approval that this be provided with the building permit. This issue was raised in a number of e-mails submitted, and the applicants subsequently provided a lease to demonstrate that the requirement is met.

As previously noted in the record (see June 16 e-mail), in staff's review of the lease language, we have noted that item #8b on page 6 indicates, "*Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.*" As indicated in the record, in staff's view the language in #8B is overly broad and we have recommended that a revised condition be attached to provide a revised lease prior to building permit which modifies #8b in the lease agreement to more clearly demonstrate that collocation is not precluded and that the limits for conflicting uses be more clearly defined in terms of operational interference.

Staff recognizes the difficulty inherent in this decision in terms of the nature of the issue and its importance to those providing it, the volume of information provided, and the limitations on considering a significant amount of the material due to federal regulations. Ultimately, the Commission must determine first whether the information necessary to make a decision has been provided, and based on review of that information in light of the applicable regulations determine whether the information is adequate to make a finding that each of the applicable approval criteria has been addressed to the Commission's satisfaction.

