

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

**ASHLAND PLANNING COMMISSION  
REGULAR MEETING  
JULY 13, 2010  
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street
  
- II. **ANNOUNCEMENTS**
  
- III. **CONSENT AGENDA**
  - A. **Approval of Minutes**
    - 1. June 8, 2010 Planning Commission Minutes
    - 2. June 22, 2010 Special Meeting Minutes
  
- IV. **PUBLIC FORUM**
  
- V. **TYPE II PUBLIC HEARINGS**
  - A. **PLANNING ACTION: #2010-00582**  
**SUBJECT PROPERTY: 1405 Tolman Creek Road**  
**APPLICANT: Malibar Group, LLC**  
**DESCRIPTION:** A request for a Boundary Line Adjustment and a Variance to allow a lot wider than it is deep for the vacant property located at 1405 Tolman Creek Road. **COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential; **ZONING:** R-1-7.5; **ASSESSOR'S MAP #:** 39 1E 23 BA; **TAX LOT:** 308 and 501
  
- VI. **OTHER BUSINESS**
  - A. **Approval of Findings for PA-2009-01244, 1644 Ashland Street**
  
  - B. **Discussion of changes to the Planning Commission Rules of Conduct**
  
  - C. **Planning Commission Liaison to TSP Technical Advisory Committee**
  
- VII. **ADJOURNMENT**

**CITY OF  
ASHLAND**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

**CITY OF  
ASHLAND**  
ASHLAND PLANNING COMMISSION  
REGULAR MEETING  
MINUTES  
June 8, 2010

**CALL TO ORDER**

Chair Pam Marsh called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

**Commissioners Present:**

Larry Blake  
Michael Dawkins  
Dave Dotterer  
Pam Marsh  
Debbie Miller  
Melanie Mindlin  
Mike Morris  
John Rinaldi, Jr.

**Staff Present:**

Bill Molnar, Community Development Director  
Derek Severson, Associate Planner  
Brandon Goldman, Senior Planner  
Amy Gunter, Assistant Planner  
Richard Appicello, City Attorney  
April Lucas, Administrative Assistant

**Absent Members:**

None

**Council Liaison:**

Eric Navickas, absent

**ANNOUNCEMENTS**

Community Development Director Bill Molnar noted on June 15, 2010 the City Council will accept testimony on RPS, and the Croman Mill Plan implementation ordinances are also on the agenda.

**CONSENT AGENDA**

- A. Approval of Minutes
1. May 11, 2010 Planning Commission Minutes
  2. May 28, 2010 Study Session Minutes

Commissioners Morris/Dawkins m/s to approve the May 11, 2010 and May 28, 2010 minutes. Voice Vote: all AYES.  
Motion Passed 8-0.

- B. Approval of Findings for PA-2009-00726, 720 Grandview Drive Appeal

**Ex Parte Contact**

No ex parte contact was reported by any of the commissioners.

Commissioners Dotterer/Blake m/s to approve the Findings for Planning Action #2009-00726, Appeal of 720 Grandview Drive. Voice Vote: all AYES. Motion passed 8-0.

**PUBLIC FORUM**

No one came forward to speak.

**TYPE II PUBLIC HEARINGS**

- A. PLANNING ACTION: #2009-01244  
SUBJECT PROPERTY: 1644 Ashland Street  
APPLICANT: Goodman Networks, Inc. for AT&T Wireless, LLC  
DESCRIPTION: A request for Site Review approval and a Conditional Use Permit to install rooftop wireless communications facilities on the existing Ashland Street Cinema building located at 1644 Ashland Street, and

associated ground mounted equipment. The installation consists of 12 architecturally-integrated panel antennas. The application includes a request for an Administrative Variance from Site Design and Use Standards required landscape buffer. The subject property is located within the Detail Site Review Zone and the Ashland Boulevard Corridor, and the existing building is also subject to Additional Standards for Large Scale Projects. COMPREHENSIVE PLAN DESIGNATION: Commercial; ZONING: C-1; ASSESSOR'S MAP #: 39 1E 15 AB; TAX LOT: 6800.

### Declaration of Ex Parte Contact

Commissioner Blake stated he conducted a walking tour. No ex parte contact was reported by any of the commissioners.

Commissioner Marsh stated a request has been submitted to reopen the record pursuant to ORS 197.763(6)(c). She explained if they do this, the public record will be reopened for seven days until 4:30 p.m. on June 16<sup>th</sup> and deliberations on this action will be postponed to June 22, 2010. Marsh stated the Commission needs to also decide whether to include in the record the additional materials that were received after the close of the initial public comment period.

Associate Planner Derek Severson clarified written requests to reopen the record were submitted by the applicant as well as two parties who had previously provided testimony.

Comment was made expressing concern about repeated requests to reopen the record. City Attorney Richard Appicello clarified if they reopen the record, the scope of materials submitted will be limited to new information and responses to materials already in the record. He stated he understands this to be a one-time request; however, they may need to address this further if staff receives additional requests to reopen the record.

**Commissioner Dotterrer/Miller m/s to reopen the record until 4:30 p.m. on June 16, 2010; to continue this item to the June 22, 2010 Special Meeting; and to allow the submission of additional material that has been received since the record was closed. Voice Vote: all AYES. Motion passed 8-0.**

### TYPE III PUBLIC HEARINGS

#### **A. PLANNING ACTION: #2010-00560**

**SUBJECT PROPERTY: FEMA Regulated Floodplains Citywide**

**APPLICANT: City of Ashland**

**DESCRIPTION: A request to amend the Flood Insurance Rate Maps and Chapter 18.62 (Physical & Environmental Constraints) of the Ashland Land Use Ordinance to provide consistency with Chapter 15.10 (Flood Damage Prevention Regulations) of the Ashland Municipal Code and federal regulations regarding building within the 100 year floodplain.**

Commissioner Marsh read aloud the public hearing procedures for land use hearings.

### Staff Report

Senior Planner Brandon Goldman and Assistant Planner Amy Gunter provided a presentation on the FEMA Floodplain map modernization. Mr. Goldman explained FEMA has created new maps for the entire country and the application before the Commission is to adopt these maps and the associated land use code amendments. He noted this item recently came before the Commission at a Study Session and he briefly reviewed the public outreach activities staff has conducted to get this information out to citizens.

Ms. Gunter reviewed how the current FEMA maps and proposed updated maps were created, and how these maps impact the City. She stated the current flood insurance rate maps were adopted in 1981 and were created using largely aerial photography and data from 1929. She explained when Ashland adopted these maps the City became part of the National Flood Insurance Program, and because the City has done more to protect our floodplains than what is required by FEMA, the citizens of Ashland receive a 15% reduction on flood insurance rates. Ms. Gunter explained data from 1988 was used to create the new digital maps and the new maps also incorporate computer modeling. She stated this project was started a number of years ago, but is just now coming to Jackson County, and stated the new maps will be easier for citizens to access because they will be in digital format instead of just paper copies.

Ms. Gunter provided information on the map amendment process and explained how citizens can go through a process through FEMA to have the maps amended. She noted since 1994, nine property owners have received amendments to the FEMA maps and clarified these amendments are still valid.

Ms. Gunter stated these map modifications will mostly affect insurance, which is why public outreach has been so important. She stated following this map adoption, property owner insurance rates will change; however, citizens have the ability to lock in their rates up until these maps are adopted. Ms. Gunter stated the City is anticipating September as the effective date and encouraged citizens to lock in their insurance rates before the new maps go into effect.

Mr. Goldman explained as part of this endeavor there are a number of land use modifications to AMC 18.62. He stated definitions will be added which will make the City's code consistent with the statewide model code. In addition, he stated this application includes amendments to the building code and he reviewed those briefly for the Commission.

Mr. Goldman clarified if the City chooses to not adopt these maps, we will lose our ability to participate in the National Flood Insurance Program and citizens would likely see a significant increase to their insurance rates. He also clarified that only property owners can request modifications to the FEMA maps; however, prior letters of map amendments will stay in effect.

### Public Testimony

**Greg Williams/744 Helman St/**Shared his concerns regarding the flooding potential for Nevada Street. He explained when Nevada St. was washed out in the 1974 flood, the City installed a new culvert and tried to change the direction of the stream in the middle of the crossing. Mr. Williams stated during the 1997 flood this culvert did exactly what they were worried it would do, and it backed up and essentially made a lake. He stated he believes a study was done that identifies this as an insufficient crossing and stated if the City were to build a crossing that is up to speed, this floodplain would be reduced and less of his property would be included in the floodplain.

### Advice from Legal Counsel & Staff

Comment was made asking what they can do to address Mr. William's concern. Community Development Director Bill Molnar stated there is a study that talks about replacing/resizing culverts in the City. He stated he is not sure if this project is included in the City's Capital Improvements Plan and stated he will bring this to the attention of the Public Works Director. He added if the City were to pursue this, they could replace the culvert and amend the FEMA maps at the same time, so the burden would not fall on the property owner. Comment was made recommending Mr. William's letter and concerns be forwarded to the City Council as part of the record.

*Commissioner Marsh closed the public hearing and the record at 7:45 p.m.*

### Deliberations & Decision

**Commissioners Dotterrer/Rinaldi m/s to recommend to the City Council the adoption of proposed digital FIRMs and supporting code amendments. DISCUSSION:** Commissioner Morris shared his concerns regarding the inaccuracy of the maps and the costs involved with obtaining map amendments, and stated he cannot support the adoption of the maps for these reasons. Commissioner Miller stated she shares Morris' concerns. Ms. Gunter clarified FEMA did indicate that the City could do their own flood insurance study and that they would amend the maps based on that information; however it would be a significant cost to the City to survey the entire community. **Roll Call Vote: Commissioners Rinaldi, Mindlin, Dotterrer, Blake and Marsh, YES. Commissioners Dawkins, Morris and Miller, NO. Motion passed 5-3.**

Staff noted this action is currently scheduled to go before the City Council on July 20, 2010. Commissioner Marsh commented on the public outreach and encouraged staff to consider sending out an additional notice to affected property owners that explains the insurance changes in plain language. Additional suggestions were made for staff to consider calling local realtors and title companies to spread the word, and to hang notices on the doors of affected properties.

### ADJOURNMENT

Meeting adjourned at 8:00 p.m.

*Respectfully submitted, April Lucas, Administrative Assistant*

**CITY OF  
ASHLAND**  
ASHLAND PLANNING COMMISSION  
SPECIAL MEETING  
MINUTES  
June 22, 2010

**CALL TO ORDER**

Chair Pam Marsh called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

**Commissioners Present:**

Larry Blake  
Michael Dawkins  
Dave Dotterer  
Pam Marsh  
Debbie Miller  
Melanie Mindlin  
Mike Morris  
John Rinaldi, Jr.

**Staff Present:**

Bill Molnar, Community Development Director  
Derek Severson, Associate Planner  
Richard Appicello, City Attorney  
April Lucas, Administrative Assistant

**Absent Members:**

None

**Council Liaison:**

Eric Navickas, absent

**ANNOUNCEMENTS**

Commissioner Marsh announced the vacancy on the Planning Commission and encouraged interested citizens to submit applications to the Mayor's office.

Community Development Director Bill Molnar requested the commissioners inform staff if they have summer travel plans and stated there is a possibility the July Study Session will be canceled.

**PUBLIC FORUM**

No one came forward to speak.

**UNFINISHED BUSINESS**

**A. PLANNING ACTION: #2009-01244**

**SUBJECT PROPERTY:** 1644 Ashland Street

**APPLICANT:** Goodman Networks, Inc. for AT&T Wireless, LLC

**DESCRIPTION:** A request for Site Review approval and a Conditional Use Permit to install rooftop wireless communications facilities on the existing Ashland Street Cinema building located at 1644 Ashland Street, and associated ground mounted equipment. The installation consists of 12 architecturally-integrated panel antennas. The application includes a request for an Administrative Variance from Site Design and Use Standards required landscape buffer. The subject property is located within the Detail Site Review Zone and the Ashland Boulevard Corridor, and the existing building is also subject to Additional Standards for Large Scale Projects.

**COMPREHENSIVE PLAN DESIGNATION:** Commercial; **ZONING:** C-1; **ASSESSOR'S MAP #:** 39 1E 15 AB; **TAX LOT:** 6800.

**Declaration of Ex Parte Contact**

Commissioner Rinaldi stated he performed a site visit. Commissioner Mindlin stated she performed a drive by site visit. No ex parte contact was reported by any of the commissioners.

## Staff Report

Associate Planner Derek Severson noted a significant amount of testimony was submitted into the record following the Commission's last meeting and stated the primary concerns were focused on: health impacts, economic impacts, collocation, and the lease agreement. Mr. Severson explained the Telecommunications Act of 1996 prohibits the Commission from basing their decision on potential health effects or health concerns; and in terms of the economic impact issues, he stated the Commission must determine whether these impacts can be separated from the concerns about health impacts. Regarding collocation, Mr. Severson clarified the Municipal Code states, "*Where possible, the use of existing WFC sites for new installations shall be encouraged. Collocation of new facilities on existing facilities shall be the preferred option.*" He noted the Applicant's have submitted additional information addressing the feasibility of collocation elsewhere and they are asserting the other potential locations would not meet their service objectives. Lastly in terms of the lease, Mr. Severson stated staff is recommending a condition be added that requires a revised lease be drafted that more clearly demonstrates that collocation is not precluded. Mr. Severson stated the Commission must determine whether they have adequate information to make a decision and whether the information provided adequately addresses the approval criteria to their satisfaction (while considering the limitations imposed by Federal regulations). Mr. Severson stated in staff's view, the materials provided are sufficient for the Commission to make a finding for approval.

City Attorney Richard Appicello noted this is a quasi-judicial proceeding and the Commission's decision must be based on the approval criteria and supported by information in the record. He noted they are prohibited from applying the radio frequency emission health concerns in their decision even though there was a lot of testimony submitted about this; and stated in his opinion, it will be difficult to separate the economic issues from the health concerns. Mr. Appicello provided a brief explanation of how the City Council has interpreted the livability standard in the conditional use criteria and stated it is not a "no adverse impact" criterion, but rather a comparison between what is being proposed and the target use of the zone.

## Questions of Legal Counsel & Staff

The Commission asked questions on a number of elements; the following is a summary of the questions and answers that were given:

- *What does the Comprehensive Plan envision for this area?*  
Mr. Severson answered permitted uses within the C1 district, developed to .35 FAR.
- *In the Applicant's pre-application report staff identified concerns regarding the building's height and visual impacts, is this still a concern for staff?*  
Mr. Severson clarified at the pre-application stage the Applicant's were proposing six false chimneys to house the cell antennas, and stated staff does not have these same concerns with the current proposal.
- *How does this application impact parking?*  
Mr. Severson clarified the Applicant's prepared an independent parking analysis and it was their determination that because the equipment will be placed at the rear of the building and will not take up any required parking, it will not affect parking on the site.
- *Why is this application a conditional use rather than an outright permitted use?*  
Mr. Severson clarified there is a table in 18.62 that identifies which uses need conditional use permits and this is one of those uses. Commissioner Marsh noted she had a copy of the table and passed it around for the commissioners to look at.
- *The codes states "collocation shall be encouraged", does Legal have a definition for "encouraged"?*  
Mr. Appicello clarified this type of language is usually seen in comprehensive plan policies and is not typical for land use code. He added because of the language used, this standard is fairly weak.
- *How should the Commission handle the varying information contained in the multiple submissions from the Applicant?*  
Mr. Appicello stated the Commission must consider all of the information in the record and noted the earlier submissions may not have been complete which is why additional information was added by the Applicant.

- *Does the criterion regarding material adverse impacts only apply to the property at hand or all of the surrounding properties?*

Mr. Appicello stated he this criterion extends to the notice area as well.

- *To what degree is the landscape screen critical?*

Mr. Severson clarified the Applicant's are requesting a variance to the landscape requirement and they assert by not providing the landscape buffer they are able to mimic the development pattern that is already in place, it allows them to preserve fire access, and the existing landscaping mitigates their request. Mr. Severson added the proposed ground structure would not be visible from the right of way, and noted the property located behind the structure is a commercial use.

Commissioner Dawkins stated he is struggling with this because based on what the City Attorney is saying, they have no room to vote anything but "Yes". He voiced his frustrations with not being able to look at the economic impacts caused by perceived danger, and stated he agrees with these concerns. He stated he cannot vote ethically on this and then ***Commissioner Dawkins recused himself from the hearing.***

### **Deliberations & Decision**

Commissioner Marsh explained that what they do is largely prescribed by the Oregon land use laws and clarified further by city regulations. She stated sometimes the hardest part is understanding exactly what the standards or criteria are and in this case the issue that most people want to talk about (potential health impacts) has been taken off the table by the Federal government and they cannot discuss it. Marsh stated what remains are three major decision points: 1) does the application meet the development standards for wireless communication facilities, 2) does it meet the criteria for a site and design application that includes an administrative variance for landscaping, and 3) does it meet the criteria for a conditional use permit. Marsh recommended they proceed with their discussion in this order and that they begin their deliberations with the development standards and the collocation element.

### ***Development Standards/Collocation***

Mr. Severson clarified there is an approval criteria that states where possible, collocation should be considered; however the Applicant's have provided a refinement to their earlier materials that details why collocation would not meet their objectives.

Commissioner Miller stated she is not convinced that collocation with the Holiday Inn Express is not an option and based on the Applicant's submittals she does not think they have really looked at this. Commissioner Mindlin commented that initially the Applicant's stated the cinema site was preferable, and as the noose tightened they changed their stance to this being the only location feasible. Commissioner Dotterer stated initially he was uncomfortable as well with the changing input, but based on legal's advice, they have to look at the totality of the Applicant's materials and believes they have addressed the collocation adequately. Commissioner Marsh agreed. She stated the original submittal was weak, but it was added to over time, and in the end she was persuaded by the most recent information that came in. She noted she was particularly persuaded by the statement from AT&T representatives that the Ashland Cinema location will provide full access to the SOU campus both indoors and out, and she believes this access for the students is an important function.

Commissioner Blake stated the criterion language in 18.72.180.C.2 is so weak, it really ties the hands of the Planning Commission. Marsh stated the collocation language is largely for site and design issues, so it puts the emphasis on them to look at the site and design factors and ameliorate any adverse visual impacts.

Commissioner Mindlin stated like Dawkins, she also feels biased and can't in good consciousness participate because of her beliefs about the environmental impacts. ***Commissioner Mindlin recused herself from the hearing*** and left the room.

### ***Site Design & Use Standards/Landscaping Variance***

Commissioner Blake stated he does not believe the current design mitigates the visual impacts and believes this will make the building more imposing than it needs to be and will block views of the mountains. Mr. Severson stated in looking at the plans he believes the parapets are for screening and the antennas appear to be located in the penthouse portion. He added he is not an engineer and cannot speak to whether there is an engineering function to the parapets. Marsh clarified without the additional parapets, there would just be a very tall Ashland Cinema sign to hide the antennas.

Commissioner Blake stated he is bothered by the Applicant's request for a landscaping waiver. Commissioner Dotterrer stated he views this administrative variance as very minor and he is okay with this. He added there are a lot of other important issues here and believes they should allow the variance in this case. Marsh concurred and Rinaldi agreed as well.

### ***Conditional Use Permit***

Commissioner Marsh noted there has been legal guidance given on the interpretation of conditional use permits in terms of the targeted use and the impacts of the use being proposed.

Commissioner Miller expressed her concerns with the economic impact this proposal will have on the surrounding businesses. Rinaldi agreed and cited the testimony they received from numerous individuals who testified they would be forced to close their business due to the lack of patronage. He added customers also testified that they would no longer visit these businesses. He stated regardless of why people feel this way, he believes this meets the definition of economic impact. Marsh stated this is a very slippery slope and while it would be very unfortunate if people no longer visit this shopping center, she does not believe they should base their decision on how people feel rather than the criteria. Miller noted the criterion that states "*other factors found to be relevant by the hearing authority for the review of the proposed use*" and questioned why they cannot put economic impact into this as a factor. She stated people have testified that they are not going to frequent those businesses and does not know why they cannot consider this. Mr. Appicello clarified there is a list of types of impacts on livability and "*other factors found to be relevant*" would typically be similar impacts to the ones that are listed. He stated the standard does not ask if there is going to be an adverse impact, it asks whether the impact is greater than the target use of the zone. He added this means the Commission needs to compare the proposed use to everything else that is permitted in a C1 zone. Dotterrer agreed with Marsh about the issue of separating economic impacts from the environmental impacts. He stated the two are connected and believes they are getting away from the criteria that they are suppose to be looking at. He added if they have a problem with the criteria, the law should be rewritten. The City Attorney was asked for his advice regarding separating the environmental and health concerns as the reason behind the economic impact. Mr. Appicello commented that given the federal statute, he would not recommend attempting to separate the reason for the economic impact from the radio frequency concerns.

Commissioner Blake commented that they will likely see future requests like this down the road and recommended the City Council take another look at the impacts and possibly strengthen the approval criteria language.

**Commissioner Dotterrer/Morris m/s to approve Planning Action #2009-01244, including the request for an administrative variance to the Site Design & Use Standards, and add the additional conditions proposed by staff.**

**DISCUSSION:** Commissioner Blake stated he does not think the two raised parapets mitigate the visual impacts and stated he would be in favor of a condition that eliminates those from the application. Blake offered this as a friendly amendment.

**Commissioners Dotterrer and Morris accepted the amendment with the clarification "so long as the removal does not compromise the screening or engineering of the structure."** Miller voiced her objections to the motion and stated she does not believe the collocation issue has been satisfactorily addressed. Marsh commented that we are a cell-centric culture and have become dependent on this technology for basic communication. She stated these issues are going to proliferate and as technology changes we are going to have to look at how we want these sited. **Roll Call Vote: Commissioners Blake, Dotterrer, Morris, Rinaldi and Marsh, YES. Commissioner Miller, NO. Motion passed 5-1.**

Commissioner Marsh noted the Findings for this action will come back at their next meeting and warned the commissioners about ex parte contact. It was noted that an appeal of this decision is very likely and Mr. Appicello clarified if appealed, there will not be a de novo hearing before the City Council. He added it will not be the same kind of hearing that happened before the Planning Commission and stated he can provide further details when the Findings come back to them.

### **ADJOURNMENT**

Meeting adjourned at 8:33 p.m.

*Respectfully submitted,  
April Lucas, Administrative Assistant*



**PLANNING ACTION: 2010-00582**

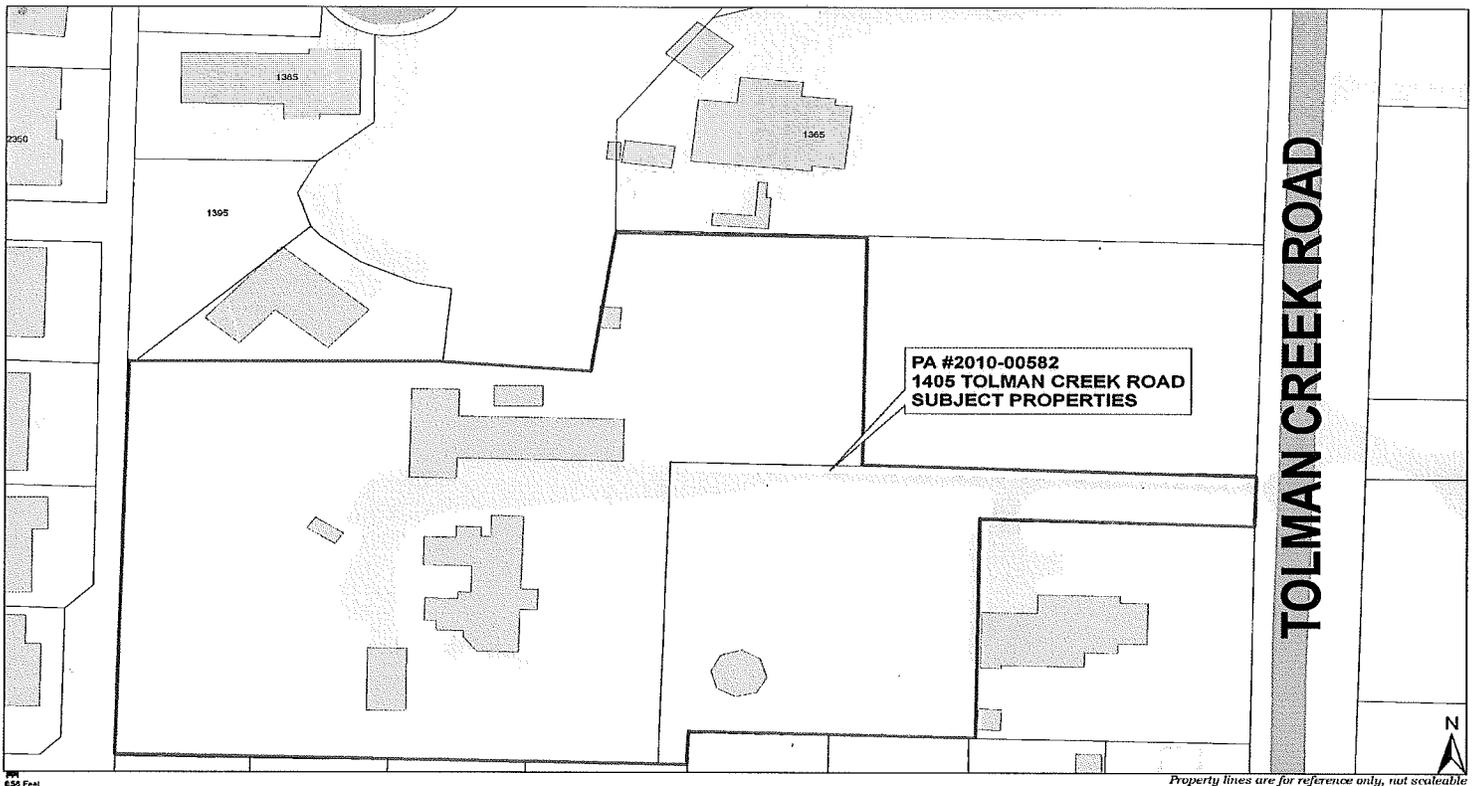
**SUBJECT PROPERTY: 1405 Tolman Creek Rd**

**OWNER/APPLICANT: Malibar Group, LLC**

**DESCRIPTION: A request for a Boundary Line Adjustment and a Variance to allow a lot wider than it is deep for the vacant property located at 1405 Tolman Creek Road. COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; ZONING: R-1-7.5; ASSESSOR'S MAP #: 39 1E 23 BA; TAX LOT: 308 and 501**

**NOTE:** The Ashland Tree Commission will also review this Planning Action on **July 8, 2010 at 6:00 p.m.** in the Community Development and Engineering Services building (Siskiyou Room) located at 51 Winburn Way.

**ASHLAND PLANNING COMMISSION MEETING: July 13, 2010, at 7:00 PM, Ashland Civic Center**



Notice is hereby given that a PUBLIC HEARING on the following request with respect to the ASHLAND LAND USE ORDINANCE will be held before the ASHLAND PLANNING COMMISSION on meeting date shown above. The meeting will be at the ASHLAND CIVIC CENTER, 1175 East Main Street, Ashland, Oregon.

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. A copy of the Staff Report will be available for inspection seven days prior to the hearing and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Department, Community Development and Engineering Services, 51 Winburn Way, Ashland, Oregon 97520.

During the Public Hearing, the Chair shall allow testimony from the applicant and those in attendance concerning this request. The Chair shall have the right to limit the length of testimony and require that comments be restricted to the applicable criteria. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least seven days after the hearing.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at 541-488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting. (28 CFR 35.102.-35.104 ADA Title I).

If you have questions or comments concerning this request, please feel free to contact the Ashland Planning Division, 541-488-5305.

## **VARIANCE**

### 18.100.020 Application

The owner or his agent may make application with the Staff Advisor. Such application shall be accompanied by a legal description of the property and plans and elevations necessary to show the proposed development. Also to be included with such application shall be a statement and evidence showing that all of the following circumstances exist:

- A. That there are unique or unusual circumstances which apply to this site which do not typically apply elsewhere.
- B. That the proposal's benefits will be greater than any negative impacts on the development of the adjacent uses; and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.  
(ORD 2425, 1987).
- C. That the circumstances or conditions have not been willfully or purposely self-imposed.  
(ORD 2775, 1996)

**ASHLAND PLANNING DIVISION  
STAFF REPORT  
July 13, 2010**

**PLANNING ACTION:** PA-2010-00582

**APPLICANT:** Malibar Group LLC

**LOCATION:** 1405 Tolman Creek Road  
Map 39 1E 23 BA, Tax Lots #308 & #501

**COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential

**APPLICATION DEEMED COMPLETE:** June 2, 2010

**120-DAY TIME LIMIT:** September 30, 2010

**ORDINANCE REFERENCE:**

18.20	R-1 Single Family Residential District
18.61	Tree Preservation and Protection
18.76.090	Conditions May Be Set
18.76.100	Final Step
18.76.110	Final Map Requirements
18.76.120	Acceptance of the Final Map
18.76.130	Final Approval by the Secretary
18.76.140	Lot Line Adjustments
18.100	Variance

**REQUEST:** A request for a Lot Line Adjustment and a Variance to allow a lot wider than it is deep for the vacant property located at 1405 Tolman Creek Road

**I. Relevant Facts**

**A. Background - History of Application**

In September of 1997, Planning Action 97-085 requested a variance to increase the number of livestock from the permitted two head of livestock over the age of six months per acre to four head of livestock over the age of six months per acre to keep 15 llamas on the property. This request was ultimately denied by the City Council.

In July of 1995, Planning Action 95-037 requested Outline and Final Plan approval for the four-lot Wildcreek Subdivision under the Performance Standards Option. Tax Lot #308, one of the subject properties in the current application, was Lot #4 in that subdivision.

There are no other planning actions of record for this site.

## **B. Detailed Description of the Site and Proposal**

The subject properties, Tax Lots #308 and #501, are located on the west side of Tolman Creek Road between Green Meadows Way and Morada Lane. Both properties are located within the R-1-7.5 zoning district, a single family residential zone which requires a minimum lot size of at least 7,500 square feet.

Tax Lot #501 is 0.89 acres in area and is vacant with the exception of a small shed associated with the agricultural use of the property as a llama farm.

Tax Lot #308 is 2.32 acres in area and contains a ranch-style, single-story single family residence, a detached garage with guest house above, and an additional large detached garage/storage building. According to Jackson County Assessor's data, the single family residence was constructed in 1890 and is approximately 2,515 square feet, and the guest house dates to 1950 and is approximately 560 square feet. The application notes that all existing structures are intended to remain on the property with the proposal. Tax Lot #308 has no legal frontage on Tolman Creek Road; while it is served by a private driveway easement from Apple Way to the north, it takes functional access via an existing flag drive to Tolman Creek Road.

The properties are generally flat, with an approximate four to five percent slope down to the northeast, although there are some steeper areas along the bank of a drainage at the western portion of the subject properties. A tree inventory and tree preservation plan has been provided identifying 16 trees in the vicinity of Tax Lot #501 which could potentially be affected by future construction on this tax lot. Three of these trees are identified for removal, including Tree #10, a 12-inch maple and Trees #11 and #12, which are small fruit trees located within the identified fire truck turn-around, and which have a diameter of less than six-inches. None of these removals is subject to a Tree Removal Permit due to the sizes of the three trees to be removed, and the remaining trees are to be protected with standard tree protection fencing prior to any site disturbance on the property. The Tree Commission reviewed the application's Tree Inventory and Tree Preservation Plan at its July 2010 meeting and had no additional recommendations.

In addition to the trees identified on and around Tax Lot #501, there is a land drainage and associated riparian vegetation along the western portion of Tax Lot #308. While not identified as a water resource in the City of Ashland's inventory, this drainage appears to be an extension of Hamilton Creek Tributary #2 which terminates on the property to the north, near the Apple Way cul-de-sac. The drainage is protected by a Natural Drainageway Easement which was established with an earlier subdivision approval.

Local stream Hamilton Creek runs along the east side of Tolman Creek Road in the property's vicinity, and its identified floodplain appears to be in close proximity to the entrance to the driveway serving the subject properties. Any work constituting development within the floodplain would trigger a Physical and Environmental Constraints Review Permit, and the applicants would need to provide a survey to clearly identify the limits of the floodplain before making application for any permits.

Access to the subject properties is via an existing flag drive from Tolman Creek Road which serves an additional tax lot (Tax Lot #500) which has legal access from Tolman but takes functional access from the drive. Tolman Creek Road is classified as an Avenue or Major Collector, and is under Jackson County's jurisdiction in this vicinity. Tolman Creek Road is currently paved with open drainages on either side, but which lacks curbs, gutters, on-street parking, storm drains, park-row planting strips with street trees, sidewalks, and bike lanes.

The proposal involves a Lot Line Adjustment to reduce the size of Tax Lot #501 from .89 acres to .33 acres. Tax Lot #308 is to increase from 2.32 acres to 2.90 acres. No additional lots are to be created with the application, and no development is proposed, however because the Lot Line Adjustment results in a lot that is by definition wider than it is deep, a Variance to the general requirement in Single Family Residential zoning districts that no lot shall be wider than it is deep is also required. This requirement is generally intended to insure efficient land use, as wider lots could result in the need for additional infrastructure to serve the same number of lots. When lots are not created to be wider than they are deep, a more compact urban form can more easily be maintained, with more lots served using less pavement and less necessary infrastructure extension.

## **II. Project Impact**

The application involves a request for a Lot Line Adjustment, which typically could be approved ministerially by the Staff Advisor when the proposal meets all requirements of the zoning district. However, in this instance the proposed relocation of a lot line results in the creation of a flag lot that is 145 feet wide while having a depth of only 80 feet. General regulations within the R-1 zoning district require that no lot shall have a width greater than its depth, and with the width and depth proposed, a Variance to the standard is required. Because the width exceeds the depth by more than 20 percent, the Variance is subject to processing as a Type II and a public hearing is required.

### **A. Lot Line Adjustment**

The proposal involves a Lot Line Adjustment to reduce the size of Tax Lot #501 from .89 acres to .33 acres. Tax Lot #308 is to increase from 2.32 acres to 2.90 acres. No additional lots are to be created with the application, and no development is proposed. Lot Line Adjustments are typically approved ministerially when all requirements of the zoning district are met. In this instance, both of the proposed lots are larger than the 7,500 square foot minimum lot size for the zoning district, both satisfy the minimum 65-foot lot width and both meet the 80-foot minimum depth. While Tax Lot #308 exceeds the maximum width and depth limitations of 150 feet, these are existing conditions that are not exacerbated by the proposed adjustment. The applicants have identified a proposed building envelope for Tax Lot #501 which provides the required yard areas for the lot as proposed, with a front yard on the east side of the lot between the envelope and Tolman Creek Road, but which also responds to a future street installation in place of the existing driveway. Only the proposed width versus depth relationship fails to meet zoning requirements, and as such a Variance has been requested.

## **B. Variance to Create Lot Wider than it is Deep**

During consideration of an appeal for a requested Variance to create a flag lot that was wider than it was deep in 2005, the Planning Commission Hearings Board was presented with an analysis of the Land Use Ordinance from the Legal Department which explained that by definition, the front lot line for a flag lot is the lot line that is closest and parallel to the street, excluding the flag pole area. The rear lot line is the line directly opposite the front lot line, with the remaining lot lines considered side lot lines, and yard areas, width and depth determinations proceed accordingly. The Hearings Board at that time concurred with the Legal Department's interpretation, and found that the lot width for a flag lot had to be measured between the two side lot lines. Through this action, it was clarified that by ordinance, there was no flexibility in determining the front lot line, yard areas or widths and depths when it came to flag lots.

The proposed Lot Line Adjustment here results in a lot with a width of 145 feet and a depth of only 80 feet. Because the Lot Line Adjustment results in a lot that is wider than it is deep, a Variance to the general requirement in Single Family Residential zoning districts that no lot shall be wider than it is deep has been requested.

The application materials note that there are a number of unique or unusual circumstances which apply in necessitating the proposed Variance: A) that Tax Lot #501 is already non-conforming in terms of width and depth; B) that Tax Lot #308 is already non-conforming in terms of having no legal street frontage, and is oddly shaped with a size which dwarfs surrounding properties; C) that Tax Lot #400 (which is not part of the application) is a vacant parcel with its only access from Tolman Creek Road but which could take access from a future street that could be installed in place of the existing driveway; D) that Tax Lot #500 (also not part of the application) could redevelop or add an accessory residential unit taking access from a future street that could be installed in place of the existing driveway; and E) that without the proposed offering of an access easement within the proposed flag pole area, both Tax Lot #400 and #500 could further develop and require additional accesses from Tolman Creek Road creating access management concerns.

The applicants have provided a comprehensive site plan, which while not being considered under the current application, is intended to illustrate that the proposal's benefits would be greater than any negative impacts on adjacent uses, and would further the intent of the ordinance and Comprehensive Plan. The plan identifies the area of the existing driveway, which is approximately 36.94 feet in width, as an area for which the applicants are willing to provide an irrevocable consent to dedicate as street right of way to accommodate a significant portion of the necessary right-of-way for a future street installation to serve the eventual development of the subject properties as well as adjacent Tax Lots #400 and #500 according to the target use of the zoning district. In addition, the applicants propose to provide access easement to both lots #400 and #500 for use of the existing driveway in the interim period to alleviate any access management concerns. The plan identifies the potential for a phased future subdivision of the subject properties to create a total of eight lots, including a new street installation with turn-around and the potential to relocate an existing unimproved bicycle and pedestrian easement connecting Tolman Creek Road and Apple Way into the new street, eliminating the need for a crossing of Hamilton Creek Tributary #2. The applicants have identified a proposed building envelope for Tax Lot #501 which

provides the required yard areas for the lot as proposed with the current adjustment, with a front yard on the east side of the lot between the envelope and Tolman Creek Road, but which also responds to the future street installation.

The application materials note that the current circumstances have not been willfully or purposely self-imposed as the current owners only acquired the properties in May of 2009 and did not create the lot's odd configuration, size or have anything to do with the surrounding properties. The application goes on to note that the requested Lot Line Adjustment is intended as an initial step in creating a neighborhood in-fill project that complies with city policies and regulations while benefiting the neighboring properties as they eventually redevelop in a more logical pattern.

For staff, the most applicable unique or unusual circumstance here is that the subject properties, contiguous parcels under a single ownership, represent a significantly oversized parcel within the zoning district. As it exists, Tax Lot #308 exceeds both the maximum width and maximum depth allowed within the district and has no street frontage. Yet this property, in combination with Tax Lot #501, has the potential under the current zoning to accommodate significant additional density, with a base density of 11.55 units (3.207 acres X 3.6 units per acre = 11.545 units).

In terms of the benefits of the proposal outweighing any negative impacts on the development of adjacent uses and furthering the purpose and intent of the comprehensive plan, staff believe that it is important to consider the underlying basis for the width versus depth relationship requirement. As staff understand it, this requirement is intended to insure efficient land use over the long term – the creation of wider lots spread development further along a street, increasing the need for pavement and utility extensions, while the use of narrower lots can accommodate the same number of houses with less pavement and less infrastructure extension.

In the short term, the proposed Lot Line Adjustment has little negative effect on the adjacent properties – the number of lots does not change with the adjustment, and Tax Lot #501 could develop as illustrated in the proposed envelope without the adjustment. However, over the long term the applicants' comprehensive site plan demonstrates that the proposal is in keeping with the underlying basis of the width versus depth requirements – efficient land use over the long term. With the applicants' offer of easements to adjacent properties and an irrevocable consent to future right-of-way dedication, the proposal benefits adjacent uses and furthers the purpose and intent of the ordinance and the Comprehensive Plan by facilitating more efficient land use for the site in the manner envisioned within the zoning district standards. Additionally, with the future street installation, Lot #501 would eventually front on the new street to its north, and at that time its width would be less than its depth, complying with the ordinance.

Staff do not believe that the circumstances or conditions are willfully or purposely self-imposed. The lot size and configuration pre-date the current owners' acquisition of the property, and while the applicants could potentially adjust the proposed width and depth to address the applicable standards in the short-term, in the long-term the proposed configuration ultimately facilitates more efficient land use for the subject properties and

surround properties, as envisioned in the standards of the zoning district, and will satisfy the width versus depth requirement with the eventual street dedication.

### **III. Procedural - Required Burden of Proof**

**Administrative approval of lot line adjustments are subject to the following, as detailed in AMC 18.76.140:**

*The adjustment of a lot line by the relocation of a common boundary, where the number of parcels is not changed and all zoning requirements are met, shall be accepted by the City, provided the requirements of Sections 18.76.090 through 18.76.130 are satisfied, in addition to Section 18.76.170, where the lot adjustment causes access to be changed to an exterior unimproved street.*

#### **SECTION 18.76.090 Conditions May be Set.**

*The Planning Commission or the Staff Advisor may require dedication of land or easements, signing in favor of street improvements, and conditions or modifications relating to improvements such as sidewalks, utilities, and the standards of the Subdivision Chapter and the development plan for the area. In no event shall the Planning Commission or the Staff Advisor require greater dedications or conditions than could be required if the area were subdivided. Underground utilities shall be required in connection with all land partition applications as set forth in subsections 18.80.060(C) through 18.80.060(F) of this Title.*

#### **SECTION 18.76.100 Final Step.**

*Within twelve (12) months of the date of preliminary map approval, the tract of land shall be surveyed, pins set at all corners, and a final map submitted to the Planning Department incorporating any conditions or modifications of the map's preliminary approval. If the applicant has not completed the foregoing within the twelve (12) month period, the applicant must resubmit the partition for preliminary approval consideration.*

#### **SECTION 18.76.110 Final Map Requirements.**

*The map to be filed with the County Clerk shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on polyester-base film having a minimum thickness of .003", 18" x 24". If ink is used on polyester-base film, the ink surface shall be coated with a suitable substance to ensure permanent legibility. An autopositive in black on polyester-base film shall also be filed with the County Surveyor. A reproducible copy of the final map shall be filed with the City Engineer. The map shall incorporate the following items before approval will be given:*

- A. *Title block, top and center specifying "minor or major partition", the partition number, City of Ashland and the applicant's name.*
- B. *Name of the property owner and developer.*
- C. *Number of each lot in the partition.*
- D. *Date, scale and north point (arrow) generally pointing to the top of the map.*
- E. *Basis of bearing determined by solar observation, Polaris observation, or*

*true bearing determined from the National Oceanic and Atmospheric Administration Survey Net (formerly Coast and Geodetic Survey).*

- F. *The name and right-of-way width of adjacent streets, alleys and private ways.*
- G. *Irrigation and drainage easements. Those portions of land within the boundaries of the partitioning subject to periodic inundation which affect the intended use of the land together with the method or source of such determination. Also, other easements of record or conditions which affect the title of land or the use of land.*
- H. *All stakes, monuments, or other evidence found and used to establish boundaries of the partition. Any lines or boundaries shown by approximation clearly identified as such.*
- I. *Established center lines by the City of adjoining streets.*
- J. *The length of all arcs, radii and central angles. Adjust all distances to the nearest 100th of a foot, except on curves, which may be shown closer. Adjust all bearings to the nearest ten (10) seconds. The error of field closure shall not exceed one (1) foot in five thousand (5,000).*
- K. *Area of each parcel expressed in either square feet or acres.*
- L. *Monumentation:*
  - 1. *All monuments shall be a minimum diameter of five-eighths inches (5/8") for iron pins and a minimum inside diameter of one-half inches (1/2") for iron pipes. For concrete monuments, refer to ORS 92.060 as amended by Senate Bill No. 487.*
  - 2. *Witness corners may be set when it is impractical or impossible to set a monument in its true position, providing course and distance are given to the true position.*
  - 3. *All monuments shall be clearly identified with the surveyor's or engineer's name or registration number.*
- M. *Certification of approval before filing with County Clerk and County Surveyor:*
  - 1. *Signature of approval on the face of the map by the Executive Secretary of the Planning Commission, or authorized representative.*
  - 2. *Dedication of easements for utilities and/or widening of street shall be made on the face of the map. Statement of dedication by owner-developer with signature attested to by notarization.*
  - 3. *Surveyor's certificate is to be shown with surveyor's seal and signature on the face of the map.*
  - 4. *Signature of approval by the City Engineer is required when dedication of streets or easements is made on the map.*
- N. *Discovery of error and omissions:*
  - 1. *All corrections or additions on a final map shall be made in ink suitable for the material and sprayed with suitable plastic material for preservation, including those prior to recording.*
  - 2. *He shall file an affidavit stating the nature of the error with the County*

*Recorder.*

3. *The map then shall be corrected and initialed by the surveyor under the direction of the County Surveyor.*
4. *The affidavit document number and date shall be placed on the face of the map that is recorded.*

**SECTION 18.76.120 Acceptance of the Final Map.**

*Final maps offered for approval shall not be accepted if the individual or agent of a corporation being responsible for the final map is acting simultaneously as the surveyor or engineer for the applicant or developer and the entity having jurisdiction of the minor and major partitioning.*

**SECTION 18.76.130 Final Approval by the Secretary.**

*When the Staff Advisor determines that the final map conforms to the final map requirements and specifications and the conditions (if any) of preliminary approval, the Secretary, or authorized representative, shall date and sign the final map.*

**The approval criteria for Variances are described in AMC 18.100 as follows:**

- A. *That there are unique or unusual circumstances which apply to this site which do not typically apply elsewhere.*
- B. *That the proposal's benefits will be greater than any negative impacts on the development of the adjacent uses; and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.*
- C. *That the circumstances or conditions have not been willfully or purposely self-imposed.*

**IV. Conclusions and Recommendations**

In considering the requested Lot Line Adjustment and Variance to allow a lot wider than it is deep, staff believe that it is important to consider the underlying basis for the width versus depth requirement. As noted above, this requirement is intended to insure efficient land use over the long term, as the creation of wider lots spreads development further along a street, increasing the need for pavement and utility extensions, while the use of narrower lots accommodates the same number of houses with less paving and less necessary extension of utility infrastructure. In this instance, the subject properties, contiguous parcels under a single ownership, represent a significantly oversized parcel within the zoning district and have the potential under the current zoning to accommodate significant additional density, with a base density of 11.55 units.

In the short term, the proposed Lot Line Adjustment has little negative effect on the adjacent properties – the number of lots does not change with the adjustment, and Tax Lot #501 could develop as illustrated in the proposed envelope without the adjustment. However, over the longer term the applicants' comprehensive site plan demonstrates that the proposal is in keeping with the underlying basis of the width versus depth requirements – efficient land use. With the applicants' offer of easements to adjacent properties in combination with an irrevocable consent to future right-of-way dedication, the proposal benefits adjacent uses and furthers the purpose and intent of the ordinance and the Comprehensive Plan by facilitating more efficient future land use for the site as

envisioned in the standards of the zoning district. And with the eventual street dedication, Lot #501 would eventually front on the new street to its north, and at that time its width would be less than its depth, ultimately complying with the width versus depth requirements. As such, staff would recommend approval of the application with the conditions below:

- 1) That all proposals of the applicant be conditions of approval unless otherwise modified herein. The applicants' "Comprehensive Site Plan" has been provided for conceptual/illustrative purposes only, and is not approved with this application.
- 2) That a final survey plat shall be submitted within 12 months. Prior to city sign-off of the final survey plat:
  - a) All easements for public and private utilities, trails, pedestrian and bicycle access, natural drainageways, irrigation, fire apparatus access, and the reciprocal access easements for shared use of the existing driveway by Tax Lots #400 and #500 (as proposed in the application) shall be indicated on the final survey plat as required by the Ashland Engineering Division.
  - b) That the applicants shall submit a signed and notarized agreement for recording which provides irrevocable consent to dedicate the existing driveway as future street right-of-way with further development of the subject properties, as proposed in the application, with the understanding that street improvements would be provided by the future developer of subject property(ies).
- 3) That prior to the issuance of a building permit to develop tax lot #501:
  - a) That the applicants shall provide a site plan identifying improvements to the existing driveway to the development standards of a flag drive, including the required paved width and clear width and provisions for a third "visitors" parking space. Any work within the Tolman Creek Road right-of-way, including but not limited to driveway improvements or utility installation, shall be subject to review and approval by Jackson County and the City of Ashland, with permits to be issued by Jackson County.
  - b) That any development including but not limited to driveway improvements or utility installation within the Hamilton Creek floodplain shall be subject to a Physical & Environmental Constraints Review Permit. Prior to obtaining permits, the applicant shall provide a site plan identifying the limits of the floodplain prepared by an Oregon-licensed surveyor.
  - c) That the requirements of the Ashland Fire Department relating to fire hydrant distance; fire flow; fire apparatus access, turn-around, and work area; and approved addressing shall be satisfactorily addressed in the building permit plan submittals and complied with prior to issuance of the building permit or the use of combustible materials, whichever is applicable.
  - d) That a Verification Permit shall be applied for and approved by the Ashland Planning Division prior to site work, building demolition or construction, and/or storage of materials. The Verification Permit is to inspect the identification of the three trees to be removed and the installation of tree protection fencing for the trees to be retained and protected on and adjacent to the property. Tree protection shall consist of chain link fencing six feet tall and installed in accordance with 18.61.200.B.

**CITY OF ASHLAND  
PLANNING APPLICATION  
1405 Tolman Creek Road; 391E23BA #308 & #501**

**PROPOSAL:** This planning application proposal is for a Lot Line Adjustment and Variance for the “existing” vacant parcel adjacent to 1405 Tolman Creek Road.

**PROJECT INFORMATION:**

**SITE INFORMATION:**

1405 Tolman Creek Road  
391E23BA 308 & 501  
2.32 acres and .89 acres  
R-1-7.5 Zoning

RECEIVED

JUN 02 2010

City of Ashland

**OWNER:**

Malibar Group LLC  
1405 Tolman Creek Road  
Ashland, OR 97520

**LAND USE PLANNING:**

Urban Development Services, LLC  
485 W. Nevada Street  
Ashland, OR 97520  
Tel: 541-482-3334

**COMPREHENSIVE PLAN DESIGNATION:**

Single-Family Residential

**ZONING DESIGNATION:**

R-1-7.5

**LOT & HOUSE DATA:**

Tax Lot 308:	2.32 acres (existing)
	2.91 acres (proposed)
House:	2,515 sq. ft.
Guest House / Garage:	560 sq. ft.
Pool / Sidewalks:	350 sq. ft. (approximate)
Lot Coverage:	2.5% (45% permitted)
Tax Lot 501 (Vacant)	.89 acres (existing)
	.20 acres (proposed)
Lot Coverage:	0% (45% permitted)

**APPLICABLE ORDINANCES:**

R-1-7.5 Single Family Residential, Chapter 18.20  
Lot Line Adjustments, Chapter 18.76  
Variance, Chapter 18.100

**ADJACENT ZONING:**

WEST: R-1-7.5 Single Family Residential  
EAST: R-1-7.5 Single Family Residential  
SOUTH: R-1-7.5 Single Family Residential  
NORTH: R-1-7.5 Single Family Residential  
SITE: **R-1-7.5 Single Family Residential**

**1. SITE & PROJECT DESCRIPTION:**

**Site Description:** The subject properties are located at 1405 Tolman Creek Road (upper Clay Street) and are commonly referred as the “Llama Farm” (391E 23BA TL 308 and 501 – see attached plans). The properties are .89 acres and 2.32 acres and are zoned R-1-7.5. The property is relatively level and void of any significant natural features other than a few trees and a drainage swale traversing through the property’s western end. The smaller parcel is vacant other than a small circular shed, but the larger parcel consists of an existing single-level single family residence, a detached guest house over a garage and a large detached garage-storage building. According to the Jackson County Assessor’s Department, the home is 2,515 square feet and was constructed in 1890. The guest house is 560 square feet and was built in 1950. The architectural appearance of the single family residence is “ranch style” which appears to have been remodeled significantly in the 1950’s from its original design. All of the structures on the property are expected to remain with this application.

Accesses to the subject properties are from Tolman Creek Road via a private flag driveway. In total, the driveway serves three tax lots: 1) TL 500 (residence with legal access onto Tolman Creek Road, but functional access via the driveway), 2) TL 501 (vacant lot to be amended by Lot Line Adjustment) and 3) TL 308 (residence with sole access from driveway). A fourth tax lot, TL 400, also abuts the private driveway, but does not have an easement for access and is *not* part of this application.

**Project Description:** As stated above, the proposal is for a Lot Line Adjustment and Variance. The Lot Line Adjustment request proposes to reduce the existing lot size from .89 acres (38,768 sq. ft.) to .33 acres (14,215 sq. ft.). The Variance request is to create a lot that is “wider than it is deep” based on its paralleling orientation with Tolman Creek Road. *No additional lots are being proposed with this application.*

**Lot Line Adjustment:** The property owners desire an adjustment of the property line between their two properties creating one larger and one smaller tax lot. When finalized, each lot will continue to exceed the zone’s R-1-7.5 minimum lot size (7,500 square feet). The overall area of Tax Lot #308 will be increased from 2.32 acres to 2.90 acres and Tax Lot #501 will be reduced in size from .89 acres to .33 acres (14,215 sq. ft.). Without the flag pole area, the actual lot size is 11,600 sq. ft. or 35% greater than the zone’s minimum.

**Tax Lot #501:** is a flag lot with its “flag pole” extending 154’ to Tolman Creek Road. The width of the flag pole is approximately 37’ wide and serves as the access to the subject lot, an adjacent parcel (not part of proposal) Tax Lot #500 as well as Tax Lot #308. The body of Tax Lot #501 is approximately 184’ in depth by 206’ in width. The parcel is

vacant, but for a small accessory building which will remain (as part of Tax Lot 308). With the Lot Line Adjustment, Tax Lot #501 will remain a flag lot, but will be reduced in size to 14,215 sq. ft. The “flag poles” width will also be reduced in order to provide the adjacent Tax lot #308 legal frontage onto Tolman Creek Road. The width of the parcel will be 80’ and the depth 145’. Finally, the proposed Lot Line Adjustment plans identify a building envelope showing the maximum boundary of a future home, its porch boundary and garage boundary.

NOTE: It should be understood that Tax Lot #501 is currently a legal parcel of record today and has the right to build one single family residence. The applicants have no desire to divide Tax Lot #501, but instead reduce its size, sell the parcel with development restrictions as noted below and maintain the remaining acreage as part of Tax Lot #308 for future development potential. Considering the national economic issues with the housing market, any future development could be far off in the future which is why the applicants are not proposing a phased subdivision as there would be time limits with each phase.

Tax Lot #308: is currently a large odd shaped parcel with no frontage on Tolman Creek Road. Access to the lot is via an access easement through Tax Lot #501’s flag pole. The proposed Lot Line Adjustment will increase the parcel’s size and provide Tax Lot #308 with its own “flag pole” to Tolman Creek Road in an attempt to provide the parcel with legal frontage.

No physical changes are proposed with this application as the existing driveway will remain “as is” as no sidewalks, curbing or paving is proposed at this time. However, it should be understood that the applicants have submitted a “conceptual” Comprehensive Site Plan (i.e., master plan) in an attempt to illustrate to staff as well as the Planning Commission and neighbors a “possible” (relatively logical) subdivision configuration in an attempt to retain the lot’s development potential as well as address the City’s desire to maintain minimum density standards, evaluate civil engineering issues and to assess various development constraints. That said, the attached Comprehensive Site Plan identifies a new road leading into the body of the parcel and serving approximately eight additional lots. Again, the attached Comprehensive Site Plan is NOT a proposed plan, simply a logical illustration of how the remaining Tax Lot #308 may be developed and would address the intent of AMC 18.76.080.

**Variance:** A Variance request is desired due to the fact the modified parcel, Tax Lot #501, will be wider than it is deep and exceed 150’ in width as prohibited under Ashland Municipal Code, 18.20.040, General Regulations, Section C. However, it should be understood the Variance proposal is really only temporary situation and that when Tax Lot #308 is further subdivided, the proposed Lot’s configuration (width and depth) will then comply with City standards. Again, the Variance proposal is not for a new lot, just the reconfiguration of an existing lot.

As previously stated, the attached “conceptual” Comprehensive Site Plan has been included to illustrate the remaining parcel’s possible subdivision configuration which will include a public street extending from Tolman Creek Road. The new street will not only serve future lots of Tax Lot #308, but also serve the eventual development of Tax Lot #400 and possibly the redevelopment of Tax Lot #500. Depending on the timing, Tax Lot

#308 could install a half street improvement including sidewalk, parkrow and curbing on the south side and when Tax Lot #400 (now vacant) proposes to subdivide, that owner would then dedicate approximately a 10' X 225' strip of land as right-of-way and finalize the north side of the street with curb, gutter, parkrow and a sidewalk. Regardless, the applicants are willing to provide an access easement within the flag drive in order to eliminate future access onto Tolman Creek Road and maintain the City's access management standards along arterial streets.

**Development Restrictions:** As noted above, a number of "private" development restrictions are proposed to be placed on both parcels titles, by the current property owners, in an attempt to maintain Tax Lot #308's development opportunities and density allocations. Equally important is to maintain the various access management standards of the City for not only Tax Lot #308, but also adjacent properties such as Tax Lots #400 and 500 where any future development of these parcels will allow vehicular access points to extend from the proposed flag pole area which will eventually convert to a street. As such, in the interim period, the flag poles will be layered with: 1) A reciprocal access easement for each of the adjoining tax lots (Lots #400 and #500) to use in an interim basis and 2) an irrevocable offer to dedicate the flag pole area as a public street with the understanding the street will be installed by the developer of Tax Lot #308 and possibly the owner of Tax Lot #501 (likely a private arrangement to be determined at the sale of the property).

Regardless, in the future, when Tax Lot #308 does subdivide and adds additional dwelling units, the new street would be installed and dedicated as a "public" street. Finally, when Tax Lot #400 is proposed to be subdivided (by others), this arrangement will allow the City to force access management standards to be from the subject driveway. In this case, the City would require the remaining street width dedication and a half street improvement to occur to the west end of Tax Lot #400 with the understanding the remaining improvements would occur with the development of Tax Lot #400.

Overall, the applicants contend this is a "win-win" for the neighboring properties as they are granted access rights to use someone else's property and the City's access management standards and policies remain in tact. Without this arrangement and initial planning effort by the applicants, both Tax Lots #400 and #500 could potentially petition the City for direct access onto Tolman Creek Road which if approved, would be an unfortunate mistake.

**Solar Access:** The proposed "revised" lot has been designed in accordance with Chapter 18.70.050.

**Utilities:** Meetings with each public utility will eventually occur, but it is expected that all utilities not already present will be extended via Tolman Creek Road. According to City records, 8" water and sewer lines exist in Tolman Creek Road, Electric meters and a sewer easement is available from the subdivision to the south and stormwater could extend to the nearby tributary of Hamilton Creek, drain into the existing stormwater ditch along Tolman Creek Road or provide an on-site temporary dry well. At this point in time, a dry well option is preferred, with all design details being provided at the time of a home's construction. Overall, it's highly likely that some preliminary engineering will

occur after evaluating various future development options which will include various meetings and input with City Engineering and Public Works staff.

**Access Management:** There are various City standards and policies regarding access management which, as stated previously, relate to this proposal. These can be found in various sections of the Zoning Code, Street Standards Handbook and Transportation System Plan and are as follows:

- Ashland Comprehensive Plan, Transportation Element, Section 10-4 (Access a) & d)  
*a) Maintain carrying capacity and ease of movement of arterials and other streets by the use of limited access through the site review process; and d) Require design that combines the access of several developments to a single point in new developments.*
  
- Ashland Municipal Code, Chapter 18.76.060 D. (Partitions, Preliminary Approval of Flag Partitions): *Curb cuts have been minimized, where possible, through the use of common driveways;*
  
- Ashland Municipal Code, Chapter 18.72.120 A. (Site Design Review): *Any partitioning or subdivision of property located in an R-2, R-3, C-1, E-1 or M-1 zone shall meet the controlled access standards set forth in section (B) below., If applicable, cross access easements shall be required so that access to all properties created by the land division can be made from one or more points. NOTE: Although the subject property is in a Residential Single Family zone, the intent, in combination with the various other access management standards/policies noted herein is applicable.*
  
- Ashland Municipal Code, Chapter 18.80.020 B. 7, Design Standards (Subdivisions), Access to subdivision: *All major means of access to a subdivision or major partition shall be from existing streets fully improved to City standards, and which, in judgment of the Director of Public Works, have the capacity to carry all anticipated traffic from the development.*
  
- Ashland Municipal Code, Chapter 18.80.020 B. 8, Design Standards (Subdivisions), Half street: *Half streets, while generally not acceptable, may be approved when essential to the reasonable development of the subdivision, when in conformity with the other requirements of these regulations, and when the Planning Commission finds it will be practical to require the dedication of the other half when the adjoining property is subdivided. Whenever a half street is adjacent to a tract to be subdivided, the other half of the street may be platted within such tract. Reserve strips and street plugs may be required to preserve the objectives of the half streets.*
  
- Street Standards Handbook, Section I Required Street Layout and Design Principals, Driveway Aprons and Curb Cuts: *The number of driveway aprons and curb cuts along streets should be minimized to enhance the pedestrian environment and maintain vehicular, pedestrian and bicycle capacity.*
  
- Street Standards Handbook, Section VI Driveway Apron and Curb Cut Standards, Shared Driveways: *The number of driveway intersections with streets shall be minimized by the use of shared driveways with adjoining lots where feasible.*

- Transportation System Plan, Section 8, Access Management Plan, Recommended Conditions of Approval and Necessary Improvements to Evaluate (Crossover Access Easements): *Will be required on all compatible parcels (topography, access and land use) to facilitate future access between adjoining parcels.*

#### **18.61.200 Tree Protection Plan:**

A total of three trees are to be removed as part of a future home's construction. Two of the three trees are less than 6" dbh and are fruit trees. These fruit trees generally sit where the required fire truck turn around will be (Tree #11 and #12). The applicants have evaluated other locations for the turn around area, but in the alternative locations either additional fruit trees are to be removed or added expense and/or unsightly impacts are created. The one tree that is greater than 6" dbh is a 12" dbh Maple (Tree #10) located at the front of the Tax Lot #501. This tree unfortunately sits in-line where either utilities are to be extended or the future street's sidewalk will be located. It is not the applicants desire to remove the Maple and will attempt to save the tree, but would like staff's understanding that this tree is proposed to be "removed" as part of this application.

None of the site's trees or adjacent trees within 15' of the site's boundary appear to be in questionable health. The trees have survived without irrigation and appear to be thriving. The trees along the eastern property line (Trees #1 - #9), as well as their root zones, will not be impacted by the construction of a home on Tax Lot #501 as it sits a minimum of 15' from the property line and approximately 12' from the trees. According to multiple sources, all of the trees identified to be saved, based on the proposed building envelope, will not be impacted from future construction or utility installation.

Trees #1 - #14 will be protected as required under the standards noted in AMC 18.61.200 B. and will specifically be protected by a chain-link fence between the areas of disturbance (building envelope and driveway / utility improvements) and the outside edge of the trees dripline canopy. This effort will protect the trees from any construction disturbance. All of these measures noted herein will be installed prior to issuance of a building permit (prior to construction) for a home on Tax Lot #501.

#### **Other Issues:**

Fire Truck Turn-Around: The applicants are aware that because the subject lot's driveway is greater than 150' in length, a fire truck turn-around is required. The plan identifies the turn around area as a "temporary" turn around. The turn around would not be necessary if and when a future street is installed and a permanent turn-around provided. The turn around will be improved to support 44,000 lbs. of weight (fire truck) and designed in accordance with Fire Department standards and constructed under their supervision. Note: If for some reason the Fire Department desires an alternative design or a slight adjustment in the location, the applicants are willing to work with Fire Department staff.

Third Parking Space: Because the subject lot is a flag lot and its driveway greater than 50' in length, the applicants are aware a third parking space is required. This parking space will be identified at the time of a building permit. At the present time, the applicants do not foresee the need for any additional easements, but it is likely the third

parking space (and any additional impervious surface area) will be accommodated if and when Tax Lot #308 is subdivided and a street installed.

Procedures: The applicants are aware the request is subject to a Type II hearing with the Planning Commission. The applicants contend a significant amount of work is being generated for a Lot Line Adjustment and that this effort will help the Planning Commission not only justify approval of the requests, but also understand the site's likely development pattern in the future.

Furthermore, the applicants are also aware there may be alternative procedures to accomplish the proposal, but it should be clearly understood the applicants have no desire to develop the remaining portion of Tax Lot #308 at this time. Alternative procedures are not only expensive and have time limits, but they are also speculative and something the property owners do not desire to explore at this time other than what is being provided.

**18.100.020 Criteria for Variance Approval:**

**A. That there are unique or unusual circumstances which apply to this site which do not typically apply elsewhere.**

There are a number of circumstances relating to this site which do not typically apply elsewhere which include: A) Tax Lot #501 is already an existing non-conforming lot as its depth and width requirements already exceed the limitations of Ashland Municipal Code 18.20.040, Section C; B) Tax Lot #308 is already an existing non-conforming lot with no legal frontage onto Tolman Creek Road, is oddly shaped and its size dwarfs the surrounding parcels; C) Tax Lot #400 (not a part of application) is a vacant parcel with its only legal access from Tolman Creek Road. Due to various City transportation access management policies and regulations (as noted below), access onto Tax Lot #400 and any subsequent additional lots would be from the proposed future street; D) Tax Lot #500 (not part of application) could redevelop or an additional accessory unit added that due to transportation access management policies and regulations, as addressed previously, would also use the new street and be prohibited from using Tolman Creek Road; and finally E) without the proposal offering an access easement within the proposed flag pole area, both Tax Lot #400 and #500 "could" add additional units and without the easement have to add a new and unnecessary driveway approach onto Tolman Creek Road. Overall, the applicants contend there are numerous oddities and unusual circumstances to this site that warrant the request.

**B. That the proposal's benefits will be greater than any negative impacts on the development of the adjacent uses; and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.**

The applicants have evaluated a variety of conceptual plans in an attempt to maintain the properties planned zoning densities and to better understand how the eventual subdivision of the remaining lot will fit within the context of the neighborhood. This is best illustrated on the comprehensive site plan where the adjusted Tax Lot (# 501) has its building envelope designed to not only provide a significant rear yard setback in order to minimize disturbances and view loss to the neighbors to the south, but also a front yard setback that recognizes the fact that a future street will be installed and all setbacks based on the street

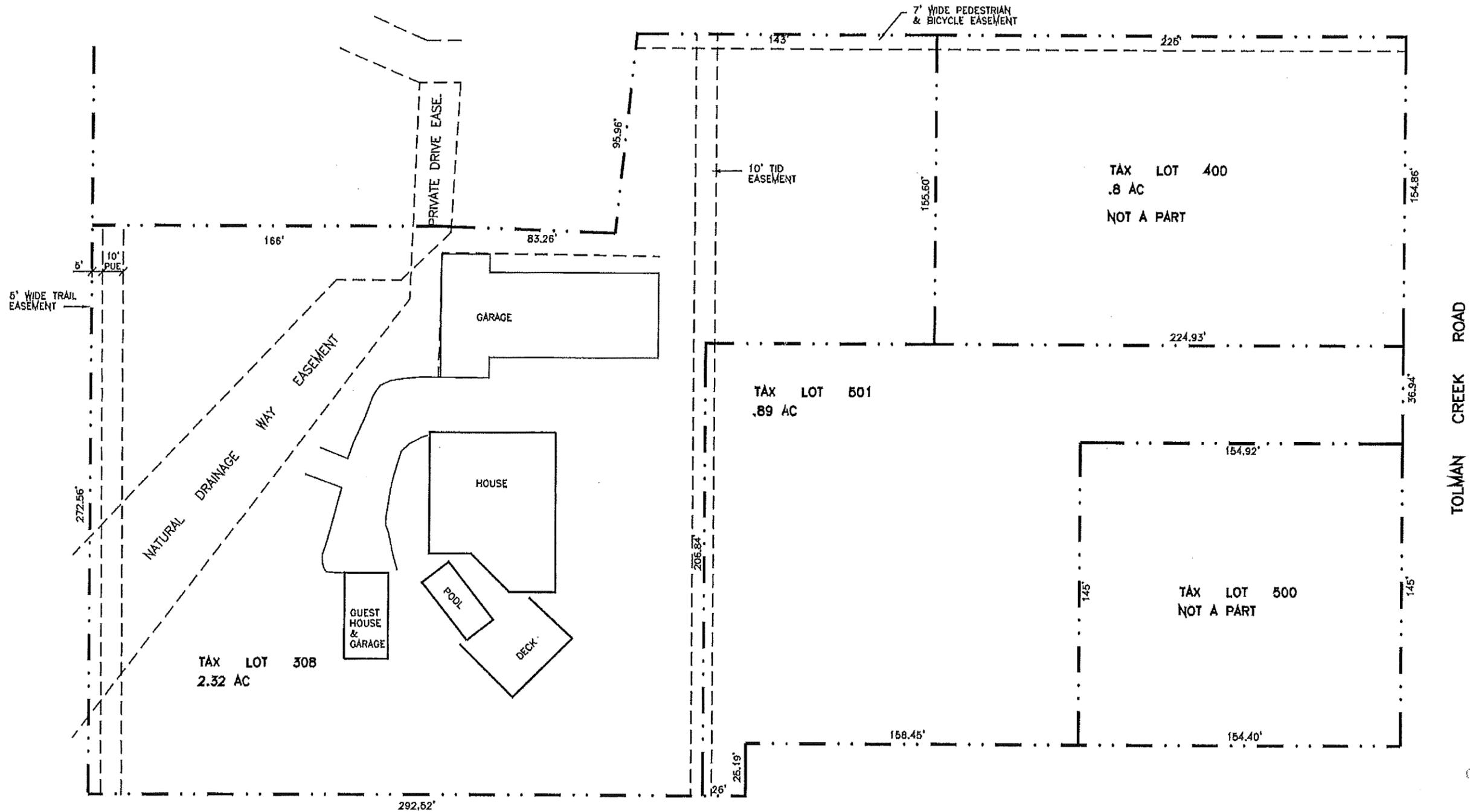
and not the actual property line. Finally, with the final plat, access easements for both Tax Lots #400 and #500 will be provided via the flag driveway in order to accommodate access management standards “in case” these lots subdivide or increase vehicular trips (one house or one accessory unit) prior to Tax Lot #308 subdividing and the new street’s installation. In doing so, the “purpose and intent” of the City’s Subdivision Ordinance, Performance Standards Options Ordinance and Comprehensive Plan policies relating to efficient use of land and transportation planning will be met.

**C. That the circumstances or conditions have not been willfully or purposely self-imposed.**

The circumstances with the proposal have not been willfully or purposely self-imposed as the property owners have only owned the property since May of 2009. The property owners did not create the lot’s odd configuration, size or have anything to do with the surrounding properties. The request is intended to provide the initial steps in creating a neighborhood infill development that complies with a variety of City policies and regulations. In addition, these planning efforts benefit the neighboring properties as they will eventually develop and redevelop in a more logical and safer pattern. In reality, the planning efforts herein will preclude future requests for Variances or Exceptions.

**Conclusion:** The applicants have considered a variety of options prior to the subject proposal, but each involved the creation of more residential lots than the applicant presently desired or would be subject to time expirations, additional fees and uncertainty. To this end, the applicant believes the proposal is far superior and has considered future development issues not only on the subject parcels, but also the neighboring ones as well with the various City standards in mind. Furthermore, the applicants have attempted to design the current Lot Line Adjustment with building envelopes that limits visual and sound impact on the adjoining properties to the south and at the same time, ensure that when a future street is installed within the flag pole area, the home on the lot will be compatible with the street’s future lot and house designs.

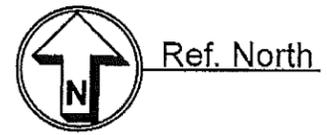




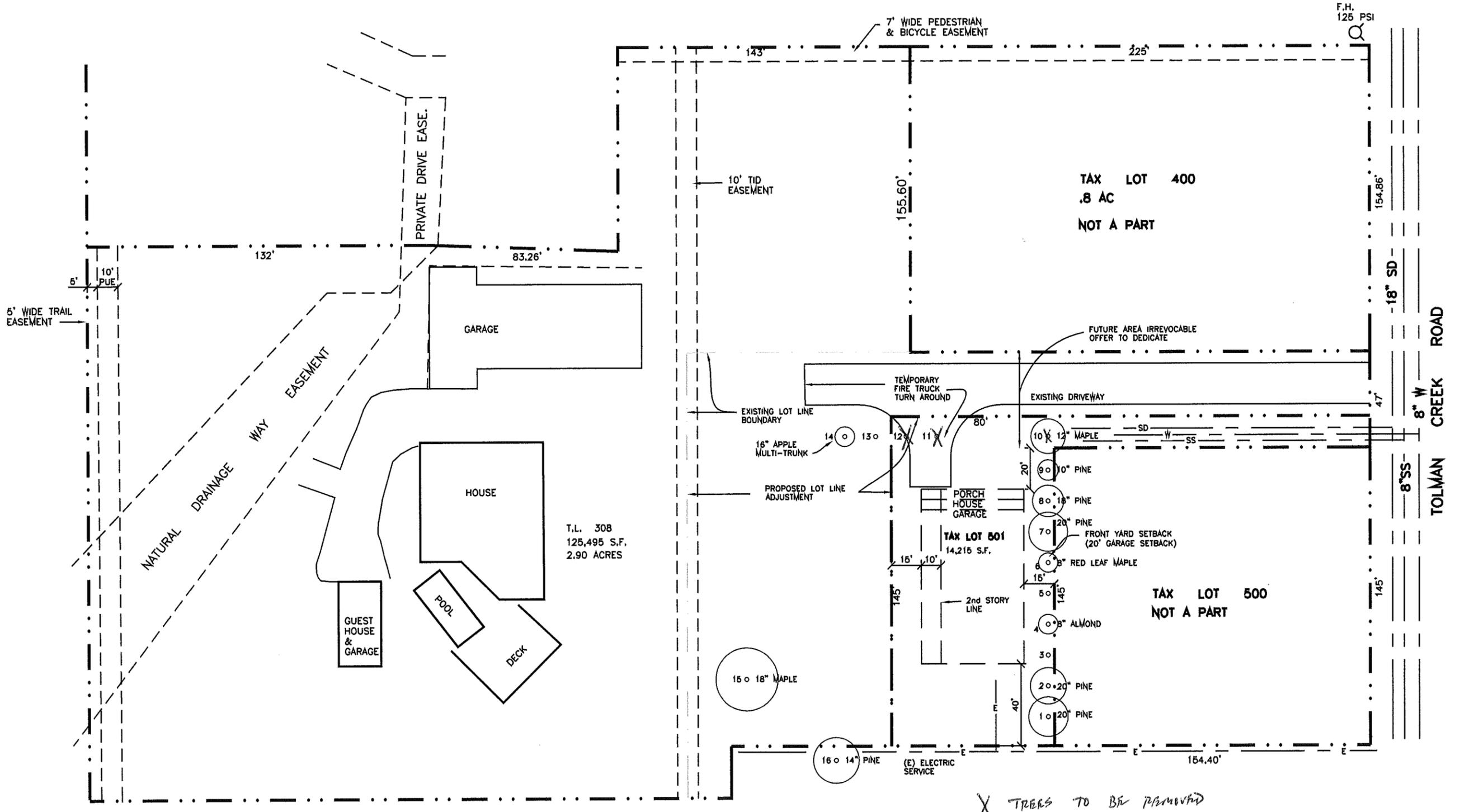
MAY 7 2010  
 Roy Marvin

05-MAY-2010

**SITE PLAN - AS IS**  
 1" = 50'



ROY MARVIN  
 1405 Tolman Creek Rd.  
 Ashland, OR



**SITE PLAN LOT LINE  
ADJUSTMENT & VARIANCE**  
1" = 50'



Ref. North

RECEIVED  
JUN 02 2010

City of Ashland

ROY MARVIN  
1405 Tolman Creek Rd.  
Ashland, OR

01-JUN-2010



**BEFORE THE PLANNING COMMISSION  
CITY OF ASHLAND, JACKSON COUNTY, OREGON  
July 13, 2010**

**IN THE MATTER OF A REQUEST FOR A CONDITIONAL USE )  
PERMIT AND SITE REVIEW APPROVAL TO INSTALL )  
ROOFTOP WIRELESS COMMUNICATION FACILITIES (WCF) )  
ON THE EXISTING ASHLAND STREET CINEMA BUILDING ) FINDINGS OF FACT  
LOCATED AT 1644 ASHLAND STREET, JACKSON COUNTY ) CONCLUSIONS OF LAW  
OREGON AND ASSOCIATED GROUND-MOUNTED WCF ) AND ORDER  
ACCESSORY EQUIPMENT; THE WCF INSTALLATION CONSISTS)  
OF 12 ARCHITECTURALLY INTEGRATED PANEL ANTENNAS. )  
THIS PLANNING ACTION ALSO INCLUDES A REQUEST FOR )  
AN ADMINISTRATIVE VARIANCE TO THE SITE DESIGN AND )  
USE STANDARDS' REQUIRED LANDSCAPE BUFFER FOR THE )  
GROUND-MOUNTED WCF EQUIPMENT. [PA #2009-01244] )  
APPLICANTS: Goodman Networks, Inc. for AT&T Wireless, LLC )**

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**I. NATURE OF PROCEEDINGS**

This matter comes before the Planning Commission for the City of Ashland for a Type II Conditional Use Hearing. The Planning Action includes associated applications for a Conditional Use Permit and Site Review approval to install rooftop wireless communications facilities on the existing *Ashland Street Cinema* building located at 1644 Ashland Street, Ashland, Oregon and to construct an associated ground-mounted accessory equipment structure. The WCF installation consists of 12 architecturally-integrated panel antennas. The Planning Action includes a request for an Administrative Variance from the Site Design and Use Standards' required landscape buffer for the ground-mounted accessory equipment structure.

A pre-application conference was held on May 13, 2009. Pursuant to AMC 18.72.180 B.10 the applicant conducted public meetings to discuss the application with neighbors in July and September 2009. The application was filed by the applicant with the Planning Department on September 22, 2009. The original application was deemed incomplete on October 13, 2009. Additional information was submitted by the applicant in March 2010. The Application was deemed complete on April 18, 2010. Notification of the public hearing before the Planning Commission on May 11, 2010, was mailed pursuant to Chapter 18, Ashland Land Use Ordinance to area property owners and affected public agencies. Notice of the May 11, 2010, hearing was also published in the Ashland Daily Tidings.

On May 11, 2010, the Planning Commission conducted a public hearing and received into the record oral and written testimony and evidence, including the staff report and file. During the hearing an opponent requested that the record be held open for seven days to submit additional

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

written testimony, argument and evidence. At that time, the applicant's representative indicated that they did not wish to request an additional seven days for the submittal of final written argument. The record was left open until 4:30 pm on May 19, 2010. Deliberations for the action were continued to the next regular meeting of the Commission on June 8, 2010. Additional materials were submitted by the applicants and opponents during the time the record was open.

On May 26<sup>th</sup>, the applicants filed a written request asking that the Planning Commission reopen the record for the presentation of additional evidence and written arguments in response to additional evidence presented after the close of the public hearing pursuant to ORS 197.763(6)(c) and 197.763(7). While this request was made to specifically reopen the record for seven days from May 26, 2010 to June 1, 2010 because the ORS authority to reopen the record lies with the Planning Commission and because the reopening of the record allows new submittals from any person in response to new evidence since the close of the May 11, 2010 hearing, the request was considered at the June 8<sup>th</sup> meeting of the Planning Commission. Two members of the public who had previously submitted written comments also made similar written requests for the record to be reopened pursuant to ORS 197.763(6)(c) and 197.763(7). At the June 8<sup>th</sup> meeting, the Planning Commission announced that while the hearing remained closed, the record would be re-opened for seven days to allow for written submittals responding to new evidence submitted since the May 11<sup>th</sup> hearing was closed, and deliberations on the application were continued until a special meeting to be held on June 22, 2010. At this time, the Commission also admitted approximately twenty e-mails and written submittals that had been received between the close of the record and its re-opening. Additional materials were then submitted by the applicant and by opponents during the period the record was re-opened. Arguments regarding whether the record should have been re-opened are addressed below under preliminary matters.

On June 22, 2010, the Planning Commission considered the whole record, including the testimony, argument and evidence submitted by the opponents and the applicants while the record was reopened, as well as the staff report, memoranda and advice from staff and counsel. Early in the deliberations two Planning Commissioners recused themselves for personal bias and prejudice. The Commissioners indicating that they could not make the decision on the application based on the applicable law as applied to the facts in the record, citing specifically the environmental and health issues concerning radio frequency emissions. The Commissioners left the hearing room after their recusal. The remaining Planning Commissioners deliberated and approved the application for Conditional Use Permit, Site Review Approval and Administrative Variance to install a rooftop wireless communications facilities and an associated ground-mounted equipment structure subject to conditions pertaining to the appropriate development of the site. On July 13, 2010, the Planning Commission approved and the Commission chair signed the Findings of Fact, Conclusions of Law, and Order.

Based upon the evidence in the record, the Planning Commission makes the following findings of fact and conclusions of law:

## **II. PRELIMINARY MATTERS**

### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

At the May 11, 2010 Planning Commission meeting, the opponents of PA #2009-01244 asked that the record remain open for seven days for the submittal of additional written comments. A large volume of additional written testimony was received from opponents. The applicant also submitted two pages of materials on May 19, 2010. On May 19, 2010 at 4:30p.m., the record was closed. On May 26, 2010 the applicants filed a written request asking that the Planning Commission reopen the record for the presentation of additional evidence in response to additional evidence presented after the close of the public hearing. The request, contrary to the earlier statement of the ATT representative at the hearing, also reserved the right to submit final written argument after the close of the record. (Argument was never submitted but the request did serve to extend the 120- day clock by seven days by operation of statute). On June 8, 2010, Colin Swales sent an email to Planning Staff including, among other things, a specific request:

...I would like to formally request per ORS 197.763 (6)(C) that the public themselves are also given the full “opportunity to respond to new evidence submitted during the period the record was left open.”

Also on June 8, 2010 an email from Art Bullock requested an extension of time to rebut the evidence submitted by the applicant re alternative sites during the period the record was open.

ORS 197.763(6)(c) and ORS 197.763(7) provide:

- c) **If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section. (emphasis added)**
- 7) **When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.**

City staff did not act on the request, believing that the Planning Commission should properly be the body to consider the matter. On June 8, 2010 the Commission considered the mandatory language of the statute “the hearings authority shall reopen the record” and determined that the requests from participants to reopen the record to respond to evidence submitted after the hearing closed on May 11, 2010 should be granted.

The Planning Commission reopened the record until 4:30 p.m. on June 16, 2010 and continued deliberations to June 22, 2010. Pursuant to ORS 197.763(7) any person could raise new issues

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

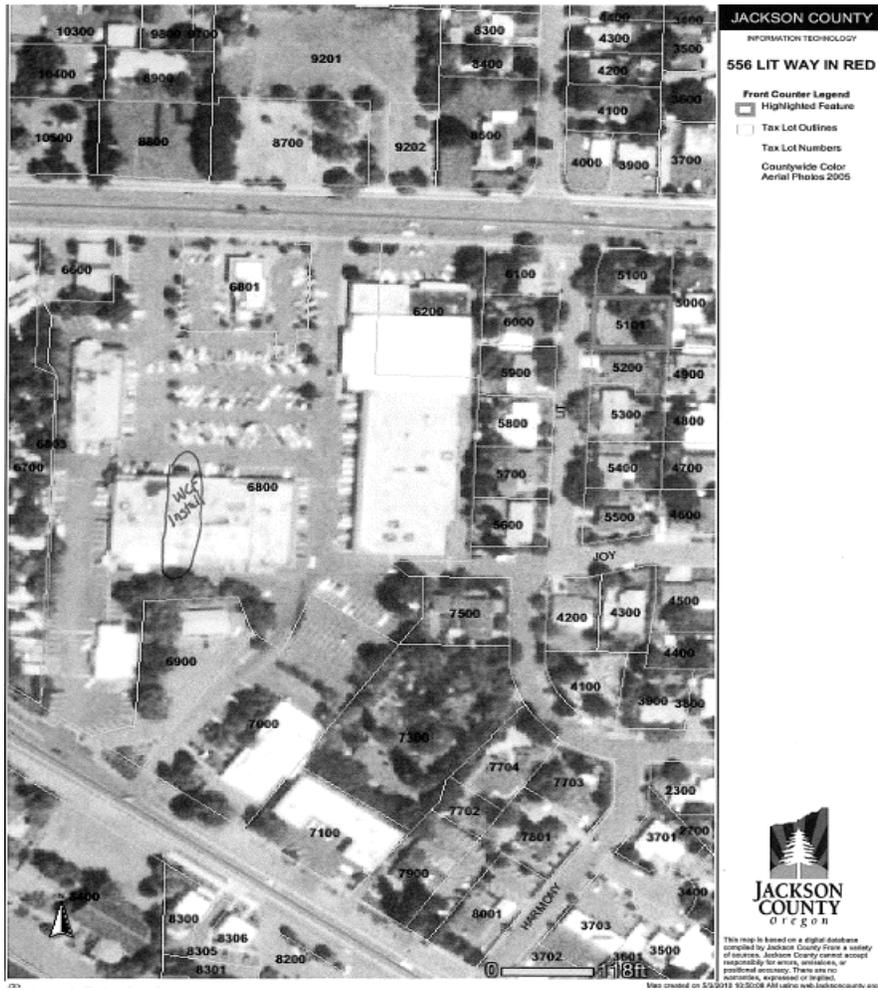
relating to the evidence submitted during the period of time the record was open after the hearing closed on May 11, 2010. The Applicants submitted additional materials on June 15, 2010 and Opponents also submitted a large volume of materials. Approximately twenty items from opponents (e-mails and written submittals) were entered into the record by the Planning Commission on June 8, 2010 despite the fact they were received subsequent to the close of the record and prior to its reopening. Included in these materials are requests to reject re-opening the record by opponents Bullock and Swales.

The Commission expressly finds and determines that the request by the Applicant to re-open the record was not untimely as it came before deliberations on the matter by the Planning Commission. The statute contemplates that a participant like the applicant in this case, might find evidence submitted while the record is open to be sufficiently “new” to request an opportunity to respond. There is no requirement that the evidence sought to be addressed be an entirely new idea or fact, only new in the sense that it had not been previously in the record. Given the volume of material submitted by opponents, the request from the applicants should not have been unexpected. There is no requirement that the “new” evidence be identified with “sufficient specificity” as was suggested by opponent Swales. Finally, the fact that opponents Bullock and Swales both requested the opportunity to submit additional evidence on behalf of opponents to respond to applicants after hearing submissions leveled the playing field. The reopening submission by applicant better identified the evidence it sought to respond to than did the submissions by opponents. However, the statute lacks any real limitation on the submissions (i.e. only that they “relate” to the new evidence), accordingly, the Commission finds and determines that it was not error to follow the mandatory language of the statute and re-open the record, nor was it error to accept into the record all the materials submitted by the applicant and opponents during the period the record was open. The Planning Commission believes that a full and fair opportunity to present evidence to the hearing body, for and against the application, is consistent with due process. Artificially truncating the record at a point that one side, or the other, feels is advantageous to their position is not consistent with due process.

### **III. FINDINGS OF FACT**

- 1) The Nature of Proceedings set forth above is true and correct and are incorporated herein by this reference.
- 2) The subject of Planning Action 2009-01244 is real property located within the City of Ashland (“City”), and described in the County Tax Assessor’s maps as Tax lot #6800 of Map 39 1E 15 AB) (the “Subject Property”). The street address of the Property is 1644 Ashland Street, Ashland, Oregon, 97520.
- 3) The subject property is located on the south side of Ashland Street, between Walker Avenue and Lit Way, and is commonly known as the Ashland Shopping Center. The property is irregularly shaped, with an area of approximately 5.91 acres, and fronts on both Ashland Street and Siskiyou Boulevard. The property is visually depicted in the record as follows:

### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**



4) The property is zoned Commercial (C-1) and is developed as a retail center and contains four large buildings and the associated parking and paving for circulation, with a variety of established businesses including a movie theater, restaurants, personal/social services, and retail uses.

5) Properties to the north, south and west fall within the C-1 commercial district. East of the subject property is an R-1-7.5 single family residential zoning district. Immediately to the west of the subject property is the Pines Trailer Court, which, despite its commercial zoning, has long been established as a residential use. The subject property is located within the Detail Site Review Zone and the Ashland Boulevard Corridor, and the existing building is also subject to Additional Standards for Large Scale Projects.

6) Because it is largely developed, the property is generally devoid of natural features with the exception of some parking lot landscaping and established trees at the perimeter of the site.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

property slopes downward to the north with a slope of five to six percent, with an approximate elevation loss of 42 feet over the approximately 750 feet between Siskiyou Boulevard to Ashland Street.

#### **IV. FINDINGS APPLYING APPLICABLE CODE CRITERIA**

- 1) The Planning Commission finds and determines that the relevant approval criteria are found in or referenced in ALUO Section 18.32 C-1 Commercial Zoning District, Section 18.72 Site Design and Use Standards (including variance), and Section 18.104, Conditional Use Permits. The Planning Commission further finds that in addition to the basic Site Review standards, the subject property is located within the Detail Site Review Zone and the Ashland Boulevard Corridor, and the existing building is subject to Additional Standards for Large Scale Projects, although the building itself was constructed prior to the current standards being put into place.
- 2) The Planning Commission finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony, the exhibits and evidence received, as well as the record as a whole.
- 3) The Planning Commission findings specifically incorporate herein the findings in support of the application submitted by the Applicant in the Planning File, including the applicant's written responses and supplemental information, said documents made a part hereof by this reference. The Planning Commission findings also incorporate the Staff Report and all staff memoranda and addenda, said documents made a part hereof by this reference. (In the event of conflict between the Planning Commission findings and other findings, including the applicant's findings, the Planning Commission findings control).
- 4) The Planning Commission finds and determines based on the whole record, that Planning Action [2009-01244], a proposal for a Conditional Use Permit and Site Review approval to install rooftop wireless communications facilities consisting of 12 architecturally-integrated panel antennas on the existing Ashland Street Cinema building located at 1644 Ashland Street, and to construct an associated ground-mounted accessory equipment structure at the rear of the building meets all applicable criteria for Site Review approval as described in Chapter 18.72 and all applicable criteria for Conditional Use Permit approval as described in Chapter 18.104. Further the Commission finds and determines based on the whole record, that the criteria for the requested Administrative Variance to the Site Design and Use Standards described in AMC 18.72.090 are fully met. The proposal complies with Development Standards for Wireless Communications Facilities described in AMC 18.72.180. These finding is supported by the detailed findings set forth herein, as well as all incorporated findings and documents and by competent substantial evidence in the whole record.
- 5) AMC 18.32 lists the permitted uses, special permitted uses and conditional uses in the Commercial zone. AMC 18.31.030.J. specifically lists as a conditional use "Wireless

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180". The Planning Commission finds and determines that within the Commercial (C-1) zoning district, wireless communication facilities (WCF) to be installed on an existing structure are subject to a Conditional Use Permit approval and to the design standards found in AMC 18.72.180.C

6) The criteria for a Conditional Use Permit are described in Chapter 18.104.050 as follows:

**A conditional use permit shall be granted if the approval authority finds that the proposed use conforms, or can be made to conform through the imposition of conditions, with the following approval criteria.**

- A. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.**
- B. That adequate capacity of City facilities for water, sewer, paved access to and through the development, electricity, urban storm drainage, and adequate transportation can and will be provided to the subject property.**
- C. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone:**
  - 1. Similarity in scale, bulk, and coverage.**
  - 2. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.**
  - 3. Architectural compatibility with the impact area.**
  - 4. Air quality, including the generation of dust, odors, or other environmental pollutants.**
  - 5. Generation of noise, light, and glare.**
  - 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.**

7) AMC 18.104 A. [Conformance with Zoning]:

- A. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This criterion requires compliance with the standards of the applicable Zoning District and Comprehensive Plan. The proposed use is a Wireless Communications Facility which is listed in AMC 18.31.030. J. as a conditional use: “Wireless Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180.” The property has an Ashland Comprehensive Plan designation of Commercial implemented with the C-1 Zoning District. The Commission finds and determines that all applicable commercial comprehensive plan policies are implemented in the C-1 zoning district in the Ashland Land Use Ordinance. The zoning district codified at AMC 18.32 sets forth the permitted, special permitted and conditional uses in C-1. A WCF is a conditional use in C-1, except in the Freeway overlay where it is permitted with only a site review. [AMC 18.72.180.D]. Accordingly, compliance with the standards of the C-1 Zoning District requires compliance with C-1 General Regulations, as applicable, [AMC 18.32.040] as well as with the specific Wireless Communication Facility standards in AMC 18.72.180C. The Planning Commission finds and determines that the recitations in AMC 18.72.180.A. [Purpose and Intent] are *not* approval criteria or design standards for siting Wireless Communication Facilities. Similarly, the general land use code purpose statements found in AMC 18.04.020 (e.g. “... promote public health, safety and general welfare”) are not approval criterion for this application. Purpose statements rarely, if ever, represent approval criteria – generally a specific incorporation is required. Similarly, the application requirements listed in AMC 18.72.180.B. [Submittals] are *not* performance standards or approval criteria for siting of a Wireless Communications Facility. Finally, the Table in AMC 18.72.180.D. sets forth only the applicable approval procedures by Zone and reflects that the Conditional Use Procedure (and applicable approval criteria) are to be used for the present application in the C-1. The design standards for Wireless Communications Facilities are set forth in 18.72.180.C (Design Standards):

### **18.72.180 Development Standards for Wireless Communication Facilities**

**C. Design Standards - All wireless communication facilities shall be located, designed, constructed, treated and maintained in accordance with the following standards:**

**1. General Provisions**

- a. All facilities shall be installed and maintained in compliance with the requirements of the Building Code. At the time of building permit application, written statements from the Federal Aviation Administration (FAA), the Aeronautics Section of the Oregon Department of Transportation, and the Federal Communication Commission that the proposed wireless communication facility complies with regulations administered by that agency, or that the facility is exempt from regulation.**
- b. All associated transmittal equipment must be housed in a building, above or below ground level, which must be designed and landscaped to achieve minimal visual impact with the surrounding environment.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

- c. **Wireless communication facilities shall be exempted from height limitations imposed in each zoning district.**
- d. **WCF shall be installed at the minimum height and mass necessary for its intended use. A submittal verifying the proposed height and mass shall be prepared by a licensed engineer.**
- e. **Signage for wireless communication facilities shall consist of a maximum of two non-illuminated signs, with a maximum of two square feet each stating the name of the facility operator and a contact phone number.**
- f. **Applicant is required to remove all equipment and structures from the site and return the site to its original condition, or condition as approved by the Staff Advisor, if the facility is abandoned for a period greater than six months. Removal and restoration must occur within 90 days of the end of the six month period.**

**2. Preferred Designs**

- a. **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.**
- b. **If (a) above is not feasible, WCF shall be attached to pre-existing structures, when feasible.**
- c. **If (a) or (b) above are not feasible, alternative structures shall be used with design features that conceal, camouflage or mitigate the visual impacts created by the proposed WCF.**
- d. **If (a), (b), or (c) listed above are not feasible, a monopole design shall be used with the attached antennas positioned in a vertical manner to lessens the visual impact compared to the antennas in a platform design. Platform designs shall be used only if it is shown that the use of an alternate attached antenna design is not feasible.**
- e. **Lattice towers are prohibited as freestanding wireless communication support structures.**

**3. Landscaping. The following standards apply to all WCF with any primary or accessory equipment located on the ground and visible from a residential use or the public right-of-way**

- a. **Vegetation and materials shall be selected and sited to produce a drought resistant landscaped area.**
- b. **The perimeter of the WCF shall be enclosed with a security fence or wall. Such barriers shall be landscaped in a manner that provides a natural sight obscuring screen around the barrier to a minimum height of six feet.**
- c. **The outer perimeter of the WCF shall have a 10 foot landscaped buffer zone.**

- d. The landscaped area shall be irrigated and maintained to provide for proper growth and health of the vegetation.
- e. One tree shall be required per 20 feet of the landscape buffer zone to provide a continuous canopy around the perimeter of the WCF. Each tree shall have a caliper of 2 inches, measured at breast height, at the time of planting.

**4. Visual Impacts**

- a. Antennas, if attached to a pre-existing or alternative structure shall be integrated into the existing building architecturally and, to the greatest extent possible, shall not exceed the height of the pre-existing or alternative structure.
- b. Wireless communication facilities shall be located in the area of minimal visual impact within the site which will allow the facility to function consistent with its purpose.
- c. Antennas, if attached to a pre-existing or alternative structure shall have a non-reflective finish and color that blends with the color and design of the structure to which it is attached.
- d. WCF, in any zone, must be set back from any residential zone a distance equal to twice its overall height. The setback requirement may be reduced if, as determined by the Hearing Authority, it can be demonstrated through findings of fact that increased mitigation of visual impact can be achieved within of the setback area. Underground accessory equipment is not subject to the setback requirement.
- e. Exterior lighting for a WCF is permitted only when required by a federal or state authority.
- f. All wireless communication support structures must have a non-reflective finish and color that will mitigate visual impact, unless otherwise required by other government agencies.
- g. Should it be deemed necessary by the Hearing Authority for the mitigation of visual impact of the WCF, additional design measures may be required. These may include, but are not limited to: additional camouflage materials and designs, facades, specific colors and materials, masking, shielding techniques.

**5. Collocation standards**

- a. Each addition of an antenna to an existing WCF requires a building permit, unless the additional antenna increases the height of the facility more than ten feet.
- b. Addition of antennas to an existing WCF that increases the overall height of the facility more than ten feet is subject to a site review."

AMC 18.104, the conditional use criteria, begins with the following text:

**A conditional use permit shall be granted if the approval authority finds that the proposed use conforms, or can be made to conform through the imposition of conditions, with the following approval criteria (emphasis added).**

The Commission finds and determines that the conditional use chapter permits the imposition of a condition to achieve compliance. This is especially pertinent to development standards such as the majority of those specified in AMC 18.72.180 C. An analysis of compliance with development standards follows:

**General Provision: 1. a. All facilities shall be installed and maintained in compliance with the requirements of the Building Code. At the time of building permit application, written statements from the Federal Aviation Administration (FAA), the Aeronautics Section of the Oregon Department of Transportation, and the Federal Communication Commission that the proposed wireless communication facility complies with regulations administered by that agency, or that the facility is exempt from regulation.**

The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Conditions 1, 2, 3, 10, and 11 below.

**General Provision: 1. b. All associated transmittal equipment must be housed in a building, above or below ground level, which must be designed and landscaped to achieve minimal visual impact with the surrounding environment.**

The Planning Commission finds and determines that the proposed placement of the accessory equipment structure on the south side of the building off of a driveway that functions as an alley service corridor rather than as a primary circulation route for shopping center users is the area of minimal visual impact on the site. The Commission finds that the proposed structure mimics similar storage structures already in place on the south side of the building while maintaining the functionality of alley access. The design, color and material of the structure and the established landscaping along the property line to the south effectively mitigate any visual impacts of the proposal. Additionally, no parking spaces are lost with the proposed placement, and the location is better situated to mitigate any visual impacts to residents of the existing nonconforming residential use – the Pines Trailer Court. The Commission further finds that the placement off of this alley does not allow placement of the required landscape buffering for the proposed accessory equipment structure because the required ten-foot width landscaping buffer would extend into the required clear width of the alley, impeding vehicular circulation, fire access and service corridor access for loading, unloading, etc. and an Administrative Variance from the Site Design and Use Standards requirement for landscape buffering is therefore required. [See findings approving landscaping variance below incorporated herein by this reference.] The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Condition 1 below.

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**General Provision: 1. c. Wireless communication facilities shall be exempted from height limitations imposed in each zoning district.**

While the Code clearly exempts communication facilities from height limitations of the zone, the applicant's proposed installation of 12 architecturally-integrated panel antennas will comply with the forty-foot limitation of 18.32.040 B.

**General Provision: 1. d. WCF shall be installed at the minimum height and mass necessary for its intended use. A submittal verifying the proposed height and mass shall be prepared by a licensed engineer.**

The Planning Commission finds and determines that with the imposition of Condition 13, the proposed WCF is at the minimum height and mass necessary for the intended use. The record reflects the need for the height proposed (see findings and evidence regarding non-feasibility of collocation incorporated herein by this reference.) In terms of visual impacts, wireless facilities are explicitly exempted from the height regulations within the zoning district, however to the extent possible they are not to exceed the height of the pre-existing structure and are to be of the minimum height and mass needed to serve their purpose.

The Commission further finds that the proposed wireless communications facility is to be installed on an existing structure and is to be architecturally integrated into that structure with the addition of a penthouse element over the entry. The penthouse element and two-tiered parapet wall on the Cinema, raises the height of the roof peak at its highest point by approximately ten feet while complying with the forty-foot height requirements of the district. The Commission finds that the proposed penthouse addition falls within the height limitations of the ordinance, is the minimum height necessary for the intended use, provides some enhancement to the building's sense of entry and orientation to Ashland Street, and is architecturally compatible with the existing structure and others within the shopping center, which was constructed prior to current standards, in terms of bulk, scale and coverage. However, the Commission finds that the proposed two-tiered parapet wall system on the façade tends to run counter to the design standards, emphasizing the building's mass at the expense of the human scale sought by the standards while serving no discernible purpose, and as such, a condition has been added to require that the two tiers of parapet walls be removed from the final design unless it can be demonstrated that they serve some structural purpose or provide necessary screening of the antennas. The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Conditions 13 below.

**General Provision: 1. e. Signage for wireless communication facilities shall consist of a maximum of two non-illuminated signs, with a maximum of two square feet each stating the name of the facility operator and a contact phone number.**

The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Condition 8 below.

**General Provision: 1. f. Applicant is required to remove all equipment and structures from the site and return the site to its original condition, or condition as approved by the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**Staff Advisor, if the facility is abandoned for a period greater than six months. Removal and restoration must occur within 90 days of the end of the six month period.**

The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Conditions 14 below.

**Preferred Designs: 2. a-e:**

- a. 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.**
- b. If (a) above is not feasible, WCF shall be attached to pre-existing structures, when feasible.**
- c. If (a) or (b) above are not feasible, alternative structures shall be used with design features that conceal, camouflage or mitigate the visual impacts created by the proposed WCF.**
- d. If (a), (b), or (c) listed above are not feasible, a monopole design shall be used with the attached antennas positioned in a vertical manner to lessens the visual impact compared to the antennas in a platform design. Platform designs shall be used only if it is shown that the use of an alternate attached antenna design is not feasible.**
- e. Lattice towers are prohibited as freestanding wireless communication support structures.**

The WCF Design Standards found in AMC 18.72.180C.2 delineate preferred designs, noting that the collocation of new facilities on existing facilities in the preferred option and when collocation is not feasible, that the WCF shall be attached and architecturally integrated into pre-existing structures when feasible. Alternative designs are the next preferred option, and within the C-1 zoning district, installations utilizing freestanding support structures are expressly prohibited. To date, all WCF installations within the City of Ashland have been collocated and/or architecturally integrated into existing buildings.

The Planning Commission finds and determines that the design standards in AMC 18.72.180C.2. are not written in absolute *mandatory* terms as has been suggested by opponents. (e.g. comments by Aaron Brian: “If collocation is feasible, collocation is required.”). Contrast this statement with the actual language of the Code which indicates that “[w]here possible, use of existing WCF sites for new installations shall be encouraged. Collocation of new facilities on existing facilities shall be the preferred option.” As was noted by staff, these regulations were written in the context of and following the adoption of Section 704 of the Telecommunications Act of 1996. The Telecommunications Act mandates that the local regulation of personal wireless service facilities “shall not prohibit or have the effect of prohibiting the provision” of such services. 47 U.S.C. 332 (c)(7). Given this context, it appears that the above referenced City of Ashland code provisions were not written in terms of rigorous mandatory approval criterion but rather were drafted to include wording more akin to aspirational comprehensive planning standards. The use of the word “encourage” in this section of the design standards also indicates a weak directive and is more akin to a required consideration. Similarly, language referring to the

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“preferred option” is not mandatory or compelling. Finally, the words in the following paragraph, 2.(b), “[i]f (a) above is not feasible,” do not operate to revise the language of paragraph (a) to be any more rigorous a standard. The City Council as the legislative body *could have written* the above referenced design standards to reflect a more rigorous collocation requirement, *such as* the following:

*The use of existing WCF sites for new installations shall be required, except where it can be demonstrated with substantial competent evidence that such collocation will prohibit or have the effect of prohibiting telecommunications service, in which case WCF facilities shall then be permitted to be attached to pre-existing structures in the service area.*

The Planning Commission will not re-write the code through an interpretation to create such a rigorous standard where none has been created by the legislative body. The Planning Commission expressly rejects the proffered “only when collocation is impossible” interpretation of the design standard.

The applicants were required as part of the submittal requirements to provide a "*collocation feasibility study that adequately indicates collocation efforts were made and states the reasons collocation can or cannot occur,*" [AMC 18.72.180.B.6 ]. This submittal requirement is not an approval criterion but an application requirement to assist the Commission in ascertaining whether the required consideration of collocation has been undertaken. This initial submittal by the applicant discussed possible collocation and drew considerable criticism. Staff, members of the Commission, and members of the opposition pointed to the original submittal as evidence that collocation was in fact feasible. The original staff report noted:

The application notes that the nearest AT&T wireless facility is in place on the Ashland Springs Hotel in downtown Ashland, roughly 2.2 miles from the subject property. The materials provided note that to serve the subject area, the antenna system would need to be less than a mile from the center of the applicants identified search ring, and the Cinema location is approximately one-half mile from the center of that ring. The applicants note as well that the Holiday Inn Express location was considered, and the applicants indicate that *while collocation might be possible at this facility* given its similar proximity to the center of their search ring, they believe that topography and the length of the needed coaxial cable runs at the Holiday Inn Express are such that the projected signal strength from the Cinema site would be stronger resulting in a larger service area and more coverage. (*emphasis added*)

Planning Commission members specifically requested more information on collocation at the Holiday Inn Facility during the May 11, 2010 hearing. The May 19, 2010 submittal by the applicant analyzed alternative sites and also identified significant impediments to use of the Holiday Inn site, but included a statement that “The co location on the Holiday Inn Express could work-purely from an RF perspective.” The June 15, 2010 submittal by the Applicant provided even more detailed information regarding the feasibility of collocation at the Holiday

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Inn site, including specifically the adequacy of Radio Frequency limitations on service. The Planning Commission considers all the evidence in the record for and against an application not just the initial submittal by the applicant. The June 15, 2010 submittal by the applicant includes the following:

B. Radio signal limitations – see attached letter from AT&T RF manager Ken Seymour (EXHIBIT B) showing comparison between the proposed Cinema site and the Holiday Inn site. This RF evaluation specifically states that the Holiday Inn site is deficient because it does not meet a required coverage goal of providing building coverage to properties at SOU campus. In addition the Holiday Inn site would not have a direct line of site to AT&T's existing site at Hotel Ashland (MD 18) and would not off load calls as required, and further the effective height of the Cinema site is 13 feet + more providing higher signal coverage. Thus the Holiday Inn site is not feasible from a signal perspective.

The Planning Commission finds and determines that preferred option of collocation of the WCF facility has been adequately considered by the applicant and that such collocation has been found not to be feasible for this provider at the Holiday Inn site. Similarly, the Commission finds and determines that the possibility of collocation on facilities owned by Southern Oregon University and used to broadcast Jefferson Public Radio has been adequately explored and ruled out by the applicants. The application materials note that collocation on existing wireless communication facilities on the University campus would be outside of their search ring, would not provide adequate signal coverage, and could severely interfere with the signal from the AT&T facilities on the Ashland Springs Hotel site. The application also notes that the transmission tower near the north Ashland interchange is nearly four miles north, outside of the search area, and not a viable collocation candidate site due to its distance from the search ring.

The Commission further finds that, to facilitate future compliance with the above standard, AMC 18.72.180.B.7 [submittal requirements] required the applicants to provide "A copy of the lease agreement for the proposed site showing that the agreement does not preclude collocation." The Commission finds that in review of the lease provided, 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.*

The Planning Commission finds that this language is overly broad and could be applied in a manner that would preclude collocation. Accordingly, a condition has been attached to this conditional use approval to require that a revised lease, amendment to the lease, or other similar signed/executed legal instrument which modifies #8b to more narrowly define conflicting uses in

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terms of signal interference and clearly demonstrate that collocation is not precluded by the lease agreement.

Based on all the evidence provided by AT&T, including specifically the June 15, 2010 submission, weighed against all other evidence in the whole record, the Planning Commission finds and determines that preferred option of collocation of the WCF facility has been adequately considered by the applicant and that such collocation has been found not to be feasible for this provider at the Holiday Inn site as well as at other sites referred to in the record given the service needs of the applicant. Specifically, in addition to impediments such as topographic differences length of the needed coaxial cable runs, safe space and access for on-site placement of the equipment cabinet, the record reflects that the Holiday Inn Express site and other sites fail to meet a number of AT&T service objectives such as providing in-building coverage to the Southern Oregon University campus and a direct line-of-sight to their Mt. Baldy/MD18 facility, and as such, the Holiday Inn Site and other sites could not provide contiguous coverage and adequately off load calls. The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Condition 1 and 9 below.

**Landscaping: 3. a-e:**

**The following standards apply to all WCF with any primary or accessory equipment located on the ground and visible from a residential use or the public right-of-way**

- a. Vegetation and materials shall be selected and sited to produce a drought resistant landscaped area.**
- b. The perimeter of the WCF shall be enclosed with a security fence or wall. Such barriers shall be landscaped in a manner that provides a natural sight obscuring screen around the barrier to a minimum height of six feet.**
- c. The outer perimeter of the WCF shall have a 10 foot landscaped buffer zone.**
- d. The landscaped area shall be irrigated and maintained to provide for proper growth and health of the vegetation.**
- e. One tree shall be required per 20 feet of the landscape buffer zone to provide a continuous canopy around the perimeter of the WCF. Each tree shall have a caliper of 2 inches, measured at breast height, at the time of planting.**

The findings of compliance under General Provision 1.b. above, together with the findings of compliance with C-1 General Regulations and the administrative variance below are incorporated herein by this reference. The Planning Commission finds and determines that compliance with this development standard is feasible or excused and is met with the imposition of Condition 1 below.

**Visual Impacts 4. a-g.**

- a. Antennas, if attached to a pre-existing or alternative structure shall be integrated into the existing building architecturally and, to the greatest extent possible, shall not exceed the height of the pre-existing or alternative structure.**

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- b. **Wireless communication facilities shall be located in the area of minimal visual impact within the site which will allow the facility to function consistent with its purpose.**
- c. **Antennas, if attached to a pre-existing or alternative structure shall have a non-reflective finish and color that blends with the color and design of the structure to which it is attached.**
- d. **WCF, in any zone, must be set back from any residential zone a distance equal to twice its overall height. The setback requirement may be reduced if, as determined by the Hearing Authority, it can be demonstrated through findings of fact that increased mitigation of visual impact can be achieved within of the setback area. Underground accessory equipment is not subject to the setback requirement.**
- e. **Exterior lighting for a WCF is permitted only when required by a federal or state authority.**
- f. **All wireless communication support structures must have a non-reflective finish and color that will mitigate visual impact, unless otherwise required by other government agencies.**
- g. **Should it be deemed necessary by the Hearing Authority for the mitigation of visual impact of the WCF, additional design measures may be required. These may include, but are not limited to: additional camouflage materials and designs, facades, specific colors and materials, masking, shielding techniques.**

The Commission finds that the proposed wireless communications facility installation effectively mitigates the visual and aesthetic impacts of the installation through architectural integration into an existing structure, a preferred design, and provides significantly more separation between the facility and the nearest residential district or residential use than is required by ordinance. The findings of compliance under General Provision 1.b. and 1.d. above and the findings of compliance with C-1 General Regulations below are incorporated herein by this reference. As an additional design measure, [4.g], the Commission further finds that the impacts of the proposed development can be further mitigated by correcting a noncompliance. As part of the land use approval to construct the theater in 1996, a screened trash and recycling enclosure was required but not installed, resulting in the placement of unscreened trash receptacles in the parking area on the west side of the building. The Commission finds that this is counter to the requirement to Site Design and Use Standards, and a condition [No 12] has been added to require that previously required screened trash enclosure be installed and utilized as part of the current application. The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Conditions 1, 5, 12 and 13 below.

**Collocation standards 5. a-b.**

- a. **Each addition of an antenna to an existing WCF requires a building permit, unless the additional antenna increases the height of the facility more than ten feet.**
- b. **Addition of antennas to an existing WCF that increases the overall height of the facility more than ten feet is subject to a site review."**

The Planning Commission finds and determines that compliance with this development standard is feasible and is met with the imposition of Conditions 1, 6, and 7 below.

Finally, in terms of the approval criterion for compliance with AMC 18.104 A. [Conformance with Zoning], the following general regulations from C-1 District apply:

### **18.32.040 General Regulations**

**A. Area, Width, Yard Requirements. There shall be no lot area, width, coverage, front yard, side yard, or rear yard, except as required under the Off-Street Parking and Solar Access Chapters; where required or increased for conditional uses; where required by the Site Review Chapter or where abutting a residential district, where such setback shall be maintained at ten feet per story for rear yards and ten feet for side yards.**

**B. Maximum Building Height. No structure shall be greater than 40 feet in height.**

The proposal involves the installation of wireless communications facilities on an existing building within an established shopping center. The Commission finds that while there are no standardized setback or yard requirements in the C-1 zoning district, wireless communications facilities must be setback from any residential zone a distance equal to twice their overall height. [AMC 18.180.C.4.] The Commission finds that in this instance, the proposed 40-foot high wireless communication facility installation is located approximately 150-feet from the Pines Trailer Court, the nearest residential use despite its commercial zoning, and approximately 250-feet from the nearest residential zoning district, thus complying with the required setback from residential zones. AMC 18.180.C.4 is therefore met. The Commission further finds that no additional parking spaces are required for the installation of wireless communications facilities, and further that with the placement of the wireless communications facilities on the rooftop and the accessory equipment structure to the south side of the building, no parking spaces are lost with the proposal. The Planning Commission finds and determines that compliance with this approval standard is feasible and is met with the imposition of Conditions set forth below.

8) AMC 18.104 B. [Adequate Public Facilities]:

**B. That adequate capacity of City facilities for water, sewer, paved access to and through the development, electricity, urban storm drainage, and adequate transportation can and will be provided to the subject property.**

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This criterion requires a finding that adequate facilities can and will be provided to the subject property subject to the development application. Conditions can be imposed to achieve compliance, [i.e. “proposed use conforms, or can be made to conform through the imposition of conditions.”] Adequate public facilities (water, sewer, electricity, storm drainage, transportation, including paved access) have sufficient capacity and are available in the adjacent rights-of-way or on-site to serve the project. The Commission finds specifically that no additional water, sewer or storm drainage facilities are necessary to serve the proposed wireless communications facility installation. The Commission finds that paved access is in place to serve the existing cinema building, transportation facilities are adequate and that electrical services are available and can and will be provided by the applicants to serve the proposed wireless communications facility. The Planning Commission finds and determines that compliance with this approval criterion is feasible and is met with the imposition of Conditions set forth below.

9) AMC 18.104 C [No Greater Adverse Effect on Livability]:

- C. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone:**
- 1. Similarity in scale, bulk, and coverage.**
  - 2. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.**
  - 3. Architectural compatibility with the impact area.**
  - 4. Air quality, including the generation of dust, odors, or other environmental pollutants.**
  - 5. Generation of noise, light, and glare.**
  - 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.**

Under the Ashland Municipal Code a Wireless Communications Facility is a conditional use; the existing development of the Ashland Shopping Center, some of which was accomplished before current regulations is primarily developed with permitted uses (e.g. the existing theater is a permitted use. AMC 18.32.020 D.). Only the addition of the WCF is currently before the Commission. This criterion [AMC 18.104 C] requires the proposed conditional use to have no greater adverse material effect on the livability of the impact area than [as compared to] development of the subject property with the target use of the zone. The impact area is considered to be the adjacent properties and the notice area. [See description under III above]. The target use of the zone is commercial. Specifically, in C-1 target use is defined in AMC 18.104.020.B.4 as:

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B. "Target Use" - The basic permitted use in the zone, as defined below.

\* \* \*

4. C-1. The general retail commercial uses listed in 18.32.020 B., developed at an intensity of .35 gross floor to area ratio, complying with all ordinance requirements.

AMC 18.32.020 B. provides:

### **18.32.020 Permitted Uses**

The following uses and their accessory uses are permitted outright:

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B. Stores, shops and offices supplying commodities or performing services, such as a department store, antique shop, artists supply store, and including a regional shopping center or element of such center, such as a major department store.

Note: Impacts of other permitted uses such as nightclubs and bars, AMC 18.32.020 K., mortuaries and crematoriums, AMC 18.32.020 F. are *not* used for the comparison. The livability criterion is simply a comparison of the impacts of the proposed use (wireless communications facility) relative to the impacts of the target use (retail commercial sales and services).

The Commission, consistent with prior City Council decisions, expressly finds and determines that this criterion is not a "no adverse impact" standard. That is, contrary to assertions by opponents, the standard is not a standard requiring the reduction, minimization or mitigation of all adverse impacts on adjacent properties. Compare, the above target use comparison standard of "no greater adverse material effect on the livability of the impact area" to the standard for an administrative variance, i.e. "Approval of the variance will not substantially negatively impact adjacent properties." The Commission expressly rejects assertions of a no adverse impact standard. The target use of the zone will [and does] have adverse impacts on livability to properties in the impact area, including architectural compatibility, noise, odor, light, glare, obstruction of views, dust, traffic, and other impacts typically associated with commercial use; the conditional use, which is also commercial and consists of a WCF installation [12 architecturally-integrated panel antennas] may have no greater adverse material effect than the target use.

Accordingly, AMC 18.104.C. is a comparison standard. The proposed use is the addition of 12 architecturally integrated panel antennas into the *Ashland Street Cinema* structure in a penthouse element over the entry. The penthouse element raises the height of the roof peak at its highest point by approximately ten feet while complying with the forty-foot height requirements of the **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

C-1. A small enclosure in the rear of the theater on the alley will house WCF equipment. Placement of architecturally integrated wireless communications facilities on the existing building and construction of an associated ground mounted accessory equipment structure at the rear of the building will have little or no adverse material effect on factors of livability as discussed below. Accordingly, the Commission finds and determines that the proposed conditional use will have no greater adverse material effect on the livability of the impact area than would development to the target commercial use of the zone. This criterion is met. Factors of livability are enumerated and compliance with the criterion is analyzed below:

### **1. Scale, Bulk, and Coverage.**

The proposed use is the addition of 12 architecturally integrated panel antennas into the *Ashland Street Cinema* structure in a penthouse element over the entry. The penthouse element raises the height of the roof peak at its highest point by approximately ten feet while complying with the forty-foot height requirements of the C-1. A small enclosure in the rear of the theater on the alley will house WCF equipment. The proposed architectural element is in compliance with setbacks and the maximum height permitted in the C-1 Zone. In terms of the target use, the proposed height, bulk, scale and coverage of the improvement is *no greater* than would be allowed for the target commercial retail use of the zone. Any obstruction of views is the same whether or not antennas are contained within the architectural feature. The proposal, as modified by Condition 13, is appropriate for the target use and is architecturally compatible with the bulk, scale, coverage and general commercial development patterns generally found in the target use. The findings of compliance under General Provision 1.b. and 1.d. above, are incorporated herein by this reference. Opponents argues the project (which increases the height of the existing building) is not similar in bulk and scale and must be denied. However, the criterion is not “the project must be similar in bulk and scale” the criterion involves a comparison of the bulk and scale of the proposed use in relation with the target use of the zone. The target use, also commercial, allows buildings 40 feet in height in accordance with the same setbacks as proposed here. Accordingly the proposed use and the target use have equal impacts on the impact area. The Planning Commission finds and determines that this criterion is met; the proposed use will have no greater adverse material effect on the livability of the impact area than the development of the subject property with the target use of the zone.

### **2. Generation of Traffic and Effects on Surrounding Streets**

The proposed use is the addition of 12 architecturally integrated panel antennas into the Ashland Street Cinema structure in a penthouse element over the entry. A small enclosure in the rear of the theater on the alley will house WCF equipment. The WCF use does not require daily traffic trips by employees or customers and therefore will have negligible traffic impact on the surrounding transportation system as compared to the target commercial retail use of the zone. The Planning Commission finds that wireless communications facilities and their associated accessory equipment will have essentially no traffic impact, including no associated parking demand, and no parking spaces are lost with the proposed installation. A condition has been added to require that adequate fire apparatus access be maintained in a manner consistent with city alley standards, and with

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condition 10, the Commission finds that the proposed installation will have no associated traffic impacts to surrounding streets. The Planning Commission finds and determines that this criterion is met; the proposed use will have no greater adverse material effect on the livability of the impact area than the development of the subject property with the target use of the zone.

### **3. Architectural compatibility with the impact area.**

The findings set forth under Bulk, Scale, and Coverage above are incorporated herein by this reference as they relate to architectural compatibility. The Planning Commission finds and determines that this criterion is met; the proposed use will have no greater adverse material effect on the livability of the impact area than the development of the subject property with the target use of the zone.

### **4. Air quality, including the generation of dust, odors, or other environmental pollution.**

The proposed use is the addition of 12 architecturally integrated panel antennas into the Ashland Street Cinema structure in a penthouse element over the entry. A small enclosure in the rear of the theater on the alley will house WCF equipment. The proposed use will have virtually no generation of dust, odors or impact on air quality but certainly will have less environmental impact than the target commercial retail use of the zone (e.g. compare proposed use with impacts from parking lot traffic, air quality and odors from delivery vehicles, customer vehicles and employee traffic typically generated in commercial retail uses). The Planning Commission finds and determines that this criterion is met; the proposed use will have no greater adverse material effect on the livability of the impact area than the development of the subject property with the target use of the zone.

Finally, to the extent radio frequency emissions are considered by numerous opponents as “other environmental pollution” to be considered in the impact on livability comparison to the impacts from the target use of the zone, the Planning Commission expressly rejects consideration of RF emissions as part of this decision. The Planning Commission finds 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 alleged environmental effects of radio frequency emissions. The City may only ensure that such facilities comply with the FCC's regulations concerning such emissions [47 U.S.C. §332(c)(7)(B)(iv)]. Accordingly, the Commission has imposed a condition that the applicants demonstrate compliance with FCC regulations at the time a building permit application is submitted, as required in AMC 18.72.180.C.1.a.. The Planning Commission will not, as urged by some opponents, knowingly disregard limitations on local government authority contained in the Telecommunications Act of 1996.

### **5. Generation of noise, light, and glare.**

The proposed use is the addition of 12 architecturally integrated panel antennas into the Ashland Street Cinema structure in a penthouse element over the entry. A small enclosure in the rear of the theater on the alley will house WCF equipment. The proposed use is architecturally compatible

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with the existing building and condition 5 requires that the proposed penthouse element and accessory equipment structure be painted and textured in a non-reflective finish and color. The proposed use will have virtually no generation of noise, light or glare and certainly will have less than the target commercial retail use of the zone (e.g. compare proposed use with impacts from parking lot lights, headlights and noise from delivery vehicles, customer vehicles and employee traffic typically generated in commercial retail uses). The Planning Commission finds and determines that this criterion is met; the proposed use will have no greater adverse material effect on the livability of the impact area than the development of the subject property with the target use of the zone.

**6. The development of adjacent properties as envisioned in the Comprehensive Plan.**

The proposed use is the addition of 12 architecturally integrated panel antennas into the Ashland Street Cinema structure in a penthouse element over the entry. A small enclosure in the rear of the theater on the alley will house WCF equipment. The proposed use will have virtually no impact on the commercial development of adjacent properties as envisioned in the Comprehensive Plan. The proposed use does not physically preclude or obstruct future development of permitted uses in the C-1 zoning district which fully implement the comprehensive plan. See list of permitted uses in AMC 18.32.020. The proposed use would appear to have much less impact on development of adjacent properties (less access and traffic generation conflicts), than development of the target use. (e.g. compare proposed use with impacts typically generated in commercial retail uses). To the extent opponents allege the impacts of the proposed use adversely impact the existing Holistic wellness uses in the impact area, the findings under 7 below (other factors) are incorporated herein by this reference. The Commission finds this conditional use will have no greater adverse affect on the livability of the impact area in terms of development of the adjacent properties than would full development of the site to its target commercial use.

**7. Other factors found to be relevant by the Hearing Authority for review of the proposed use.**

The proposed use is the addition of 12 architecturally integrated panel antennas into the Ashland Street Cinema structure in a penthouse element over the entry. A small enclosure in the rear of the theater on the alley will house WCF equipment. Opponents urge adverse economic impact to adjacent properties as a factor under this approval criterion. The argument is that the proposed WCF use will have greater adverse material effect on the livability (economic losses to existing businesses in the impact area) when compared to the development of the subject lot with the target C-1 use of the zone. An example of this kind of adverse economic impact would be a conditional use which competed with impact area uses to a greater extent than target C-1 uses would compete with impact area uses. However, as noted earlier, the standard is *not* - no adverse impact (economic or otherwise) on adjacent properties.

The Commission recognizes that there is a specific cluster of existing land uses in place in the impact area which relate to holistic wellness. The Commission further finds that a significant, if

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

not overwhelming, amount of the testimony provided by patrons, owners and employees of these businesses expressed opposition to the proposed conditional use based on perceived health impacts and environmental effects of radio frequency (RF) emissions from wireless communications facilities. The patrons, owners and employees also expressed opposition to the proposed use because the natural consequence of the health and environmental concerns expressed over RF emissions is a loss of patronage of the holistic wellness businesses. The Commission considered the arguments by Opponents and finds and determines that the concern over economic impacts on the adjacent businesses is, in fact, inseparable from the concerns expressed over the health and environmental effects of Radio Frequency emissions. Stated another way, the adverse economic impact argument does not exist separate and apart from the prohibited consideration of impacts of RF emissions. As such, the argument cannot be considered due to the limitations imposed under the Federal Telecommunications Act of 1996, (discussed above) and the Commission is compelled to decline to consider the economic impact argument under this criterion.

In sum, the Planning Commission expressly finds and determines that the proposed WCF use will not have any greater adverse material effect on the livability of the impact area than the development of the property with the target commercial use of the zone. Based on the detailed findings set forth herein, the detailed findings of the Applicant, the findings and responses in the Staff reports specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record, the Planning Commission finds and determines that this criterion is met, or can be met with the imposition of conditions.

10) Site Design Review: AMC 18.72.

The installation of wireless communication facilities are also subject to all *applicable* Site Design and Use Standards. [AMC 18.72.180 D]. The proposed use is only the addition of 12 architecturally integrated panel antennas into the Ashland Street Cinema structure in a penthouse element over the entry, together with a small enclosure in the rear of the theater on the alley which will house WCF equipment. Accordingly, the *applicable* Site Design and Use Standards are limited to the proposed use and do not implicate or require re-examination of existing Ashland Shopping Center development on the project site. The criteria for Site Review are described in Chapter 18.72.070 as follows:

- A. All applicable City ordinances have been met or will be met by the proposed development.**
- B. All requirements of the Site Review Chapter have been met or will be met.**
- C. The development complies with the Site Design Standards adopted by the Planning Commission for implementation of this Chapter.**
- D. That adequate capacity of City facilities for water, sewer, paved access to and through the development, electricity, urban storm drainage, and adequate transportation can and will be provided to**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**and through the subject property. All improvements in the street right-of-way shall comply with the Street Standards in Chapter 18.88, Performance Standards Options.**

**A. All applicable City ordinances have been met or will be met by the proposed development.**

The Planning Commission finds and determines that this criterion is a general reference to all the mandatory requirements for the application, including but not limited to Conditional Use Approval Standards, Site Design Review, and compliance with Zoning. Detail Site Review Zone, Ashland Boulevard Corridor, and Additional Standards for Large Scale Projects are not implicated by the proposal and are therefore not applicable standards. Based on the detailed findings set forth herein, the detailed findings and responses in the Staff reports and those findings and responses in support provided by the Applicant, specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record, the Planning Commission finds and determines that this criterion is met, or can be met with the imposition of conditions.

**B. All requirements of the Site Review Chapter have been met or will be met.**

The Planning Commission finds and determines that this criterion is a reference to applicable specific site design review criteria contained in Chapter 18.72, (such as specific criteria for wireless communication facilities in 18.72.180.C.) Accordingly, based on the detailed findings set forth herein, the detailed findings and responses in the Staff reports and those findings and responses in support provided by the Applicant, specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record, the Planning Commission finds and determines that this criterion is met, or can be met with the imposition of conditions.

**C. The development complies with the Site Design Standards adopted by the Planning Commission for implementation of this Chapter.**

The Planning Commission finds and determines that this criterion is a reference to the separately bound and adopted site design standards. To the extent these standards have been addressed in findings above, those findings are specifically incorporated herein by this reference. Based on the detailed findings set forth herein, the detailed findings and responses in the Staff reports and those findings and responses in support provided by the Applicant, specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record, the Planning Commission finds and determines that this criterion is met, or can be met with the imposition of conditions.

**D. That adequate capacity of City facilities for water, sewer, paved access to and through the development, electricity, urban storm drainage, and adequate transportation can and will be provided to and through the subject property. All improvements in the**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

**street right-of-way shall comply with the Street Standards in Chapter 18.88, Performance Standards Options.**

Findings of compliance with the adequate public facilities standard in AMC 18.104 B. as set forth above are specifically incorporated herein by this reference. Based on the detailed findings set forth herein, the detailed findings and responses in the Staff reports and those findings and responses in support provided by the Applicant, specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record, the Planning Commission finds and determines that this criterion is met, or can be met with the imposition of conditions.

- 11) The criteria for an Administrative Variance to the Site Design and Use Standards are described in AMC 18.72.090 as follows:
- A. There is a demonstrable difficulty in meeting the specific requirements of the Site Design Standards due to a unique or unusual aspect of the proposed use of a site;**
  - B. Approval of the variance will not substantially negatively impact adjacent properties;**
  - C. Approval of the variance is consistent with the stated purpose of the Site Design and Use Chapter; and**
  - D. The variance requested is the minimum variance which would alleviate the difficulty.**

The Planning Commission finds and determines that the above referenced approval criterion for an Administrative variance to Site Design and Use Standards, specifically for landscaping required in AMC 18.72.180C.3. are met in that the proposed use causes demonstrable difficulty in meeting the requirement, the variance will not substantially negatively impact adjacent properties, the variance is consistent with the purposes of the Chapter and the variance is the minimum variance necessary to alleviate the demonstrable difficulty. The above finding is based on the detailed findings set forth herein, the detailed findings and responses in the Staff reports and those findings and responses in support provided by the Applicant, specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record.

The Planning Commission finds and determines that there is demonstrable difficulty in meeting the Site Design and Use Standards landscaping requirements due to the unique and unusual aspect of the proposed use of the site. The propose use requires ground mounted WCF equipment to support the WCF use which under AMC 18.72.180 C.3 above must be landscaped. The Commission finds that there is demonstrable difficulty in placement of such required ground mounted WCF facilities and landscaping on a site without adequate parking facilities for existing development or adequate area for additional landscape buffering. The proposed use on the south side of the *Ashland Street Cinema* building off of a driveway that functions as an alley service corridor rather than as a primary circulation route for shopping center users is the area most

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suited for the essential ground placement of the equipment. There are similar structures already in place along this corridor, no parking spaces are lost with the proposed placement, and the location is better situated to mitigate any visual impacts to residents of the adjacent nonconforming Pines Trailer Park. (see below). The Commission further finds that the placement off of this alley precludes landscape buffering for the proposed accessory equipment structure because the required ten-foot width landscaping buffer would extend into the required clear width of the alley, impeding vehicular circulation, fire access and service corridor access for loading, unloading.. The Commission finds and determines that there is demonstrable difficulty in meeting the landscaping requirement due to the proposed use. This criterion is met.

The Commission finds and determines that approval of the variance will not substantially negatively impact adjacent properties. The findings in the paragraph above, as well as General Provisions 1b, are incorporated herein by this reference. The proposed structure mimics similar storage structures already in place on the south side of the building while maintaining the functionality of alley access, and that approval of the requested Administrative Variance would not substantially negatively impact adjacent properties due to the existing substantial landscaping in the form of large mature trees and shrubs located on the sloped area immediately south of the alley, which already effectively buffer views of the backside of the *Ashland Street Cinema* building. The Commission further finds that the view from the public right-of-way appears to be entirely screened by the existing buildings and landscaping in place to the south of the alley, and while the proposed accessory structure would potentially be visible from the residential units in the adjacent Pines Trailer Court, the spatial buffer provided, fencing in place between the properties, and design, color, materials and placement to match the existing storage structures all effectively mitigate visual impacts and amount to architectural integration of the accessory equipment structure into the existing building in a manner in keeping with the purpose and intent of the standards. This criterion is met. .

The purposes of the Site Design and Use Chapter include reducing adverse effects on surrounding property owners and the general public, creation of a safe and comfortable business environment, energy conservation, enhancement of the environment for walking, cycling, and mass transit use, and ensuring high quality development throughout the City. [See AMC 18.72.010]. This criterion is met based on the specific findings of compliance with conditional use criteria set forth above, as well as the design standards and general standards set forth above and incorporated herein by this reference. .

Finally, the requested variance is the minimum necessary to alleviate the hardship. The landscaping is unnecessary in this location and the applicant has requested no more relief than is necessary to effectuate construction of the proposed use. The above finding is based on the detailed findings set forth herein, the detailed findings and responses in the Staff reports and those findings and responses in support provided by the Applicant, specifically incorporated herein by this reference, as well as by competent substantial evidence in the whole record.

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

## V. ORDER

In sum, the Planning Commission concludes based on the whole record, that the proposal represented in Planning Action #2009-01244. to install rooftop wireless communications facilities consisting of 12 architecturally-integrated panel antennas on the existing Ashland Street Cinema building located at 1644 Ashland Street and to construct an associated ground-mounted accessory equipment structure, and an Administrative Variance from the Site Design and Use Standards' required landscape buffer for the ground-mounted accessory equipment structure is in compliance with all applicable approval criteria and is supported by evidence contained within the whole record.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the Planning Commission hereby APPROVES Planning Action #2009-01244., subject to compliance with the conditions of approval, as set forth in the body of this document , incorporated herein, and as set forth below. The following are the conditions and they are attached to the approval:

- 1) That all proposals of the applicant be conditions of approval unless otherwise modified here.
- 2) That all requirements of the Building Division, including but not limited to: that final drawings prepared by an Oregon-licensed design professional shall be necessary to complete the submission for permits; that permit drawings shall address OSSC Chapter 16 wind, seismic and tributary loads, forms of attachment, and any special inspections required; and that all necessary building permits be obtained, and all permit fees and associated charges paid prior to installation.
- 3) Building permit submittals shall include written communications from the Federal Aviation Administration, the Aeronautics section of the Oregon Department of Transportation, and the Federal Communications Commission that the proposed wireless communication facility complies with the regulations of their respective agencies or is exempt from those regulations.
- 4) That prior to the issuance of a building permit, the applicants shall obtain a business license from the City of Ashland.
- 5) That prior to use of the proposed wireless communications facility (WCF), the applicants shall paint and texture the proposed penthouse element and accessory equipment structure in a non-reflective finish and color to match the existing building.
- 6) That Building Permits be obtained for any future carrier that might consider use of the applicant's facilities as a matter of co-location.
- 7) That a Site Review and Conditional Use Permit be obtained for any future carrier that might consider a different mounting location.
- 8) That no signage beyond that allowed for wireless communications facilities in AMC 18.72.180.C ("*a maximum of two non-illuminated signs with a maximum of two square feet each stating the name of the facility operator and a contact phone*")

### FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

number”) shall be permitted on the wireless communications facility. No additional signage for the theater or other shopping center uses shall be permitted on the rooftop wireless communications facility (WCF).

- 9) That prior to the issuance of a building permit, the applicants shall provide a copy of a revised lease or similar executed/signed legal instrument which modifies item #8b in the lease agreement to more narrowly define conflicting uses in terms of signal interference and demonstrate that collocation is not precluded by the lease agreement.
- 10) That the requirements of the Ashland Fire Department, including that the required clear width for fire apparatus access be maintained for the driveway at the south side of the building with the installation of the accessory equipment structure, shall be satisfactorily addressed prior to the issuance of an occupancy permit or approval of the final inspection.
- 11) That the building permit submittals shall include an electric service plan approved by the City of Ashland’s Electric Department.
- 12) That a screened trash and recycling enclosure shall be in place, in use and inspected by the staff advisor in accordance with the Site Design and Use Standards prior to the final inspection or use of the proposed wireless communication facility. An opportunity to recycle site of equal or greater size than the solid waste receptacle shall be included in the trash enclosure in accordance with 18.72.115.A.
- 13) That the proposed two-tiered lateral parapet wall elements of the façade shall be removed from the design unless the applicants can demonstrate that they serve a specific structural or screening function which would be compromised by their removal. The reduced mass and associated height of the design elements shall be verified by a licensed engineer consistent with AMC 18.72.180.C.1.d.
- 14) That all equipment and structures shall be removed from the site and the site returned to its original condition, or condition as approved by the Staff Advisor, if the facility is abandoned for a period greater than six months. Removal and restoration must occur within 90 days of the end of the six month period.

**Ashland Planning Commission Approval**

\_\_\_\_\_  
Pam Marsh  
Planning Commission Chair

\_\_\_\_\_  
Date

Signature authorized and approved by the Commission this 13th day of July, 2010

Approved as to form:

\_\_\_\_\_  
Ashland City Attorney

Date: \_\_\_\_\_

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

# Memo

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DATE: 7/13/10  
TO: Planning Commission  
FROM: April Lucas, Administrative Assistant  
RE: Planning Commission Rules Update

On February 8, 2010 the City Council adopted uniform policies and operating procedures for all City advisory commissions and boards. As a result, an update of the Planning Commission Rules is necessary to provide consistency with the new ordinance.

The proposed revisions to the Planning Commission Rules are attached. Deletions are **~~lined through~~** and additions are **bold underlined**.

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**PLANNING COMMISSION RULES<sup>1</sup>  
GOVERNING THE CONDUCT OF ITS BUSINESS**

1. **Meetings.** The number of Planning Commission, hereinafter referred to as “commission”, meetings per month and a schedule of meeting dates shall be established and may be altered or changed at any regularly scheduled meeting. Two regular meeting dates are established each month on the second and fourth Tuesdays at 7 p.m. in the Council Chambers.
  - 1.1. Public hearings shall conclude at 9:30 p.m. and be continued to a future date to be set by the commission, unless the commission by a two-thirds vote of those present, extends the hearing(s) for one-half hour until 10:00 p.m. and for an additional half-hour until 10:30 p.m. if desired, at which time the commission shall set a date for continuance.
  - 1.2. All meetings shall end no later than 10:00 p.m., unless the commission by two-thirds vote of those present extends the meeting for one-half hour until 10:30 p.m. at which time the commission shall set a date for continuance of the agenda items not acted upon.
  - 1.3. Additional meetings may be held at any time upon the call of the chair or by a majority of the voting members of the commission or upon request of the city council. ~~following at least twenty-four hours' notice to each member of the commission.~~ **Notwithstanding notice requirements under Oregon law, advance notice of at least 36 hours shall be provided for all meetings.**
  
2. **Quorum.** ~~Five (5) members of the commission constitute a quorum. A meeting of greater than one-half of the regular members constitutes a quorum.~~ **A simple majority of the quorum present determines the action on any motion, question, ordinance, or resolution. The recommendation to the City Council of any amendment to the Land Use Ordinance or Comprehensive Plan shall be by the affirmative vote of not less than a majority of the total members of the commission.**

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<sup>1</sup> Section 2.10.070 of the Ashland Municipal Code authorizes the Commission to adopt rules for its governance and procedures, consistent with the laws of the state. These rules are adopted under such authority.

3. **Election of Officers.** ~~In June of each year~~ At its first meeting of the year the commission shall elect a chair and first and second vice-chairs. The recording secretary shall be a member of the Community Development Department staff.
  
4. **Duties of Officers.** The duties and powers of the officers of the commission shall be as follows:
  - 4.1. The Chair Shall:
    - 4.1.1. Preside at all meetings of the commission.
    - 4.1.2. Call special meetings of the commission.
    - 4.1.3. Sign documents of the commission.
    - 4.1.4. See that all actions of the commission are properly taken.
  - 4.2. First Vice-Chair. During the absence, disability, or disqualification of the chair, the first vice-chair shall exercise or perform all the duties and be subject to all the responsibilities of the chair.
  - 4.3. Second Vice-Chair. During the absence, disability, or disqualification of the chair and first vice-chair, or at the request of the chair, the second vice-chair shall exercise or perform all the duties and be subject to all the responsibilities of the chair.
  - 4.4. The recording secretary shall:
    - 4.4.1. Take minutes for commission meetings. ~~Keep the minutes of all meetings of the commission in an appropriate minute book.~~
    - 4.4.2. Give or serve all notices required by law.
    - 4.4.3. Prepare the agenda for all meetings of the commission.
    - 4.4.4. Be the custodian of commission records.
    - 4.4.5. Inform the commission of correspondence relating to business of the commission and attend to such correspondence.
  
5. **Scheduling Council Matters.** Matters referred to the commission by the city council shall be placed on the calendar for consideration and action at the first meeting of the commission after such reference.

## 6. Rules of Order.

- 6.1. *Robert's Rules of Order* shall generally govern the commission in all cases not otherwise provided for by these rules by ordinance or by state law. Failure to strictly follow *Robert's Rules of Order* shall not be cause to void or otherwise disturb a decision or action of the commission.
- 6.2. The commission may set time limits for speakers, providing equal opportunity for opponents and proponents, while enabling the commission to finish business scheduled before the commission. The chair may set the order of speakers and changes to agenda order as needed to conduct business before the commission.
- 6.3. Reconsideration. The commission may reconsider matters brought before the commission as set forth below.
  - a. The staff liaison, applicant or any interested party may request reconsideration of the vote after the public record has been closed, but prior to adoption of the final order (findings, conclusions and orders) by providing evidence to the Community Development Director that a factual error occurred through no fault of the party asking for reconsideration, which in the opinion of the director might affect the decision before the commission. Failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the commission an opportunity to respond to the issue precludes a reconsideration request.
    - i. Such request shall be at least fifteen (15) days prior to the commission's next regular meeting.
    - ii. If the director is satisfied that an error occurred crucial to the decision, the director shall schedule reconsideration with notice to participants of the matter before the commission. Reconsideration shall be scheduled before the commission at the next regularly scheduled meeting.
    - iii. The commission shall first decide, by motion, whether to reconsider the matter and if so, the limits of reconsideration and testimony. Unless agreed to by a majority, reconsideration shall be limited to

the portion of the decision affected by the facts not raised during the open public hearing and record.

iv. Regardless of who files the request for reconsideration, if the applicant has not consented to an extension of the time limits (120 day rule) as necessary to render a decision on the reconsideration, the reconsideration shall be denied by the director.

b. Any member of the commission who voted in favor of the decision may move to reconsider the decision at the next regular scheduled meeting. If the motion is seconded the commission shall vote on whether to reconsider. If the commission votes to reconsider, the process outlined in 6.3.a.iii above shall be followed.

7. **Procedure.** Hearings shall be conducted as set forth in Ashland Municipal Code and Oregon Law, and the commission shall adopt and make available to the public the City of Ashland Public Hearings Format for Land Use Hearings as adopted by the commission.

8. **Hearings Board.** The conduct of the Hearings Board shall be governed by applicable sections of these rules, specifically, sections 6, 7, 9, 10 and 11.

9. **Voting.** Voting on quasi-judicial matters shall be by roll call vote and the order of voting shall be rotated. Voting on other matters may occur by voice vote unless an oral vote is requested by the commission.

10. **Public Disclosure.** Any member of the commission who has a conflict of interest or a bias on any matter that is on the commission agenda shall voluntarily excuse themselves, vacate the member's seat and refrain from discussing and voting on such items as a commissioner.

11. **Absence at Hearing.** Except as provided below, only those members of the commission present at the hearing may act on a planning action. Any commissioner absent for any part of the hearing on an action may act if the commissioner reviews

the record of the hearing and all of the documents submitted at the hearing(s) prior to participating in any deliberations or decisions.

12. **Notification of Absence.** Each member of the commission who knows that the member will not be able to attend a scheduled meeting of the commission shall notify the ~~Community Development Director at the earliest possible opportunity~~ **the commission chair or staff liaison at least two hours prior to the meeting.**

The Community Development Director shall notify the chair of the commission in the event that the projected absences will produce a lack of quorum.

13. **Vacancy.** The vice-chair shall succeed the chair if the chair vacates the office before the term is completed. The vice-chair shall serve the unexpired term of the vacated office. A new vice-chair shall be elected at the next regular meeting.

14. **Amendments.** These rules may be amended at any meeting of the commission by a majority of the commission, provided that the text of a proposed rule change and scheduled consideration date is announced at a commission meeting at least fourteen (14) days prior to the meeting where the rule change is to be considered, and provided further that notice of such proposed amendment is given to each member in writing at least fourteen (14) days prior to the meeting.

Adopted by the Planning Commission on the \_\_\_\_ day of \_\_\_\_\_, 2010.

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Pam Marsh, Chair  
Ashland Planning Commission

ORDINANCE NO. 3003

**AN ORDINANCE AMENDING THE ASHLAND MUNICIPAL CODE ADDING A NEW CHAPTER 2.10, PROVIDING FOR UNIFORM POLICIES AND OPERATING PROCEDURES FOR ADVISORY COMMISSIONS AND BOARDS; ADDING A NEW CHAPTER 2.11 MUNICIPAL AUDIT COMMISSION; A NEW CHAPTER 2.19 HOUSING COMMISSION, A NEW CHAPTER 2.15 FOREST LANDS COMMISSION, A NEW CHAPTER 2.22 BUILDING BOARD OF APPEALS AND AMENDING AMC 2.12 PLANNING COMMISSION, AMC 2.13 TRANSPORTATION COMMISSION, AMC 2.17, PUBLIC ARTS COMMISSION, AMC 2.18 CONSERVATION COMMISSION, AMC 2.21 CABLE ACCESS COMMISSION, AMC 2.23 ASHLAND AIRPORT COMMISSION, AMC 2.24 HISTORIC COMMISSION, AMC 2.25 TREE COMMISSION, AMC 2.56 BAND BOARD, REPEALING RESOLUTIONS 1995-25, 1996-18, 2003-07 and 2007-15, AND CREATING A NEW CHAPTER 2.29 CONCERNING PUBLIC ART AND AMENDING CHAPTER 15.04**

Annotated to show <del>deletions</del> and <u>additions</u> to the code sections being modified. Deletions are <b><del>bold lined through</del></b> and additions are <b><u>bold underlined</u></b> .
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**WHEREAS**, in 2006-2007 the City Council undertook the task of reviewing the Council Rules codified in AMC Chapter 2, under which the City Council operates; and

**WHEREAS**, as part of the Council Rules review, the Council Rules Committee began a review and discussion of the rules under which its advisory commissions, committees and boards operate; and

**WHEREAS**, in various Ordinances and Resolutions, the City has established numerous commissions, committees and boards as a means of providing detailed study, action and recommendations to the Council; and

**WHEREAS**, the City Council desires to complete the work of the Council Rules Committee as it relates to Additional Council Rules [separate ordinance] as well as Uniform Policies and Operating Procedures for Advisory Commissions, Committees and Boards [this ordinance]; and

**WHEREAS**, the City Council wishes to codify Regular Commissions such as Housing Commission, Forest Lands Commission and the Municipal Audit Committee (now Commission) in the Ashland Municipal Code and edit existing ordinances to reduce duplication; and

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** A new Chapter 2.10 [Uniform Policies and Operating Procedures for Advisory Commissions and Boards] is hereby added to the Ashland Municipal Code to read as follows:

**2.10 Uniform Policies and Operating Procedures for Advisory Commissions and Boards**

**2.10.005 Purpose. Advisory commissions and boards (advisory bodies) require uniform rules, policies and operating procedures to assure maximum productivity and fairness for members and the public. Except where otherwise provided in this Code, the following policies and procedures govern all the City's commissions and boards, as well as ad hoc entities. Nothing herein removes the requirement for compliance with more specific regulations and guidelines set forth by state statute, administrative rule, ordinance, or resolution specific to the advisory body. These rules do not apply to the elected Parks and Recreation Commission.**

**2.10.010 Created or Established. See individual Commission or Board Code Chapters codified between AMC 2.11 and AMC 2.25.**

**2.10.015 Appointment. See AMC 2.04.090.C.**

**2.10.020 Terms, Term Limits and-Vacancies All successors to original members of an advisory commission or board, shall have a three (3) year term, except as otherwise provided in the appointment order. Notwithstanding the three year limitation, Planning Commissioners shall serve four (4) year terms. All regular terms shall commence with appointment and shall expire on April 30 of the third year, unless otherwise provided in the appointment order. The appointing authority may stagger terms in the original appointment order as necessary. Members may serve three (3) terms on any single commission or board, after which time the Mayor and Council will give due consideration to other qualified candidates before making a reappointment. Any vacancy shall be filled by appointment by the Mayor, with confirmation by the City Council, for any unexpired portion of the term as provided in AMC 2.04.090.C.**

**2.10.025 Meetings and Attendance. Unless otherwise provided by law, the number of meetings related to business needs of an advisory commission, or boards may be set by the advisory body. All members are expected to attend all regularly scheduled meetings, study sessions and special meetings, when applicable. If a member will be absent from a meeting the member must notify the chair or the staff liaison at least two hours prior to the meeting. Any member who has two or more unexcused absences in a six month period [i.e. January 1– June 30 or July 1 - December 31] shall be considered inactive and the position vacant. Further any member not**

attending a minimum of two-thirds (2/3) of all scheduled meetings (inclusive of study sessions and special meetings) shall be considered inactive and the position vacant. Attendance shall be reviewed by the commission or board during the regularly scheduled meetings in January and July, with a report sent to the Mayor and City Council advising of the need for appointment or re-appointment, if necessary.

2.10.030 Removal. See AMC 2.04.090.F.

2.10.035. Public Meeting Law. All meetings of advisory commissions and boards are subject to strict compliance with public meeting laws of the State of Oregon. Notwithstanding notice requirements under Oregon law, advance notice of at least 36 hours shall be provided for all meetings. Notice shall be sent to a newspaper with general local circulation and posted on the city's website. In the case of emergency or when a state of emergency has been declared, notice appropriate to the circumstances shall be provided and reasons justifying the lack of 36-hour notice shall be included in the minutes of such meeting.

2.10.040 Quorum-and Effect of Lack Thereof. A meeting of greater than one-half of the regular members constitutes a quorum. Non-voting ex officio members, staff and liaisons do not count toward the quorum. A majority of the quorum is necessary to adopt any motion. Members need not be physically present at a meeting if another means of attendance (e.g. telephonic, internet etc.) has been established by the membership and public meetings law requirements are met. If there is no quorum for a meeting, no official business shall be conducted and all matters advertised shall automatically be continued to the next regularly scheduled meeting.

2.10.045 Council Liaison. See AMC 2.04.100.

2.10.050. Election of Officers, Secretary, and Subcommittees. At its first meeting of the year the advisory commission or board shall elect a chair and a vice chair who shall hold office at the pleasure of the advisory body. Neither the chair nor vice-chair shall serve as an officer for more than two consecutive terms. Without the need for an appointment, the head of the City Department staffing the commission, committee or board shall be the Secretary and shall be responsible for keeping an accurate record of all proceedings. The Department head may delegate such tasks to a staff liaison. Subcommittees may be formed for the purpose of gathering information and forming a recommendation to be brought forward to the full advisory body. Provided however, only the full body can make recommendations to the City Council. Subcommittees must comply fully with the requirements of Oregon Public Meetings law.

2.10.055. Role of Staff. At least one staff person is assigned to work with each advisory commission or board. The staff liaison provides professional guidance, continuity, and insight into City policy and attends all regular and special meetings and workshops. The staff liaison supports the group as a whole and shall not do work at the request of individual members. Each staff liaison has a limited amount of time to devote to the group. If additional staff time is needed the request should be made to the City Administrator or appropriate Department Head.

2.10.060 Agendas and Minutes. The chair or staff liaison will be responsible for the agenda of all meetings of advisory commissions and boards. A member or staff liaison will be responsible for taking minutes. Agendas and minutes will be posted on the city's web site. Members are encouraged to access those documents from the web site. Staff will email or mail documents to members upon request. The Council Liaison shall periodically be given the opportunity to report to the commission or board.

2.10.065. Goals. Advisory commissions and boards are encouraged to establish annual goals and action items that reflect the body's charge as stated in the specific commission ordinance. Advisory bodies are expected to suggest, support and advance Council goals and are encouraged to look for ways within their own unique responsibilities to do so.

2.10.070. Rules and Regulations. The advisory commission or board may make such rules and regulations as are necessary for its governance, including the conduct of meetings, when not inconsistent with Ashland City Charter, Ashland Municipal Code or Oregon law. These rules may be less formal than Roberts Rules of Order. In the event of conflicts that cannot be resolved less formally, Roberts Rules of Order shall be used as the standard for meeting rules and procedures. Failure to strictly follow Roberts Rules of Order shall not be cause to void or otherwise disturb a decision or action. The body will strive to be clear in its proceedings.

2.10.080. Code of Ethics. The City of Ashland is committed to the highest ethical standards for its public officials. To ensure public confidence, all members of advisory commissions and boards must be independent, impartial, responsible and not use their position for personal gain or to benefit or harm others. Advisory commissions and boards shall operate in the general public interest serving the community as a whole and shall serve no special interests. Advisory commission and board members shall not endorse in their official capacity any commercial product or enterprise. Members should be aware the criminal codes, ethics and conflict of interest laws set forth in state statutes and city ordinances, including but not limited to the State of Oregon Criminal Code, ORS 244 and in AMC Chapter 3.08.

**2.10.085. Deliberation.** It is the duty of the chair or presiding officer to ensure that each member has the opportunity to speak. Members speak only for themselves and shall be open, direct and candid. Members shall strive to deliberate to a decision and shall rely upon the chair to keep the discussion moving. No member shall speak more than once until every member choosing to speak shall have spoken or waived their right to do so. No member shall speak more than twice on the same motion without leave of the presiding officer.

**2.10.090. Council as Final Decision-Maker.** With the exception of certain delegated quasi-judicial actions, most advisory commissions and boards do not make final decisions subject to appeal but rather make recommendations to, or act in an advisory capacity to the council. The City Council is the final decision-maker on all city policies and the use of city resources.

**2.10.095 Gifts.** Subject to the acceptance of the City Council, an advisory body may receive gifts, bequests or devises of property in the name of the City to carry out any of the purposes of the advisory commission or board, which funds, if required by the terms of the gift, bequest or devise, shall be segregated from other funds for use with the approval of the City Council.

**2.10.100 Budget, Compensation and Expenses.** Money is set aside in department budgets for Commission and Board expenses. Should an advisory body require additional funds, requests should be submitted to the department head through the staff liaison. Regular members of the advisory commissions and boards shall receive no compensation for services rendered. Members must receive permission and instructions from the staff liaison in order to be reimbursed for training or conferences and associated travel expenses related to official business.

**2.10.105 Reports.** Advisory commissions and boards shall submit copies of its minutes to the city council and shall prepare and submit such reports as from time to time may be requested by the Mayor and City Council. Unless otherwise expressly provide in the Ashland Municipal Code or State Law, all reports or recommendations of City advisory bodies committee shall be considered advisory in nature and shall not be binding on the mayor or city council.

**2.10.110. Lobbying and Representing the City.** Members shall only represent the opinion or position of the advisory body if specifically authorized by the full membership at a duly advertised meeting. Unless specifically directed by the City Council to state the city's official position on federal, state or county legislative matters, no lobbying before other elected bodies or committees will be undertaken by members of advisory commissions and boards. An individual member is free to voice a position

**on any issue as long as it is made clear that the speaker is not speaking as a representative of the city or as a member of an advisory commission or board. Advisory body members are prohibited from engaging in political activity in accordance with ORS 260.432.**

**SECTION 5.** Chapter 2.12, [Planning Commission], is hereby amended to read as follows:

## **2.12 City Planning Commission**

### **2.12.010 Established Membership Created**

There is ~~established~~ **created** a City Planning Commission **consisting** of nine (9) members, to be appointed by the Mayor and confirmed by the City Council, to serve without compensation, not more than one (1) of whom may reside within three (3) miles outside the City limits. **Appointments shall conform to the legal constraints of ORS 227.030.** ~~The Mayor shall be an ex officio, non-voting member of the City Planning Commission.~~

### **2.12.020 (Repealed)**

### **2.12.030 Terms of Office – Vacancies**

~~Successors to the original members of the City Planning Commission shall hold office for four (4) years.~~

### **2.12.035 Terms of Office – Attendance**

~~All appointed Commissioners shall be expected to attend regularly scheduled Planning Commission meetings, study sessions, and Hearings Board meetings, when applicable. Any Commissioner having two (2) unexcused absences in a six (6) month period shall be considered inactive and the position vacant. Any Commissioner not attending a minimum of two-thirds (2/3) of all scheduled meetings shall be considered inactive and the position vacant. Attendance shall be reviewed by the Commission during the regularly scheduled meetings of January and July, with recommendations sent to the Mayor and Council for replacement, if necessary.~~

### **2.12.040 Elections of Officers - Annual Report**

~~The Commission, at its first meeting, or as set forth in the Planning Commission bylaws, shall elect a Chair and a Vice Chair, and shall appoint a Secretary who need not be a member of the Commission, all of whom shall hold office at the pleasure of the Commission. The Secretary shall keep an accurate record of all proceedings, and the City Planning Commission shall, on the first day of October of each year, make and file a report of all its transactions with the City Council.~~

### **2.12.050 Quorum - Rules and Regulations**

~~Five (5) members of the City Planning Commission constitute a quorum. The Commission may make and alter rules and regulations for its government and procedure, consistent with the laws of the state and shall meet at least once every thirty (30) days. The recommendation to the City Council of any amendment to the Land Use Ordinance or Comprehensive Plan shall be by the affirmative vote of not less than a majority of the total members of the commission.~~

## 2.12.060 Powers and Duties - Generally

A. The Planning Commission is the appointed citizen body with the primary responsibility of providing recommendations to the Mayor and City Council regarding the overall direction of land use planning. The Commission reviews and makes recommendations regarding comprehensive land use planning and fosters mutual communication on land use issues. The Commission is responsible to the City Council for making recommendations on land use plans and policies that are coordinated with other City plans, policies, and functions.

B. The Planning Commission shall have the powers and duties to:

1. Periodically review the Comprehensive Plan and make recommendations to the City Council on public processes, studies, and potential revisions to the Plan. Work in conjunction with other City citizen advisory commissions, boards, and committees to ensure coordination of various elements of the Comprehensive Plan.
2. Render quasi-judicial decisions on land use applications and appeals of administrative land use decisions as prescribed by the Ashland Code and Oregon state law.
3. Conduct public hearings and make recommendations to the City Council on planning issues and legislative changes to land use regulations and ordinances.
4. When needed to implement City goals and policies, meet with other planning bodies in the region on issues that affect City land use planning. Make recommendations to the City Council on regional land use issues in general.
5. Foster public awareness and involvement in all aspects of land use planning in the community.

C. Except as otherwise set forth by the City Council, the Planning Commission may exercise any or all of the powers and duties enumerated in ORS 227.090 et. seq., as well as such additional powers and duties as are set forth herein.

**2.12.070 (Repealed)**

**2.12.080 Funding – Gifts and Bequests**

~~The City Council may annually budget such sums, and authorize the employment of consulting advice and/or necessary staff to carry out the powers and duties delegated to the City Planning Commission and its subcommittees set forth in this chapter. The Commission may receive gifts, bequests or devises of property to carry out any of the purposes of this chapter, which shall be placed in a special fund for the use of said Commission.~~