

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
July 10, 2018
AGENDA

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street

- II. **ANNOUNCEMENTS**

- III. **AD-HOC COMMITTEE UPDATES**

- IV. **CONSENT AGENDA**
 - A. **Approval of Minutes**
 - 1. June 12, 2018 Regular Meeting
 - 2. June 26, 2018 Special Meeting

- V. **PUBLIC FORUM**

- VI. **UNFINISHED BUSINESS**
 - A. **Approval of Findings for PA- 2017-01486, 1250 Ashland Street**

- VII. **PUBLIC HEARINGS** - None

- VIII. **DISCUSSION ITEMS**
 - A. **Planning Commission Recommendation for Wildfire Ordinance and Map Amendments**

- XI. **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
MINUTES - Draft
June 12, 2018

CALL TO ORDER

Chair Roger Pearce called the meeting to order at 7:04 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

Commissioners Present:

Troy Brown, Jr.
Michael Dawkins
Melanie Mindlin
Haywood Norton
Roger Pearce

Staff Present:

Bill Molnar, Community Development Director
Maria Harris, Planning Manager
Dana Smith, Executive Assistant

Absent Members:

Lynn Thompson

Council Liaison:

Dennis Slattery, absent

ANNOUNCEMENTS

Community Development Director Bill Molnar explained the Commission would hear two public hearings at their meeting June 26, 2018. The Wildfire Ordinance and the appeal of the Southern Oregon University (SOU) cell tower. He recommended starting with the Wildfire Ordinance then continuing it to another meeting to accommodate the appeal. The City Council would have a public hearing June 19, 2018, regarding the Accessory Residential Units Amendments Ordinance. He encouraged commissioners to attend the meeting. He distributed the draft agenda for the upcoming Retreat. Lastly, former Commissioner Miller had withdrawn her request for reappointment.

AD-HOC COMMITTEE UPDATES

Commissioner Brown provided an update on the Transportation System Development Review Committee. They met earlier in the day and set the groundwork for the review process.

CONSENT AGENDA

A. Approval of Minutes

1. May 8, 2018 Regular Meeting
2. May 22, 2018 Study Session

Commissioners Brown/Mindlin m/s to approve the minutes of the Regular meeting May 8, 2018. Chair Pearce was absent for the meeting and abstained from the vote. Voice Vote: all AYES. Motion passed 4-0.

Commissioners Dawkins/Brown m/s to approve the minutes of the Study Session May 22, 2018. Voice Vote: all AYES. Motion passed 5-0.

PUBLIC FORUM

Huelz Gutcheon/Ashland/Spoke on climate change, the need to stop development, how wealthy people moving to town increased criminal behavior, and traffic.

TYPE III PUBLIC HEARINGS

A. PLANNING ACTION: PA-L-2018-00001

DESCRIPTION: An ordinance adding a new Chapter 18.3.14 Transit Triangle Overlay, a Transit Triangle (TT) overlay map and amending chapters 18.2.1, 18.2.2, 18.2.3, 18.2.3, 18.3.12, 18.3.13, 18.4.3, 18.6.1 of the Ashland Municipal Code to implement the recommendations of the infill strategy project for the area surrounding the bus route in the southeastern part of Ashland that circulates on Ashland St., Tolman Creek Rd., and Siskiyou Blvd., also referred to as the transit triangle.

Chair Pearce explained this was a continued public hearing from the meeting May 22, 2018. This was not a quasi-judicial public hearing. The Commission would make a recommendation to the City Council. Community Director Bill Molnar added Fregonese and Associates were unable to attend the meeting due to a family emergency.

Staff Report or Consultant Report

Planning Manager Maria Harris explained the project started in 2016 and consisted of nine public meetings, two phases, two stakeholder's meetings and an open house. Staff emailed the public hearing notice to all participants in the open house and stakeholder meetings in addition to the newspaper.

The Transit Triangle would increase rental housing units and provide an area where residents had options for getting around. Currently, the purchasing power of a median-income household in Ashland was \$217,950. In 2017, the median home price was \$421,500. There were low vacancy rates and increased rental costs. In Ashland, 39.4% of households had one person compared to 27.8 for the state. Of that, 44.8% of those households were renter-occupied. The median size for Ashland was two people per household.

The proposed area had a supply of vacant and re-developable land. It was served by Rogue Valley Transportation District (RVTD) Route 10 with shopping and services within walking distance.

Background supporting the project included:

The 2015 City Council Strategic Plan

- 5.2.a Pursue affordable housing opportunities, especially workforce housing. Identify specific incentives for developers to build more affordable housing.
- 13.2 Develop infill and compact urban form policies.
- 18.2 Develop and encourage alternative transportation options.

The 2012 Greater Bear Creek Valley Regional Plan

- No areas identified for urban growth boundary expansion.
- Minimum of 6.6 dwelling units per gross acre.

A recent report from the Regional Housing Strategy that showed Ashland was slightly behind the minimum 6.6 dwellings at 6.4 units per gross acre.

The project's purpose was encouraging development and redevelopment adjacent to the bus route that included commercial and residential uses. Being near the bus route provided transportation options and promoted sustainable planning.

Project Objectives included:

- Diversify housing supply by providing an area to build moderately priced rental units.
- Provide a better environment for local business development and expansion.
- Support transit service through increased ridership.
- Create a walkable setting in close proximity to existing neighborhoods.

The market feasibility model under the current zoning and development standards indicated large residential units with rates exceeding market rates. Commercial rents were too low to make construction feasible. Changing the

requirements for residential density, the number of stories, required parking and landscaping coverage would result in the following:

- Increased number of residential units.
- A decrease in the size of residential units.
- Rents decreased.

Fregonese and Associates put together several ordinance changes. The Transit Triangle Overlay created a new chapter, **18.3.14** that was optional and not mandatory. However, if a developer elected to use the overlay, they would have to meet all requirements of **18.3.14**. The Overlay option required residential units to be rentals. It prohibited hotel, motel and Travelers' Accommodations prohibited. The commercial and residential split included:

- C-1 and E-1: 50% of the ground floor in permitted uses (non-residential).
- R-2 and R-3: 60 square feet of retail, restaurant or office permitted for each residential unit.

For Dimensional Standards in the Overlay Option, they suggested a maximum Floor Area Ratio (FAR) of 1.5 for C-1 and E-1 Zones. For R-2 and R-3 zones, the maximum would be 1.25 FAR. Building height for C-1 and E-1 would be 50-feet or four stories. R-2 and R-3 zones were 42-feet or three stories.

There were no changes in the landscape area for C-1 and E-1. It would remain at 15%. Landscape area for R-2 and R-3 zones was reduced 20 percent. Open space did not change for C-1 and E-1 zones and was not required for R-2 and R-3.

There were no changes for C-1 and E-1 regarding building separation. In R-2 and R-3 zones, it was not required. Yard setbacks were 15-feet from residential yards for C-1 and E-1 zones. There would be a 5-foot minimum setback for front yards in R-2 and R-3 zones. A new requirement was building step backs for side streets within 25-feet of a residential zone. Any portion of a building over 25 feet must be stepped back 10-feet. An alternative from the developer roundtable included a combination of articulation, offsets, setback, angles or curves to reduce building mass instead of using a step back.

Parking under the Overlay Option would require one space for units less than 800 sq. ft. It would provide a three-space off-street parking credit for retail, restaurant, or office.

Other Amendments deleted the requirement for affordable units in C-1 and E-1 for projects with over 10 residential units. It added a micro-car parking management strategy with a credit of up to 25%.

Next Steps included a public hearing at the City Council meeting on August 7, 2018.

Questions of Staff

Commissioner Mindlin addressed the articulation option for the step back from the developer roundtable discussion. How would they determine if something articulated was adequate? Ms. Harris explained initially the requirement where 25% of the façade shall be articulated was in the original draft. They removed it because it would be difficult to apply. It would be up to the hearing authority to determine. It was similar to the detail site review zone that provided offsets or entry alcoves to break up the building mass. Not all of the Transit Triangle was in the detail site review zone. The R-2 and R-3 zones would be subject to the residential site review standards and then the few standards included in the transit triangle.

Commissioner Brown was not sure it would work. The Transit Triangle was trying to reduce the perception of mass. Articulation made it opinion based and therefore subjective and difficult for the Commission to make a determination. It left the City open to appeals. He was not comfortable replacing the step back with articulation. Mr. Molnar did not think it was different from developing in the detail site review zone or under the large-scale development standards. It did not quantify the actual amount of offset. It had similar standards in terms of using a change of materials. Ultimately

the burden was on the applicant to convince the Commission they tried to reduce building mass. Commissioner Brown explained it was using mass that made it too subjective. The standard was in there but for a different purpose. It could not be done with an objective code statement. Having a 10-foot step back or range worked. Chair Pearce agreed. Commissioner Brown thought it should be removed from **18.3.14(B)(4)**. Commissioner Norton suggested using an average for setback and let public comment determine approval.

Staff confirmed the plaza requirement would apply through the detail site review standards. It counted towards the FAR.

Commissioner Mindlin noted the height definition **18.6.1.030 Definitions**. One definition had a 6.5-foot height and another definition showed 7-feet for floor areas. Ms. Harris clarified the different definitions of floor area were used in different ways. It was not counting at 6.5. It counted at the 7-foot maximum permitted floor area because that was the volume measurement for residential historic district buildings. It counted spaces that could be converted into living space. The maximum permitted floor area was only used in reference to historic districts.

Chair Pearce wanted to include a reference to the vertical housing ordinance. Ms. Harris explained the Council would review a draft vertical housing ordinance in August. Commissioner Norton was not comfortable recommending vertical housing without more information. Ms. Harris added it was included in Fregonese and Associates' Ashland Infill Strategies report. Commissioner Mindlin raised a concern regarding the tax incentive for vertical housing. Chair Pearce explained it was a state statute that could be implemented in certain areas. Ms. Harris further explained the City could tailor the zone to the community. It encouraged development in areas that had languished. Commissioner Mindlin thought it made sense but it was usually geographic with an overlay zone.

Public Testimony

Mark Knox/Ashland/Supported the project with small changes. He addressed the discussion regarding setbacks Commissioner Mindlin and Commissioner Brown had earlier. The state required the setback to be clear and objective. He stated he had no financial interest and was speaking from a citizen and planning perspective only. He referenced the downtown design standards and discussion on having balconies. It resulted in a standard with illustrations on how it could work and withstand appeals. He was recently in Tiburon California and was surprised to see roughly 40% of the businesses were closed due to the influx of Amazon. It was a circumstance that could occur in Ashland. He suggested the ground floor be 35% commercial in this zone and 65% residential. He was struggling with the requirement of having residential units as apartments. It should be a requirement for housing. Adding impediments could affect financing and construction. If the units were built as condominiums, they could still be rentals.

Zach Brombacher/Ashland/Moved to Ashland in the 1960s. People did not think the town could get built up to where it was. He commented on the overcrowding the infill strategy was having on the town. He was zoned E-1 in the south part of Ashland. He wanted to see more jobs created. Requiring residential units above commercial was not conducive to the light industrial and truck traffic. Every square foot of his property was worth quite a bit. Taking away frontage from his land took away money. He did not support having tall buildings in the area. He commented on developments receiving discounts and not having to pay local improvement districts (LIDs) due to low-income and senior citizens. Ashland was a unique place. He believed the homes would always be expensive.

Deliberations & Decision

Commissioner Dawkins had an issue requiring the units to be rentals. He understood why the requirement was there but thought Mr. Knox's point was well taken. Chair Pearce thought the requirement was problematic. The units needed to be affordable. Units could be rented whether they were owned individually or had several owners. Commissioner Brown agreed. It seemed heavy handed. Ms. Harris explained it was in the original drafts from Fregonese and Associates. It was an option for someone if they wanted to develop ownership housing. They could but would be unable to take advantage of the Transit Triangle provisions that included less parking and landscaping and larger buildings. Commissioner Dawkins thought it would deter development. Commissioner Mindlin commented

it was part of their modeling program. It provided developers with a financially feasible plan. Commissioner Dawkins noted at approximately \$1,400 a month, the rental costs were not affordable. Mr. Molnar clarified it was an option to build 30 units an acre at three stories and not be tied to rental or new ownership. He was curious at the long-term affordability with condominiums. This option retained the units as rentals and kept rental costs down over the long term. Chair Pearce observed a single owner would have the same costs as a condominium association. Ms. Harris explained when Fregonese and Associates modeled the plan they had a rate of return for rental units and ownership units. In addition, workforce housing was a City Council goal. Fregonese and Associates looked at the different demographic groups that typically were attracted to different and diverse housing types. Commissioner Norton added there were different standards for condominiums. Converting apartments to condominiums could reduce the number of units in order to meet the standards.

Commissioner Mindlin thought they should try the plan and readdress it if no development occurred over two years. Chair Pearce added City Council wanted to encourage more rentals. He was comfortable keeping it rental. Commissioner Dawkins thought there would be a couple of councilors who would object to keeping it rental. Commissioner Norton supported trying it and seeing what happened.

Commissioner Mindlin appreciated Mr. Knox's suggestion of changing the percentage of commercial versus housing. Commissioner Brown proposed changing it to 35% commercial and 65% residential. Ms. Harris noted in the Transit Triangle chapter, it was reduced it to 50-50. In other areas, it was 65% commercial required on the ground floor. Chair Pearce agreed with 35% commercial and 65% residential. Commissioner Norton suggested reducing commercial further to 25%.

Commissioner Brown noted strip shopping did not work well and he doubted it would be successful in Ashland. Having one building with ground floor commercial and offices above might work better. He was comfortable lowering the percentage of commercial or keeping it the same. Office space on the ground floor mixed with retail was not conducive to a walking environment. Other communities banned office space on ground floors. He liked the concept of the transit district with shopping at the beginning or end node and not sporadic. He thought the commercial space would remain empty. Remove the requirement and require a commercial component instead.

Mr. Molnar explained the Commission could recommend Council review changing the 50-50 to 35% commercial and 65% residential and still meet state requirements. The Commission supported 35% commercial and 65% residential. Regarding the step back, Mr. Molnar would add language they were subject to exceptions that were equivalent or better.

Commissioner Brown/Dawkins m/s to accept the draft plan except for two changes, one to lower the percentage of commercial to residential to 35%-65% and remove the definition of set back and make it an equivalent or better exception. Roll Call: Commissioner Dawkins, Brown, Mindlin, Norton, and Pearce, YES. Motion passed 5-0.

ADJOURNMENT

Meeting adjourned at 8:38 p.m.

*Submitted by,
Dana Smith, Executive Assistant*

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
SPECIAL MEETING
MINUTES - *Draft*
June 26, 2018

CALL TO ORDER

Chair Roger Pearce called the meeting to order at 7:03 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

Commissioners Present:

Troy Brown, Jr.
Michael Dawkins
Melanie Mindlin
Haywood Norton
Roger Pearce

Staff Present:

Bill Molnar, Community Development Director
Maria Harris, Planning Manager
Derek Severson, Senior Planner
Dana Smith, Executive Assistant

Absent Members:

Lynn Thompson

Council Liaison:

Dennis Slattery

ANNOUNCEMENTS - None

AD-HOC COMMITTEE UPDATES - None

PUBLIC FORUM - None

TYPE III PUBLIC HEARINGS

A. PLANNING ACTION: PA-L-2018-00003

DESCRIPTION: Ordinances amending Chapters 18.3.10, 18.4.3.080, 18.4.4, 18.5.1, 18.5.3.060, 18.5.5.020, 18.5.7 and 18.6.1 of the Ashland Land Use Ordinance to amend the development standards for Wildfire Lands, amend the official Physical and Environmental Constraints Map to expand the boundary of Ashland's designated Wildfire Lands to include all properties within the City Limits, and amend Chapter 9.04 of the Ashland Municipal Code to establish a Prohibited Flammable Plants List.

Staff Report

Senior Planner Brandon Goldman provided the following background on the amendments:

Wildfire Ordinance Amendments

- Ashland Fire & Rescue requested the City Council expand the boundary of Ashland's designated Wildfire Lands to incorporate the entire City (April 15th, 2014).
- Ashland Fire & Rescue identified a number of potential changes to the municipal code, to be considered:
 - Clarify the submittal requirements for a Fuel Prevention and Control Plan
 - Update the requirements for general fuel management areas (fuel breaks around structures).
 - Prohibiting new planting of highly flammable plants within proximity of structures.
 - Ordinance and Map amendments are a legislative Land Use action requiring the approval of an ordinance, with public hearings before the Planning Commission and City Council.

Fire Department Division Chief-Forestry Division Chris Chambers explained over the past few years Ashland had experienced several fires that were outside the wildfire protection zones. The ordinance would protect life and property,

firefighter safety, watershed, and quality of life in the face of climate change with increasing wildfires. Ignitions were occurring all over the city. Highly flammable vegetation continued being introduced throughout the city around existing and new structures. Fire through the air was a primary concern for the Fire Department as well. Wind from high intensity wildfires like the Siskiyou fire, carried embers and caused fires. He provided examples.

Mr. Goldman explained the Wildfire Lands Ordinance Amendments would:

1. Expand the Wildfire Lands Overlay to include the entire city.
2. Proposed update to the Development Standards for Wildfire Lands relating to new construction and additions.
3. Proposed Municipal Code change to define specific highly flammable plants as a nuisance to not be newly planted within 30 feet of structures.
4. Proposed Resolution with a Prohibited Flammable Plants list.

Expanding the wildfire zone citywide was supported by a 2014 Wildfire Hazard Zone Evaluation Report. It mapped wildfire fuels and found that all areas within the city were at or above the threshold for a wildfire hazard zone designation.

The Fire Prevention and Control Plans were subject to planning actions like partitions, subdivisions and new commercial development. They would require Site Design Review. They were not required for new single family dwellings, accessory residential units, or additions.

The applicant would submit a Fire Prevention and Control Plan addressing the wildfire mitigation standards on both existing and proposed landscaping. The plan would duplicate primary elements of their landscape plan. They would also provide a schedule to implement the plan. Larger projects for commercial, multifamily and subdivisions would have a management plan that included:

- New Landscaping
- Tree removals
- Areas to be thinned
- Schedule for thinning and removal
- Ongoing Maintenance

The General Fuel Management Area applied to all new buildings, additions, and decks increasing lot coverage by 200 sq.ft. or greater, and new buildings if the footprint was larger than 200 square feet. It would not apply to internal remodels, second story additions, or small additions less than 200 square feet.

Requirements for general fuel modification areas included:

- Remove all dead or dying vegetation on the property.
- Removal of Prohibited Flammable Plants from within 5' of a new structure or addition.
- No new planting of plants listed on the new Prohibited Flammable Plant List within 30' of a structure.
- No combustible materials within 5 feet of a new structure or addition, including mulch.
- New fences connecting to a structure must be non-combustible within 5 feet of where they attach.
- Existing Flammable trees (evergreen pine, fir) which are to be retained:
 - Provide a 10-foot clearance to canopy from new building or additions
 - Must be maintained to remove understory growth and clearance from ground (8')
 - Allowance for an exception if pruning the tree to this extent will compromise its health.
- Existing fire resistant trees (deciduous oak, maple) to be retained:
 - Pruned to not touch a structure
 - provide a 10' clearance from a chimney.
- Roof Material (new or 50% re-roof) to be fire resistant (Class B).

Through the review by the Planning Commission, Tree Commission, and Wildfire Mitigation Commission, The initial draft of the ordinance presented in 2015-16 was changed to have a clear distinction between highly flammable plants, and plants that were more fire resistant. This acknowledged that fire resistant trees and shrubs could be closer to buildings without substantially increasing risk.

The Tree Removal section was amended and would:

- Allow removal of trees less than 18" in diameter without a separate tree removal permit in hillside lands if proposed as part of an approved Fire Prevention and Control Plan, or to implement a comprehensive general fuel modification strategy.
- Require Tree removal permits for larger properties subject to partitions or subdivisions.

A resolution adopting the Prohibited Flammable Plant List would apply citywide:

- Prohibit new plantings of listed flammable plants within 30' of buildings and decks.
- Existing listed flammable plants are to be removed if within 5' of a new building, addition, or deck.

The Tree Commission and Wildfire Mitigation Commission reviewed a draft earlier this year. Each Commission recommended approving the draft ordinance and recognize the amendments made during meetings with various commissions and the working group. Additional suggestions made by both Commissions were incorporated into the draft. The draft would go before City Council July 17, 2018 for First Reading and August 7, 2018 for Second Reading.

Division Chief Chambers commented on the disproportionate impact developing new structures without considering existing housing stock. The existing homes, businesses and buildings made up the bulk of fire danger in Ashland. It was one of the reasons the initial proposal was withdrawn and revised then brought back at this time. Existing stock would continue to be addressed through the Firewise Communities Program. Staff was applying for a grant through FEMA for \$3,000,000. They had also ranked structures in the city that had a high fire rating.

In the future, they planned to consider the appendix W that would look at the construction of the buildings. Lessons from recent fires showed the area zero to 5 feet away from a house was critical to prevent houses from igniting during a wildfire. Eaves and venting of houses were also important but currently not addressed. The proposed amendments would meet the current understanding of wildfire ignitions and community preparation.

Questions of Staff

Commissioner Mindlin appreciated the work done. She addressed the possible waiver based on fire resistant materials on the building and wanted to know why windows were not considered. Mr. Goldman explained if there was a flammable plant below a window, the heat would likely break the window and penetrate the house. The exceptions process was an opportunity to review each property case by case to grant that exception. A property could have bark mulch if there was fire resistant siding.

Public Testimony

Kerry KenCairn/Ashland/Was concerned about homes with 3-foot setbacks and wood fences in the historic district. She wanted to ensure there was enough exception language that spoke to historically complicated and odd neighborhoods that did not force metal fencing or the removal of established landscaping. She hoped they would honor the historic pattern.

Mr. Goldman explained they were concerned with a fence running on a property line at 3-feet from one building and 3-feet from the other. Fencing was an opportunity for privacy screening between the two properties. They crafted the ordinance to specify the fence within 5-feet of where it connected to the building. The fence running parallel between the properties could be wood. Wood fencing could act like a fuse during a wildfire. A 3-foot metal gate connecting to a home could be enough to prevent a fire spreading to the house.

Chair Pearce noted Section 9.04.022 used the term general fuel management area and Section 18.3.10.100(B) referenced a general fuel modification area. Mr. Goldman clarified both should be general fuel modification area and would make the change.

**Commissioners Mindlin/Brown m/s to approve and make a recommendation in favor of the ordinance to the City Council. Roll Call Vote: Commissioners Pearce, Dawkins, Brown, Mindlin, and Norton, YES.
Motion passed 5-0.**

Councilor Slattery left the meeting at 7:30 p.m.

TYPE II PUBLIC HEARINGS

A. PLANNING ACTION: PA- 2017-01486

SUBJECT PROPERTY: 1250 Ashland Street

OWNER/APPLICANT: Southern Oregon University/Smartlink LLC for Verizon Wireless

DESCRIPTION: The Planning Commission will consider an appeal of the Staff Advisor's approval of a request for a Site Design Review Permit to install wireless communication facilities (*antennas and associated equipment*) on the roof of the Science Building at 1250 Ashland Street on the Southern Oregon University Campus. The application also includes a request for a Conditional Use Permit because with the installation of panels proposed to screen the wireless communication facility installation, the building height will exceed 40 feet. COMPREHENSIVE PLAN DESIGNATION: Southern Oregon University District; ZONING: SO; ASSESSOR'S MAP: 39 1E 15BB; TAX LOT #: 100

Chair Pearce explained this was an appeal of staff's decision to approve the installation of wireless communication facilities at Southern Oregon University (SOU) by Mr. and Mrs. Uhtoff. He read aloud the public hearing procedures for land use hearings.

Ex Parte Contact

Commissioner Dawkins declared no ex parte contact. He spent his college career in the same building and had read the article in the Ashland Daily Tidings. The article would not influence his decision. Commissioner Brown had no ex parte contact and a site visit. Commissioner Mindlin had no ex parte but was familiar with the building. She was contacted by Rod Newton and declined via email to talk to him. Instead, she referred him to the packet online. Commissioner Norton had no ex parte and a site visit. He had read the article in the Ashland Daily Tidings. Chair Pearce declared no ex parte contact and drove by the site.

Staff Report

Senior Planner Derek Severson explained the appeal was of an administrative approval for two requests:

- **Site Design Review Permit** to install Wireless Communication Facilities (antennas and associated equipment) on the roof of the Science Building at 1250 Ashland Street on the Southern Oregon University Campus.
- **Conditional Use Permit** because with the installation of panels proposed to screen the wireless communication facility installation, the building height will exceed 40 feet.

Staff initially approved the application subject to a number of conditions, and subsequent to the Notice of Decision. Kathy Uhtoff filed an appeal request. The Planning Commission heard Type I appeals. This was a de novo hearing.

The building had partial screening walls around the roof to screen mechanical equipment. The applicants proposed to extend the panels around the building fully screening the antenna installations.

The City regulated the placement, appearance and visual impacts of WCF's while providing residents the ability to utilize wireless services. It identified the following preferred designs:

1. Collocation on Existing WCF Site is the preferred option.
2. Attached to Existing Structure if #1 not feasible.

3. Alternative Structure is #1 & #2 not feasible. Design features to conceal, camouflage or mitigate.
4. Free-standing Support Structure if #1, #2 & #3 not feasible. Lattice towers are prohibited as free-standing support structures.

Other regulations included:

- Independent Third Party Review required.
- Placement in the area of the site with least visual impact while allowing functionality.
- Setback from residential zones at least twice the height of the installation.
- Mitigate visual impacts through architectural integration.
- Non-reflective finish & color; blend with color & design of existing.
- Limits exterior lighting and signage to only what is required by federal or state law.
- Additional visual mitigation may be required to camouflage through design, facades, colors, materials, masking and shielding techniques.

The City had two approved sites. The Holiday Inn Express & Suites on Clover Lane and the Ashland Springs Hotel downtown. Both had architecturally integrated wireless facilities into the architecture of the buildings.

There were two appeal issues:

1. The deadly and serious consequences of 5G. Potential hazards of fifth generation (5G) wireless facilities to human health and the environment.
2. Violation of Oregon's statewide planning goals. Ms. Uhtoff notes that Goal 1 of Oregon's statewide planning goals in OAR 660-015-0000(1) calls for citizen involvement, and suggests that neither the city nor the applicants fully disclosed to all affected citizens their intention to install a 5-G cell tower as the notices mailed only went to property owners within 200 feet of the subject property while cell tower radiation and frequencies from the new tower will extend well beyond 200 feet.

Mr. Severson addressed appeal issue #1 and explained the proposal was for a 4G installation and not 5G. City code did not distinguish between 4G and 5G. Federal law precluded the City from considering the health impacts:

- **47 U.S. Code § 332(c)(7)(B) - Mobile services (ii) - A ...local government ... shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.**
- **(iv) - No ... local government ...may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission's regulations concerning such emissions.**

For appeal Issue #2, he explained the following:

- Statewide Planning Goals are not approval criteria.
- Ashland's regulations are based in state requirements and acknowledged as implementing state law.
- State law requires a 100-foot noticing area for administrative actions.
- Ashland's regulations require a 200-foot noticing area (from the site). Notice was appropriately provided here (see *exhibits*) for the application, the decision and the appeal.
- Ashland's regulations also require a 300-foot noticing area (from the wireless facility) for a neighborhood hearing conducted by the applicants.

Staff recommended the Planning Commission deny the appeal and uphold the original approval with the conditions recommended in the staff report.

Questions of Staff

Commissioner Mindlin asked if the students at the university were notified. Mr. Severson did not have any information on whether they were informed or not.

Chair Pearce noted City Attorney Dave Lohman want the Commission reminded of the Telecommunications Act of 1996. In **47 USC 332(c)(7)(B)**, Congress decided to preempt any local decisions and zoning authority. A local entity could not regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities were approved by the FCC and complied. The Commission was constrained by federal law to make a decision based on health issues.

Applicant's Presentation

Mike Connors/Hathaway Larsen Law Firm/Represented the applicant. The proposed site would provide coverage and capacity. The coverage component would cover dead spots in service. The facility would supplement coverage. The other aspect was capacity and related to bandwidth. There was an increasing number of people using wireless equipment. The types of uses had increased and subsequently decreased bandwidth.

The location was chosen based on building height. The facility would cover the university and surrounding areas. He clarified it was a rooftop facility and not a cell tower. The applicant would extend and complete the remainder of the existing screening wall making it architecturally consistent with the existing screening. The primary benefit was visual. Both the antenna and the equipment would be concealed. They would also help screen some of the mechanical equipment there already. The second benefit of the screening wall was noise reduction. Noise standards required the applicant to demonstrate that noise levels affecting residential properties would not exceed 45 A-weighted decibels (dBA). The noise study concluded with the screening wall, the noise level would be 21-23 dBA.

There was a colocation option for the second preferred option. A report provided in the application explained the reasons and needs for using the SOU location. The report evaluated three alternatives that met the first option preference and explained why they were not feasible. The alternatives did not provide the intended coverage and were located too close in proximity of existing facilities and would create interference. The City had their own expert, Mr. Johnson, evaluate the applicant's report and he had concurred with their conclusions.

Mr. Connors understood the health concern issues. It was prohibited by federal law. The purpose behind the law was the federal government determined there was a need to standardize radio frequency (RF) emissions. Experts determined the national standards. As a carrier, Verizon was required to demonstrate compliance with FCC standards. It was a complicated issue with deep science. It made it difficult for local decision makers who may not have that expertise to make a determination. It was a reason federal law prohibited local jurisdictions from making decisions based on health or emission effects.

The second issue raised had to do with the statewide planning goals. Oregon law stated if a local jurisdiction had a Comprehensive Plan and Land Use Ordinance, compliance with that was presumed to be compliance with the statewide planning goals. The applicant complied with noticing requirements and procedures. He did not believe there was a legal basis for the Commission to preclude that the applicant violated statewide planning goals. The applicant complied with the criteria.

He asked the Commission to approve the application and adopt the staff report as Findings.

Questions of the Applicant

Commissioner Mindlin asked if the students at the university were notified. Mr. Connors did not think the students were notified. Notice requirements applied to property owners.

Appellant's Presentation

Kathy Uhtoff/Ashland/Lived in the area in a multi-generational household. She was concerned with the cell tower.

Alan Rathsam/Ashland/ Was a retired mechanical engineer and shared his credentials. The Telecommunications Act of 1996 was antiquated and based on 580 micro watts per square centimeter of radiated power which was felt on a level of being cooked. It was obsolete. Current reports from scientists all over the world showed there were health effects far below those levels. One report noted there was blood brain penetration in a matter of seconds when someone held a phone next to their head. Another report stated scientists found measurable brain changes in fifty seconds of holding a phone next to your head. Scientists were demanding a halt to the introduction of 5G. Currently, 4G was limited to 6 gigahertz. The 5G cell would start at 30 gigahertz and could go to 300. It would most likely serve 28-98 gigahertz.

Ms. Uthoff did not believe the need had been substantiated. The City hired Mr. Johnson, a New York engineer, to do a study and he was coming to the conclusion the cell tower was not needed. At that point, Verizon heard of the upcoming report and had their expert submit another report. From that report, Mr. Rathsam had submitted a graph into the record showing the need was not now. It might be in the future. Based on that, she did not think the Commission should approve the application.

Public Testimony

Amy Munro/Ashland/She had recently read of other cities not permitting 5G installations. She was a conventionally trained doctor and initially skeptical. There were thousands of studies on the issue. On the whole they were split with 55% showing a negative effect from the electromagnetic field (EMF) and electromagnetic radiation (EMR). Lack of definitive proof that something was harmful did not mean it was safe. She spoke to the electromagnetic spectrum. Approximately 130 years before there was only sunlight and cosmic radiation. Now it was full of manmade EMF and EMR. The precautionary principle should be used in this circumstance.

Jasper Rose/Ashland/Lived a block away from the college and proposed cell tower. She cared about the quality of life for herself and two younger brothers, family, and neighbors. Through commented dissonance it was easy to think the harmful effects were not there but they existed. She was scared for her future. People were surrounding themselves with wireless technology. They were either aware or not aware like the SOU students who did not know the cell towers were being installed. Everyone had been so driven to keep advancing technology that they forget to question safety. As a community, we should stand together and say no.

Vicki Simpson/Ashland/Needed to speak for the children and young people. There were classrooms at SOU for young children. She knew from a few hours of research there were all sorts of danger and red flags against concentrated cell phone power in one area. There were increased levels of medical issues for children. She listed several. Other concerns were bees, birds, animals, and foliage removal around cell towers. There were money concerns for the City. She doubted insurance companies would insure any wireless operation. She suggested the City use qualified engineers to map out the ambient radiation levels before the towers are installed and on a yearly basis after installation.

Scott Ploss/Ashland/Worked with people who had radiation poisoning. All of his standard training as an electrician stated it did not exist. He had worked with people who could find wires in a wall because they were that sensitive. The need had not been demonstrated. In California, cell towers were banned on fire stations. He questioned using SOU as a location. Science had advanced since the federal communication guidelines that came out in 1996. There were many new studies from the federal government. The law had not changed and they were not supposed to address health issues but there might be other ways to address the issue. Approximately 10% of the nation had EMF sensitivities. The law needed to be changed. Some laws were wrong in history.

Alan Rathsam/Ashland/Verizon's case for immediate need of the SOU cell tower had not been presented directly, comprehensively, and adequately to the Ashland Planning Department. The case for immediate need was implied but not specifically addressed in a letter by Andrew Thatcher to Planning Manager Maria Harris. The letter presented Verizon's immediate need in a simple plot of a forward data volume. An FTD trend line fitted versus time with a reference line showing present data volume capacity. He used the graph submitted into the record earlier. It was taken from Figure 1 of Mr. Thatcher's letter. It did not show the basis of cell tower coverage growth that determined the slope of the trend line. The key was to justify immediate need. The simple plot was not sufficient to establish immediate need.

Finally, Mr. Thatcher's only contribution was the cell tower measurements at SOU. Other information in his letter was merely a review of analysis done by Verizon. Mr. Johnson, the City's cell tower consultant accepted findings in the letter without questioning the lack of details.

Kelly Marcotulli/Ashland/Protested the cell tower on the grounds that not only was it unnecessary, the City would lose money because the bee population of Ashland will decline. She submitted a document into the record that spoke to colony collapse due to electromagnetic radiation from cell phones and relay towers. Ashland was a designated Bee City. The cell tower jeopardized bees and everything people held dear here. Once the cell tower was installed, others could collocate. Then the next 5G installation comes along and people fry along with the bees. Bees were an important species and critical pollinators. They pollinated crops that fed 90% of the world. Where was the feasibility study showing the need for the tower? It threatened everyone's way of life.

Denise Allen/Ashland/Had over 200 signatures gathered in a short time of people wanting to stop the SOU cell tower. She had no doubt the signatures would reach the thousands. People in Ashland were very informed. There were many concerned citizens. She hoped the Commission would make a safe decision for everyone.

Darwin Thusius/Ashland/Read excerpts of the letter to the Editor in the Ashland Daily Tidings that strongly opposed the tower. He went to the websites of two of the studies referenced in the letter and found no evidence of what the letter claimed. The conclusion in the studies was ambiguous. Everything was uncertain including the effects of radiation on lab rats versus humans. Current data showed the present safety limit was acceptable. He was not taking a stance either way but wanted to know the actual truth.

Ivy Ross/Ashland/Was part of Oregon for Safer Technology. Her group viewed this as a 5 to 10-year project. They were planning on challenging the entire City code if needed. They were not concerned with aesthetics. They were going to the next level of consciousness on the subject. Cities around the world were doing this research. They planned on educating the community and challenging the federal law of 1996, the FCC, and the telecom industry. They would also make sure SOU students and families understood what was happening with this facility. They questioned the \$18,000 for such a large important issue.

Commissioner Mindlin asked if Ms. Ross had information on the notification of students. Ms. Ross had no knowledge if SOU had notified their students.

Paul Sheldon/Ashland/Lived approximately 800 feet outside of the notification zone. He spoke of having the moral courage to act. The moral courage to say, I don't know why yet but I know this is wrong. His house will be subject to electromagnetic trespass from this tower. The law was not there to prohibit trespass in one's brain with electromagnetic waves. The Commission would have to answer to their grandchildren on the decision made tonight. The McCarthy hearings were within the law. Would the Commission have spoken up during that time? Or when smoking was allowed in rooms in the 1950, or with the current housing of immigrant children? He urged the Commission to say no.

Gary Hrraz/Ashland/All visual aspects of the study were shown except for the view from the neighborhood above the location. He provided day care for his grandchildren and an elderly woman. His concern went beyond money and what the federal law thought. More studies were needed. They were in direct line of the site. Noise was also an issue at 45 decibels. There were already issues with noise never addressed. There was nothing to block the radiation that will come from the tower to their neighborhood.

Chris Lucas/Ashland/Worked at SOU. University students were not notified in an official capacity but were talking about the facility. There was a real need for greater capacity around SOU. He taught media production with classes in advanced technology and citizen journalism. Students used their cell phones for reporting. The uses of this technology were important for the students' development and moving into world as media journalists, and story tellers. They needed to rely on SOU's ability to keep facilities up to date. When it got crowded on campus, people lost coverage. Students

wanted more capacity. He had done the research and he was not worried. There was a good argument for building capacity for the city and SOU as an instructional tool.

Tara Shea Aananda/Ashland/Expressed respect for the Commission. This was an opportunity to get involved in something that could possibly go down in history. To make a huge difference not only socially but in human consciousness. The 5G technology was an attack on physiology and consciousness. This kind of technology affected the ability to dream, meditate, and connect to each other and whatever created us. She invited them to upstage William Shakespeare and box the federal government. We do not have to roll over just because of the Telecom act of 1996.

Jim Fong/Ashland/Shared his background and credentials. He had previously worked with Rod Newton from the Hidden Springs Wellness Center regarding a cell tower going on top of a nearby cinema. They worked closely with staff to amend the current city ordinance. His wife was electromagnetic sensitive. He was very aware of the federal ban on considering health concerns. The planning process executed by the City was fundamentally flawed. The assessment and need for colocation options and stated needs and demands for the facility were unsubstantiated. They all knew the third party evaluation process would result in efforts by telecommunication companies to throw it back as their validation. In this case, it appeared the third party evaluation lacked sufficient expertise and knowledge.

Miriam Sundheim/Ashland/The FCC regulation that did not allow decisions made based on health issues was 22 years old and maybe could now be challenged. She was concerned because they did not really know what the added electromagnetic issues might mean. She suggested taking more time to consider whether or not to take this risk. She supported using the precautionary principle.

Rebuttal by Applicant

Mr. Connors addressed testimony about need. There were no approval criteria that related to need. However, there was evidence from their expert on need who had explained the particulars regarding colocation. This was reviewed by the City expert. He took issue at comments made that the City's expert did not do their job. During the initial study he pushed back and wanted more supportive evidence to substantiate some of the statements Verizon had provided. Additionally, his client would not be doing this unless there was a need.

Apparently, the notice was not sent to the students because it was specific to property owners. He emailed the consultant and her understanding was that SOU provided a general notice to the students.

With the screening wall, the noise would be half the maximum allowed.

Lastly, was testimony on health concerns. He reiterated this was not 5G, it was 4G. LTE was an acronym for 4G. Most of the testimony did not relate to the approval criteria. The Commission had to apply the facts of the law and were not policy makers. They were constrained in their role. There were venues for someone wanting to challenge the law.

Commissioner Dawkins asked if there were plans to go from 4G to 5G. Mr. Connors responded there was no plan to do that. He could not say never, 5G was very early in the process. It would be a long evolution and possibly take many years.

Commissioner Norton wanted to know if Verizon had panels on either of the two existing sites. Mr. Connor did not think Verizon had panels at either of the sites. They looked at them both for colocation purposes. The conclusion was they did not satisfy or cover the intended coverage area and were too close to existing facilities and that would create interference. Mr. Connors did not know where Verizon was currently getting service. The information was in the expert's report.

Questions of Staff

Commissioner Norton asked if the two existing facilities had site design permits and the process for modifying facilities. Mr. Severson explained there were eight providers at the Ashland Springs Hotel facility. If they wanted to modify that,

they would have to check with the City. Altering the exterior of the building would require a new process. Replacing an older system with a new system in the same place would not require the applicant to go through a planning process.

Deliberations & Decision

Chair Pearce noted the Commission was severely constrained. Most of the testimony spoke to health concerns and the Commission was not the venue to make challenges. Congress was the appropriate entity. Commissioner Dawkins spoke to the cell tower facility at the cinema eight years before. He had sympathized with testimony against the facility. He could not vote for it or abstain so he had walked out. Commissioner Mindlin had done the same and both were reprimanded by the mayor. The Commission governed by being quasi-judicial. They had to uphold same standards as judges. He noted comments made on the McCarthy hearings about moral responsibility. The criteria stated they could not deny the application based on health issues per federal law. It was a symbolic gesture but not a legal one. It went against why the Commission was there and their responsibility here.

Commissioner Mindlin spoke to cognitive dissonance and being constrained by federal law. The reason she kept asking about the students was that she found it disturbing there was not a single student present for or against the facility. The students may want more coverage. School was out but some students lived in town. She thought if the students were aware they would have had the opportunity to go to their administration and oppose the application. That would be within the legal parameters of what was possible. She did not think sufficient public process was followed in this case.

Commissioner Brown wondered where was the speakers regarding the wildfire ordinance. He acknowledged public concern regarding the cell facility. However, the Planning Commission had a job that was relatively simple. When an applicant came in with an application, there are required criteria. The Commission played a role in that process. The Commission had no control over the cell facility at SOU. They did have 100% control over the wildfire issue. But no one was talking to that topic. They were speaking to things the Commission had no control over and reprimanding the Commission. He found it interesting.

Commissioner Norton was not concerned with the roof and screening. He focused on the significant service gap. Both letters from Mr. Thatcher and Mr. Johnson agreed there was a gap. Tonight, he received the graph, but wished it had gone back to Mr. Thatcher and Mr. Johnson for a response. Commissioner Brown noted the existing coverage maps in the packet. Commissioner Norton thought the graph contradicted the information in the packet. Chair Pearce added there were two hired experts and both agreed there was a coverage gap. There was substantial material that showed the criteria was met. Commissioner Norton noted there was not enough time to review the graph but hoped next time, this kind of information was submitted earlier in the process. Commissioner Dawkins agreed it came late but this was a de novo hearing and the next step was LUBA.

Chair Pearce thought staff's presentation covered the Goal 1 issue. The City complied with the ordinance for noticing.

Commissioners Brown/Dawkins m/s to deny the appeal and approve the application with conditions in the staff report. Roll Call Vote: Commissioners Norton, Pearce, Brown, and Dawkins, YES. Commissioner Mindlin NO. Motion passed 4-1.

ADJOURNMENT

Meeting adjourned at 9:30 p.m.

*Submitted by,
Dana Smith, Executive Assistant*

BEFORE THE PLANNING COMMISSION
July 10, 2018

IN THE MATTER OF PLANNING ACTION #2017-01486, AN APPEAL OF THE)
STAFF ADVISOR'S APPROVAL OF A REQUEST FOR SITE DESIGN REVIEW)
TO INSTALL WIRELESS COMMUNICATION FACILITIES (ANTENNAS AND)
ASSOCIATED EQUIPMENT) ON THE ROOF OF THE SCIENCE BUILDING AT)
1250 ASHLAND STREET ON THE SOUTHERN OREGON UNIVERSITY CAMPUS.)
THE APPLICATION ALSO INCLUDES A REQUEST FOR A CONDITIONAL USE)
PERMIT BECAUSE WITH INSTALLATION OF PANELS PROPOSED TO SCREEN)
THE WIRELESS COMMUNICATION FACILITY INSTALLATION, THE BUILDING) **FINDINGS,**
HEIGHT WILL EXCEED 40 FEET. STAFF INITIALLY APPROVED THE APPLI-) **CONCLUSIONS &**
CATION ADMINISTRATIVELY SUBJECT TO A NUMBER OF CONDITIONS.) **ORDERS**
SUBSEQUENT TO THE MAILING OF A NOTICE OF DECISION, KATHY UHTOFF)
WHO RESIDES JUST OUTSIDE OF THE NOTICE AREA AT 633 ROCA STREET,)
FILED AN APPEAL REQUEST.)

OWNER:	Southern Oregon University)
APPLICANT:	SmartLink LLC for Verizon Wireless)
APPELLANT:	Kathy Uhtoff)

RECITALS:

- 1) Tax lot #100 of Map 39 1E 15BB is located at 1250 Ashland Street on the Southern Oregon University campus and is zoned SO (Southern Oregon University District).
- 2) The application is a request for a Site Design Review Permit to install wireless communication facilities (antennas and associated equipment) on the roof of the Science Building at 1250 Ashland Street on the Southern Oregon University Campus. The application also includes a request for a Conditional Use Permit for the installation of panels proposed to screen the wireless communication facility installation, which will require the building height to exceed 40 feet. Staff initially approved the application administratively subject to a number of conditions. Subsequent to the mailing of a Notice of Decision, Kathy Uhtoff, who resides at 633 Roca Street, filed an appeal request. Site improvements are outlined on the plans on file at the Department of Community Development.
- 3) The criteria for Site Design Review approval are described in AMC 18.5.2.050 as follows:
 - A. ***Underlying Zone:*** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*

- B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
- C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
- D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
- E. **Exception to the Site Development and Design Standards.** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
 - 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.;*
or
 - 2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*

4) The Wireless Communication Facility Design Standards are described in AMC 18.4.10.030 as follows:

All wireless communication facilities shall be located, designed, constructed, treated, and maintained in accordance with the following standards.

A. General Provisions

- 1. *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 (FCC) confirming that the proposed wireless communication facility complies with regulations administered by that agency or that the facility is exempt from regulation.*
- 2. *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.*
- 3. *Wireless communication facilities shall be exempted from height limitations imposed in each zone.*

4. *Wireless communication facilities 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.*
5. *Lattice towers are prohibited as freestanding wireless communication support structures.*
6. *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.*
7. *The 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.*
8. *All new wireless communication support structures shall be constructed so as to allow other users to collocate on the facility.*

B. Preferred Designs. *The following preferred designs are a stepped hierarchy, and the standards shall be applied in succession from subsection a to e, with the previous standard exhausted before moving to the following design alternative. For the purpose of chapter 18.4.10, feasible is defined as capable of being done, executed or effected; possible of realization. A demonstration of feasibility requires a substantial showing that a preferred design can or cannot be accomplished.*

1. **Collocation.** *Where possible, the use of existing wireless communication facilities sites for new installations shall be encouraged. Collocation of new facilities on existing facilities shall be the preferred option. Where technically feasible, collocate new facilities on pre-existing structures with wireless communication facilities in place or on pre-existing towers.*
2. **Attached to Existing Structure.** *If (a) above is not feasible, wireless communication facilities shall be attached to pre-existing structures, when feasible.*
3. **Alternative Structure.** *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 wireless communication facilities.*
4. **Freestanding Support Structure.** *If (1), (2), or (3) 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.*
5. **Lattice towers** *are prohibited as freestanding wireless communication support structures.*

C. Collocation Standards

1. *The collocation feasibility study shall meet all of the following requirements.*
 - a. *Document that alternative sites have been considered and are technologically unfeasible or unavailable.*

4. *Antennas 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.*
5. *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.*
6. *Exterior lighting for a wireless communication facility is permitted only when required by a federal or state authority.*
7. *Should it be deemed necessary by the approval authority for the mitigation of visual impact of the wireless communication facility, 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, and shielding techniques.*

5) The criteria for Conditional Use Permit approval are described in AMC 18.5.4.050.A as follows:

1. *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.*
2. *That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.*
3. *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, pursuant with subsection 18.5.4.050.A.5, below. 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.*
 - a. *Similarity in scale, bulk, and coverage.*
 - b. *Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.*
 - c. *Architectural compatibility with the impact area.*
 - d. *Air quality, including the generation of dust, odors, or other environmental pollutants.*
 - e. *Generation of noise, light, and glare.*
 - f. *The development of adjacent properties as envisioned in the Comprehensive Plan.*
 - g. *Other factors found to be relevant by the approval authority for review of the proposed use.*
4. *A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.*
5. *For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.*
 - a. **WR and RR.** *Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*
 - b. **R-1.** *Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*
 - c. **R-2 and R-3.** *Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*
 - d. **C-1.** *The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and*

within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.

- e. **C-1-D.** *The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 1.00 gross floor to area ratio, complying with all ordinance requirements.*
- f. **E-1.** *The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.*
- g. **M-1.** *The general light industrial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, complying with all ordinance requirements.*
- h. **CM-C1.** *The general light industrial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.50 gross floor to area ratio, complying with all ordinance requirements.*
- i. **CM-OE and CM-MU.** *The general office uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area, complying with all ordinance requirements.*
- k. **CM-NC.** *The retail commercial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area ratio, complying with all ordinance requirements.*
- l. **HC, NM, and SOU.** *The permitted uses listed in chapters 18.3.3 Health Care Services, 18.3.5 North Mountain Neighborhood, and 18.3.6 Southern Oregon University District, respectively, complying with all ordinance requirements.*

- 6) The Planning Commission, following proper public notice, held a public hearing on June 26, 2018 at which time testimony was received and exhibits were presented. Following closing of the record and the public hearing, the Planning Commission determined that staff had not erred in approving the requested Site Design Review and Conditional Use Permits to install Wireless Communication Facilities on the SOU Science Building at 1250 Ashland Street, denying the appeal and approving the application subject to conditions pertaining to the appropriate development of the site.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, and Miscellaneous Exhibits lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS

2.1 The Planning Commission finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony and the exhibits received.

2.2 The Planning Commission finds that the proposal for Site Design Review meets all applicable criteria for Site Design Review approval described in section 18.5.2.050, for Wireless Communication Facilities described in section 18.4.10.030, and for Conditional Use Permit approval described in section 18.5.4.050.A. The site plan and elevation drawings provided delineate the proposed wireless communication facility installation locations, designs and associated improvements.

2.3 The Planning Commission finds that, as detailed in AMC 18.4.10.020, wireless communication facilities (WCF) attached to existing structures in the Southern Oregon University are subject to Site Design Review.

The Commission further finds that the current application was approved by staff on May 16, 2018 with a 12-day appeal period which extended through the end of business on May 29, 2018. On May 25, 2018 prior to the end of the appeal period, Kathy Uhtoff timely filed a notice of land use appeal. Ms. Uhtoff resides just outside of the noticing area for the application, but had submitted written comments during the public comment period and thus had standing to appeal. The notice of appeal identified two specific grounds for which the decision should be reversed or modified: 1) the deadly and serious consequences of 5G, and 2) violation of Oregon's statewide planning goals.

AMC 18.5.1.050.G. explains that appeal hearings on Type I decisions made by the Staff Advisor are "*de novo*" hearings before the Planning Commission and follow the standard Type II public hearing procedure except that the decision of the Planning Commission is the final decision of the City. Consideration of the appeal is not limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.

2.4 The Planning Commission finds that the application explains that the proposed rooftop antennas and associated equipment are designed to provide additional services to customers in and around the Southern Oregon University campus and to improve service capacity, thereby improving overall performance. The applicants emphasize that if additional WCF are not built soon to provide more capacity, Verizon Wireless's existing sites will exhaust their capacity and no longer be able to provide service to customers in the area.

WCF installations attached to existing structures in the Southern Oregon University district are subject to Site Design Review approval. In this instance, the building itself and associated site improvements recently received Site Design Review approval and the Commission's review here is limited to considering how the addition of the proposed WCF complies with the applicable WCF design standards.

The Planning Commission further finds that with regard to the design standards the application explains that the antennas and associated equipment will be located on the roof, and will be screened and concealed by an existing screen wall as well as by new proposed screening which will extend the existing screening wall to go around the remainder of the building and include fiberglass reinforced plastic (FRP) in the area of the WCF. The new screening is to match the existing screening wall to minimize any visual impacts. The equipment will be visually screened by the wall at the top of the building – the antennas and equipment

cabinets are shorter than the wall and will not extend above the wall. No vegetative screening is proposed as the installation is entirely limited to the rooftop, and the rooftop installation is noted as being only as high as necessary to achieve the coverage goals.

The Commission finds that all equipment is proposed to be equal to or lesser in height than the existing screening wall. No signage beyond any required by state and federal laws is proposed to be posted, no exterior lighting is proposed, and the applicants agree to remove all equipment from the site and return it to its original condition within 90 days if and when the facility is ever abandoned for a period of greater than six months. The application asserts, and staff have confirmed, that the building is set back more than twice its overall height from any residential zone.

The applicants have provided the code-required collocation study, and as required by ordinance the City has retained the services of an independent third-party reviewer. The code requires that the applicants deposit funds with the city with their application fee to pay for this independent third-party review. The city enlisted the services of Professor William P. Johnson, RF Engineering Consultant, who is a full-time faculty member in the Electrical-Computer-Telecommunications Engineering Technology Department at Rochester Institute of Technology in Rochester, NY. Mr. Johnson is the director of Rochester's graduate masters program in telecommunications engineering technology and holds graduate degrees in electrical engineering and law. He teaches courses in radio-frequency (RF) systems, telecommunications systems and law. Johnson reviewed the application materials to ensure that the site approvals are based on an objective need. In his initial review, Johnson concluded that the applicants had failed to provide sufficient objective evidence relevant to the proposal documenting the need for additional RF coverage and capacity. The applicants provided additional submittals in response to this review.

The Commission finds that in reviewing subsequent materials submitted by the applicants' consultant Andrew H. Thatcher - a board certified Health Physicist with more than 29 years of experience evaluating both ionizing and non-ionizing radiation sources and a member of both the Health Physics Society and of the Institute of Electrical and Electronics Engineers - on March 22, 2018 in response to Mr. Johnson's initial findings, Johnson noted that the later submittals contained a narrative and multiple supporting figures regarding the coverage gap issue and the performance of the proposed site compared to several alternate sites. In summarizing his review, the City's independent third-party consultant Johnson concluded that the applicants' report, prepared by Mr. Thatcher, included narrative and figures that provide the city with sufficient objective evidence to meet the requirements of the collocation standards. He further noted that the Thatcher report shows that the proposed site produces acceptable performance and fills the area's coverage and capacity needs, whereas the alternate sites that were considered would not. While testimony and exhibits provided at the appeal hearing raised questions as to whether the applicants had adequately established a need for the proposed facilities, the Planning Commission ultimately found that the materials provided by the applicants from R.F. expert Mr. Thatcher and the city's review of these materials by independent expert Mr. Johnson provided substantial evidence from highly qualified experts in this field that the collocation standards had been met.

2.5 The Planning Commission finds that the subject property is located within the Southern Oregon University (SOU) district, a special district designed to provide for the unique needs of Southern Oregon University as a State educational institution functioning within the planning framework of the City. The

SOU district is regulated under AMC Chapter 18.3.6 and by the SOU Campus Master Plan which was adopted by the City as Ordinance #3014.

Within the SOU district, WCF are authorized subject to Chapter 18.4.10, In addition, any construction over 40 feet in height is subject to the approval of a conditional use permit per Chapter 18.5.4. While WCF themselves are exempted from height restrictions in each zone, with the addition of the proposed ten-foot tall FRP screen walls here, the building's height will exceed the outright allowed 40-foot height. Currently, the building parapet is at 38 feet 3 inches above the finished grade, and the highest point on the structure is at 55 feet above finished grade. Both the existing and proposed screen walls extend to 48 feet 3 inches above finished grade.

Conditional use permits provide for discretionary review of the adverse material impacts of a request in comparison to adverse material impacts that could reasonably be expected from the property's target use, which for the SOU District is "*The permitted uses listed in... (chapter) 18.3.6 Southern Oregon University District... complying with all ordinance requirements.*" Consideration in the criteria include adequate capacity of city facilities, impacts on the livability of the impact area when considered in terms of scale, bulk, and coverage; traffic generation; architectural compatibility; air quality; generation of noise, light, and glare; the development of adjacent properties as envisioned in the Comprehensive Plan; and other factors found to be relevant by the hearing authority. Conditional use permits provide the city with the ability to impose conditions necessary to mitigate these adverse material impacts.

The Commission finds that the proposal is in conformance with the standards of the SOU district and relevant Comprehensive Plan policies, and that because the proposal is for an unmanned WCF it will not impact access to city services, generate any additional traffic or impact transportation in any way. In addition, the antennas and equipment that will be going on the roof will be screened with material that will match the current screening wall but extend around the whole building, and as such will have no greater impact on the livability of the surroundings than would the target use. The installation will not affect air quality, and the applicants have provided an acoustic report from a qualified expert which concludes that, "*the predicted noise levels are significantly lower than both the code limit and the existing ambient noise levels, and as such will not contribute to the existing noise environment.*" No added exterior lighting is proposed in conjunction with this WCF installation. The proposal is limited to the campus and will not affect the future development of adjacent properties, and is an allowed use in the district subject to the requirements of AMC Chapter 18.4.10.

Uphill neighbors' testimony raised concerns that visual and acoustic screening was inadequate, and did not account for potential radiation exposure for properties uphill of the installation which might have a direct line of site to the building and thus the potential for greater harm. The Planning Commission finds that the visual and acoustic concerns are adequately addressed and meet the city's Site Design Review and Conditional Use Permit criteria. The uphill neighbors' concerns regarding radiation exposure fall within the federal regulations which preclude the city's ability to consider the direct or indirect environmental or health impacts of such an installation when the installation complies with all federal regulations. This federal preemption is discussed in more detail below.

2.6 The Planning Commission finds that Ashland's standards regulate the placement and appearance of wireless communication facilities (WCF) while providing residents with the ability to access and adequately utilize the services that these facilities support.

In reaching the initial decision to approve the request, the Staff Advisor found it important to first note that the key concern most often raised in WCF applications – the environmental health impacts associated with such installations – is explicitly precluded from local consideration under federal law. This preclusion applies to moratoria, as well as to individual land use decisions. As such, the Planning Commission finds that while applications may be carefully considered in terms of the applicable local land use regulations including requirements for design review approval, specific design standards and in this instance an associated Conditional Use Permit related to the proposed increase in building height, the Planning Commission is specifically precluded by federal statute from considering environmental impacts, including health impacts, of a WCF installation provided that it will comply with Federal Communications Commission (FCC) regulations.

The Planning Commission finds that the proposed WCF installation is to be placed on an existing structure, behind an existing screening wall which will be extended to encircle the rooftop perimeter. This wall will entirely conceal the WCF installation on the existing Science Building's rooftop with no associated equipment on the ground, meeting the applicable design standards. The application includes an acoustic report by an engineer which concludes that the predicted noise levels are significantly lower than both the code-allowed noise limits and the existing ambient noise levels, and as such will not contribute to the existing noise environment. In addition, the city has retained the services of an independent third party reviewer who has analyzed the application and determined that the application includes sufficient objective evidence to meet the requirements of the collocation standards and shows that the proposed site produces acceptable performance and fills the area's coverage/capacity needs, whereas the alternate sites considered do not.

In initially considering the Conditional Use Permit component of the request, the Staff Advisor found that the benefits demonstrated by the applicants' installing the screening wall outweighed and mitigated the impacts associated with the additional height involved and that the extension of the existing screening was architecturally compatible with the existing building. The application was approved with conditions, and subsequent to the mailing of a Notice of Complete Application (NOCA), two neighboring property owners provided written comments with regard to the proposal during the comment period.

Kathy Uhtoff of 633 Roca Street, who is now the appellant, initially expressed concerns with the proposal, noting that Verizon uses vast amounts of energy while only one to two percent of it comes from renewable energy sources. Kathy Uhtoff further questioned why the University and the City would support this company when in other endeavors both are supposedly proactive in combating climate change. She emphasized that this is a chance for the University and the City to stand up to these companies and demand that they improve their energy sourcing.

Chris Uhtoff of 78 Fourth Street expressed concerns with the placement of a cellular tower on top of the Science building. Uhtoff suggested that this installation would degrade the aesthetic environment of an appealing public space and create an eyesore in an area that should be a scenic ally that is architecturally

pleasing to both neighboring residents and students. Chris Uhtoff noted that cell towers have highly annoying and continuous noise levels and create a “psychological creepiness” to the nearby area because of their unknown health effects. Uhtoff further suggested that while studies of the harmful effects may be inconclusive at this point, there are increasing amounts of information being transmitted and the power and amount of transmitters will continue to increase. Chris Uhtoff concluded that by allowing a cellular tower in this public space it is more likely to lead to more and more powerful transmitters in the future in this location, creating even more of an industrial look to the area.

With regard to Kathy Uhtoff’s concerns over Verizon’s use of only a minimal amount of renewable energy in its operations, the Staff Advisor noted that while Ashland Municipal Code section 18.4.2.010.D provides that the standards promote site planning and building designs which, “*Support resource conservation and reusable energy generation, through solar, wind, and other renewable energy sources*” there is no land use criterion within the code which considers an applicant’s choice of energy source, and the Planning Commission so finds. The Staff Advisor also noted that SOU itself has been recognized by the U.S. Environmental Protection Agency as being among the top schools in the northwest for effectively increasing its renewable energy use through its purchase of renewable energy certificates equivalent to approximately 120 percent of its electrical use. SOU students have chosen to use self-imposed student fees to provide funds for renewable energy on campus, including the purchase of renewable energy credits which offset the school’s energy use. In addition, the University has more than 1,000 solar photovoltaic panels in place on campus.

In terms of Chris Uhtoff’s concern with aesthetics, and with the increasingly industrial appearance creating an eyesore, the applicants propose to conceal the installation behind a screening wall. This wall will match existing rooftop screening already in place, but will extend the screening around the full perimeter of the roof with fiberglass reinforced plastic panels in the screen wall used to screen the WCF installation. The Planning Commission finds that the extension of new screen wall segments which match the existing screening already in place and which conceal the WCF installation would be architecturally compatible with the existing building without contributing to an “increasingly industrial” appearance.

In response to Chris Uhtoff’s concerns over noise levels, the application materials included an acoustical report performed in the immediate vicinity of the proposed WCF by Alan Burt, a registered professional engineer with SSA Acoustics, LLP. The noise survey extends from the proposed equipment to the nearest surrounding properties, documenting the existing conditions and calculating the impacts of the acoustical changes due to the proposed equipment. This report explains that the average ambient noise level was 54 dB(A) primarily due to local traffic on Elkader Street. The report goes on to note that the Ashland Municipal Code (AMC) in section 9.08.170.E.3.a provides that noise from mechanical equipment to a residential receiving property is limited to 45 dB(A). With the equipment centered on the north side of the building roof behind an existing ten-foot high FRP screen wall at the building parapet and the nearest residential properties 245 feet west and 220 feet south of the equipment respectively, the report calculates the anticipated noise level at the adjacent properties will be 21-22 dB(A) and the sound level will therefore be below the 45 dB(A) allowance in the AMC at the nearest receiving properties. The acoustical report concludes that the predicted noise levels are significantly lower than both the code limit and the existing ambient noise levels, and as such will not contribute to the existing noise environment.

In terms of the possible health impacts of wireless communication facilities, Title 47 U.S. Code §332(c)(7)(B)(iv) “*Mobile Services – Preservation of Local Zoning Authority*” provides that “No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission’s regulations concerning such emissions.” Federal law explicitly precludes the city’s consideration of potential environmental health impacts of wireless communication facilities through the city’s local zoning authority. This preclusion prevents the city from considering health impacts in individual land use decisions and would also prevent the city from imposing a moratorium of facilities of this nature.

Chris Uhtoff has also raised concerns with the ever-increasing energy and data use for WCF, and the need for continued expansion of the facilities. There is no land use criterion applicable to this concern upon which the Planning Commission could base a decision. The Staff Advisor noted that the WCF installation proposed is to be served by extending power from an existing electrical transformer in place behind the building, and the applicable criteria consider only the current request rather than the potential that it will lead to undetermined future expansion. If the installation were to be modified or expanded at a later date, that request would need to be considered in light of applicable standards in place at the time.

2.7 The Planning Commission finds that on May 25, 2018 prior to the end of the appeal period, Kathy Uhtoff timely filed a notice of land use appeal. Ms. Uhtoff resides just outside of the noticing area for the application, but as detailed in 2.6 above she had submitted written comments during the initial public comment period and thus had standing to appeal. Ms. Uhtoff’s notice of appeal identified two specific grounds for which the decision should be reversed or modified:

- 1) **The deadly and serious consequences of 5G.** Ms. Uhtoff’s appeal notice alleges that the potential hazards of 5G on human health and the environment have been identified in an article entitled, “*Scientists warn of potential serious health effects of 5G*” dated September 13, 2017. She notes that a growing body of international researchers has spoken out against the technology, warning that it may have serious biological side effects. She further alleges that current studies show that there is a clear and present danger to humans who are exposed to cell towers, that American universities are publishing reports that call for an immediate halt to the 5G rollout, and that firefighters unions in California have sought and received exemptions from having cell towers placed on top of their buildings. Ms. Uhtoff also emphasizes that the Rogue Valley is an agricultural hub and that Ashland needs to aggressively address issues relating to the decline of the local bee population. The appeal submittal includes a number of articles to support of the issues raised. In addition to Ms. Uhtoff, a number of other residents testified about their concerns over the potential health effects of electromagnetic radiation from cellular facilities.

and

- 2) **Violation of Oregon’s statewide planning goals.** Ms. Uhtoff notes that Goal 1 of Oregon’s statewide planning goals in OAR 660-015-0000(1) calls for citizen involvement, and suggests

that neither the Planning Commission nor Southern Oregon University fully disclosed to all affected citizens their intention to install a 5-G cell tower as the notices mailed only went to property owners within 200 feet of the subject property while cell tower radiation and frequencies from the new tower will extend well beyond 200 feet.

2.8 The Planning Commission finds that with regard to the first appeal issue, the appeal expresses concern over the potential consequences to human health and the environment of “5G” which refers to fifth-generation wireless systems. 5G is intended to provide for greater speeds to move more data, lower latency so that the service is more responsive, and the ability to connect a more devices, such as those for sensors and smart devices. The Commission finds that based on the application materials and testimony provided by the applicants – while there is no distinction in the applicable standards relative to the generation of technology proposed for installation - the current request actually involves fourth generation (4G) or Long Term Evolution (LTE) technology rather than the questioned 5G. The Commission further finds that the applicants have indicated that it would be several years before they would consider upgrading the proposed installation.

The Planning Commission further finds that in terms of the human health and environmental impacts of wireless communication facilities, Title 47 U.S. Code §332(c)(7)(B)(iv) explicitly precludes the city’s consideration of potential environmental health impacts of wireless communication facilities through the city’s local zoning authority. This preclusion prevents the city from considering direct environmental or health effects of electromagnetic radiation as well as indirect environmental or health impacts in land use decisions. In addition to state land use law requirements that the city render a final decision within 120-days of a complete application being submitted, Federal law also requires that the city “*act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable time after the request is duly filed.*” 47 U.S.C. §332(c)(7)(B)(ii)

The Planning Commission finds that while the appellants and those testifying at the appeal hearing have raised a number of issues relative to the human health and environmental impacts of the emissions from wireless communications facilities, these are considerations which the city is expressly precluded from considering under federal law. Such considerations fall under the exclusive authority of the Federal Communication Commission (FCC) and as such do not provide a basis by which the city could deny or condition an application to install a wireless communication facility.

With regard to the second appeal issue, the appeal notice cites Goal 1 of Oregon’s statewide planning goals in OAR 660-015-0000(1) calling for citizen involvement, and suggests that neither the City nor Southern Oregon University fully disclosed to all affected citizens their intention to install a cellular facility as the notices mailed only went to property owners within 200 feet of the subject property while cell tower radiation and frequencies from the new tower will extend well beyond 200 feet.

The Planning Commission finds that Goal 1 of the statewide planning goals is not an applicable approval criterion, and that the City has an acknowledged Comprehensive Plan and implementing ordinances and as such may be presumptively assumed to comply with the statewide planning goals when city ordinances are satisfied.

The Commission further finds that AMC 18.5.1.050.G.2.c “Content of Notice of Appeal” requires that the appeal issues identified in the notice must have been raised during the public comment period. This issue was not raised during the public comment period, however because Type I appeals are conducted as *de novo* hearings, this issue may be raised and addressed.

The Planning Commission finds that as detailed in AMC 18.4.10.020, wireless communication facilities (WCF) attached to existing structures in the Southern Oregon University district are subject to Site Design Review. AMC 18.5.2.030 provides that except as indicated elsewhere in the section, applications for Site Design Review are subject to the Type I procedures detailed in AMC 18.5.1.050. There are no specific exceptions which would require another review procedure for wireless communication facility installations in the Southern Oregon University district detailed in this section. AMC 18.5.1.050.B “Notice of Application” requires that the City mail a notice of a pending Type I application to the following:

- a. Applicant.
- b. Owners of the subject property.
- c. Owners of record for properties located within 200 feet of the perimeter of the subject site. (18.5.1.050.B.2 requires that the notices shall be mailed to “owners of record of property on the most recent property tax assessment roll.”)
- d. Neighborhood group or community organization officially recognized by the City that includes the area of the subject property.
- e. Where an application subject to Type I review is preceded by a Type II decision, to parties of record from the subject Type II decision.
- f. For applications to amend an approval, to persons who requested notice of the original application that is being amended or modified, except that where the mailing address of a person entitled to notice is not the same as the mailing address of record in the original approval, the City is not required to mail notice.

AMC 18.5.1.050.D “Notice of Decision” requires that the City mail a notice of a Type I decision to the following:

- a. Applicant.
- b. Owners of the subject property.
- c. Owners of record for properties located within 200 feet of the perimeter of the subject site.
- d. Neighborhood group or community organization officially recognized by the City that includes the area of the subject property.
- e. Parties of record; this includes any group or individual who submitted written comments during the comment period.
- f. Those groups or individuals who requested notice of the decision.
- g. For applications to amend an approval, to persons who requested notice of the original application that is being amended or modified, except that where the mailing address of a person entitled to notice is not the same as the mailing address of record in the original approval, the City is not required to mail notice.

The Commission finds that maps illustrating the notice area used, mailing lists of property owners generated from the most recent property tax assessment roll, and affidavits of mailing for the Notice of Application and Notice of Decision have been provided by the Staff Advisor in the record in Staff Exhibit S-1. There are no officially recognized neighborhood groups or community organizations in the city, and there was no preceding Type II decision for this site.

The Commission further finds that AMC 18.5.1.050.B.4 requires that the city post a notice of the application on the project site in clear view from the public right-of-way. The required public notice was posted by Planning staff on April 19, 2018 and a photo of the posted public notice has been provided by the Staff Advisor in the record in Staff Exhibit S-2.

The Commission further finds that for wireless communication facility applications, AMC 18.4.10.030.L requires that the applicants conduct and document a local community meeting to inform members of the surrounding area of the proposed wireless communication facility, providing the following documentation with their application:

1. A copy of the mailing list to properties within 300 feet of the proposed facility.
2. A copy of the notice of community meeting, mailed one week prior to the meeting.
3. A copy of the newspaper ad placed in a local paper one week prior to the meeting.
4. A summary of issues raised during the meeting.

The Planning Commission finds that the applicants' submittal materials include the above documentation. The Commission further finds that while materials submitted for the appeal period question whether the mailing list provided to address item #1 above, the mailing list provided shows that the notice was mailed to properties within 200 feet of the subject property and that the proposed facility is more than 100 feet from the boundaries of the property and as such the notice provided went to properties within 300 feet of the proposed facility.

The Planning Commission also finds that the Oregon Revised Statutes address "Conduct of local quasi-judicial land use hearings in ORS 197.763.2 as follows:

(2) (a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; **or**

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

The Commission finds that Ashland's Unified Land Use Ordinance was adopted by Ordinance #3105 on December 17, 2014, and has been acknowledged by the State of Oregon as implementing the statewide land use planning goals. Ashland's noticing requirements send notice to property owners within 200 feet of the development where state law requires only a 100-foot noticing area (*i.e. double the state noticing requirement*). In addition, Ashland's wireless communication facility regulations further require that the applicants provide notice to neighbors within 300 feet (*triple the state requirement*), publish a notice in the local newspaper, and conduct a community meeting separately from the city's noticing and hearing process.

The Planning Commission finds that the standard land use noticing required under Ashland's Type I and wireless communication facility regulations and demonstrated to have been carried out according to requirements for this application significantly exceeds that required under state law.

2.9 The Planning Commission finds that with regard to the public notice provided being inadequate to a degree which violates state land use planning goals under Oregon state law, Ashland's ordinances have been acknowledged by the State of Oregon as being consistent with and implementing the statewide land use planning goals. Ashland's "Type I" noticing requirements send notice to property owners within 200 feet of the development, which is double the 100-foot notice required by state law, in addition to posting a public notice on site in plain view from public right-of-way, and Ashland's regulations further require that the applicants provide notice to neighbors within 300 feet of the proposed installation, which is triple the requirement found in state law, as well as publishing a notice in the local newspaper; and conducting a community meeting separately from the city's noticing and hearing process. The Commission finds that the standard land use noticing required under Ashland's "Type I" and wireless communication facility regulations and demonstrated to have been properly carried out here exceeds the requirements of Oregon state law.

The Commission finds that with the conditions below attached, the proposal satisfies the applicable approval criteria and that neither the appeal issues raised in the initial notice nor those issues raised during the hearing provide a basis to reverse the initial decision of the Staff Advisor.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the request for Site Design Review and Conditional Use Permit approvals to install wireless communication facilities on the roof of the Southern Oregon University Science Building is supported by evidence contained within the whole record.

The Planning Commission denies the appeal, and re-affirms the Staff Advisor's original Site Design Review and Conditional Use Permit approvals to allow the installation of wireless communication facilities, including antennas and associated equipment, on the roof of the Science Building at 1250 Ashland Street on the Southern Oregon University Campus subject to the conditions detailed below. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2017-01486 is denied. The following are the conditions and they are attached to the approval:

1. That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein, including:
 - a. That a screening wall matching the existing partial screening wall, with FRP paneling at antenna areas, shall be extended around the full perimeter of the building roof as proposed by the applicants;
 - b. That the proposed equipment cabinet, battery cabinet and antennas shall not extend above the level of the screen wall;
 - c. That vertical conduit attached to the building façade shall be painted to match the existing building;
 - d. That there shall be no new exterior lighting in conjunction with the proposal; and
 - e. That no associated equipment, other than the existing power transformers and generator, shall be placed on the ground.
2. That all conditions of the previous land use approvals shall remain in effect unless otherwise specifically modified herein.
3. That the applicants shall obtain required building permits, including any structural, mechanical and electrical permits; pay associated fees and charges; and obtain all required inspection approvals. All requirements of the Building Division, including but not limited to: that final drawings prepared by an Oregon-licensed design professional may be necessary to complete the submission for permits; that permit drawings shall address any applicable Oregon Structural Specialty Code requirements (i.e. wind, seismic and tributary loads, and forms of attachment).
4. 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.
5. That the plans submitted for the building permit shall be in conformance with those approved as part of this application. If the plans submitted for the building permit are not in substantial conformance with those approved as part of this application, an application to modify this Site

Design Review and Conditional Use Permit approval shall be submitted and approved prior to issuance of a building permit.

6. That prior to the issuance of a building permit, the applicants shall obtain a business license from the City of Ashland.
7. That prior to use of the proposed wireless communications facility (WCF), the applicants shall paint, texture or otherwise treat the proposed screening wall in a non-reflective finish and color to match the existing screening wall.
8. That prior to the issuance of a building permit, the applicants shall provide a copy of the signed lease evidencing that collocation is not precluded by the lease agreement.

Planning Commission Approval

July 10, 2018

Date

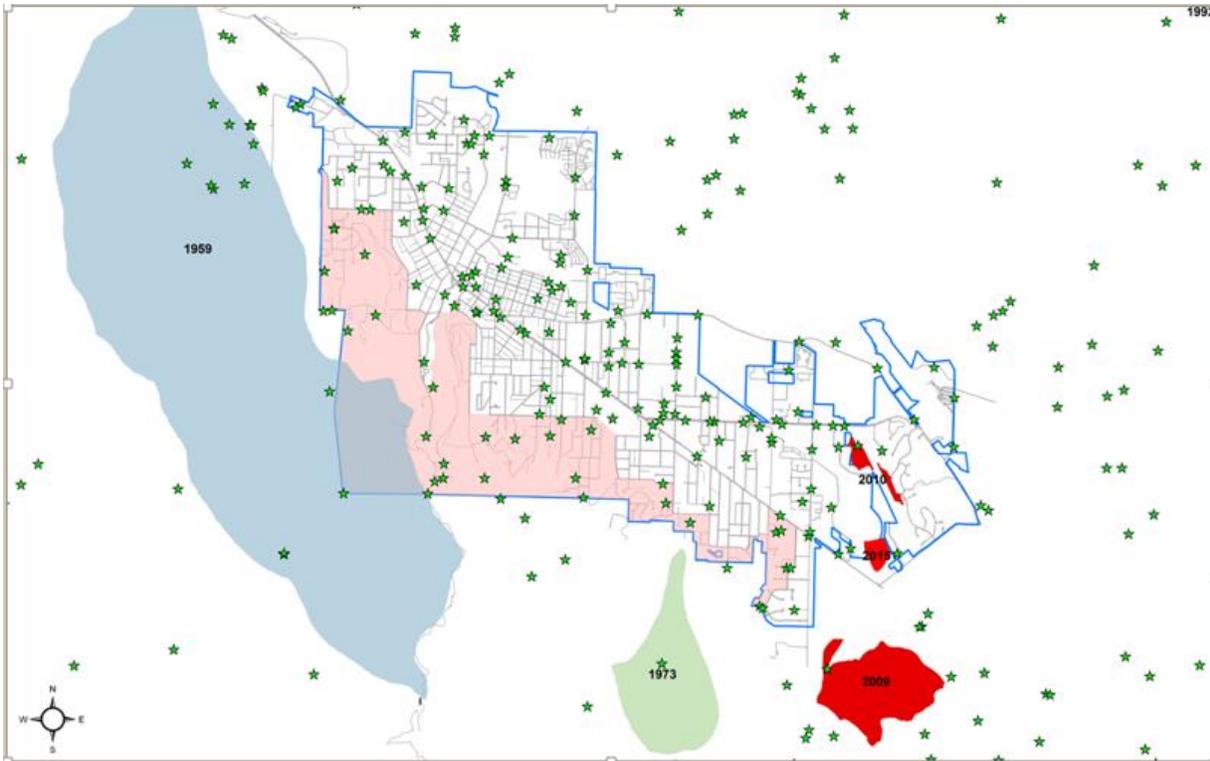
Planning Commission Report

DATE: July 10, 2018
TO: Ashland City Council
FROM: Ashland Planning Commission
RE: Planning Commission Recommendation
Ordinance Amendments for Wildfire Development Standards Ordinance
(PA-L-2018-00003)

Summary

The Planning Commission unanimously recommends approval of Planning Action PA-L-2018-00003. This legislative action includes proposed amendments to the Physical and Environmental Constraints Map to expand the boundary of Ashland's designated Wildfire Lands to incorporate the entire City; amendments to the Ashland Land Use Ordinance to implement new standards for fire prevention and control plans and fuels reduction associated with development; amendments to the Tree Removal permit requirements; and a Resolution to establish a Prohibited Flammable Plant list and a municipal Code amendment to declaration that such plants as a fire hazard.

The Commission found that wildfire poses a risk to persons and property throughout the entire community and therefore determined that the designated wildfire lands boundary, and the development standards for wildfire lands, should be applied city wide to mitigate for the potential adverse effects of wildfire. The commission found that the Wildfire Hazard Zone Evaluation in 2014 demonstrated that the existing Wildfire Lands overlay boundary does not incorporate all areas within the City that meet the criteria to be considered a Wildfire Hazard Zone as set forth by OAR Chapter 629, Division 044, and that that frequency, spread, acceleration, intensity, and size of fires that have occurred outside the existing wildfire lands overlay demonstrates that the expansion of the wildfire lands overlay boundary is warranted. Ashland Fire and Rescue presented a map to the Commission that identified where individual fire ignition points and larger wildfires have occurred since 1959. This map showed that the risk of wildfire has not been isolated to the existing wildfire lands overlay area.



Ashland wildfires and ignitions:

Pink polygon = Existing wildfire lands designation

Green stars = ignitions

Blue, green, and red polygons = wildfires occurring in 1959, 1973, 2008, 2010

In review of the existing development standards for Wildfire Lands, the Planning Commission identified a number of potential changes to the existing code to be considered as part of the legislative amendment process. Draft code revisions were presented at numerous study sessions throughout 2017 and 2018, and were discussed by the Planning Commission, Tree Commission, Wildfire Mitigation Commission, and an ad-hoc wildfire hazard committee convened by the Mayor (comprised of City staff, representatives from the Tree, Planning, and Wildfire Mitigation Commissions). Through these study sessions the Commissions aimed to clarify the submittal requirements for a Fire Prevention and Control Plan, as well as revise or establish requirements for the implementation of required General Fuel Modification Areas not presently codified within the currently adopted Land Use Ordinance.

The Planning Commission found that if approved the proposed ordinance amendments, and expansion of the Wildfire Lands boundary, would address Statewide Planning Goal 7 as a local effort to “*implement measures to reduce risk to people and property from natural hazards including wildfire*”. Further the Commission found that the 2017 Climate and Energy Action Plan (CEAP) identified that regulation of new development within the Wildfire Fire Overlay was considered necessary to be more resilient to climate change impacts, and that adoption of the proposed ordinances would address this CEAP goal. The Commission further acknowledges that the City Council had an established an explicit goal to “*Complete the expansion of the city’s*

Ashland Planning Commission

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wildfire hazard zone to accurately reflect risk. Update the Wildfire Hazard Zone ordinance to allow for Citywide application and schedule for Council consideration". This Council goal is directly addressed through the ordinances and a resolution being forwarded for Council's consideration.

The Commission held a public hearing and deliberations on the proposed amendments on June 26th, 2018. Prior to the public hearing, the Planning Commission held study sessions on June 24, 2014, February 24, 2015, November 24, 2015, February 23, 2016, and February 27, 2018.

Recommendation

AMC 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions. As discussed earlier, the Planning Commission finds the proposed amendments to the land use ordinance relating to wildfire development standards and the wildfire lands overlay map are necessary and are supported by the Planning Staff Report dated June 26, 2017, the 2014 City of Ashland Wildfire Hazard Zone Evaluation, the Community Planning Assistance for Wildfire (CPAW) Ashland Ordinance Review (dated January 10, 2017), the CPAW report titled Best Practices Compilation for Ashland (dated April 2017), and the minutes from the prior study sessions as included in the record.

The Planning Commission reviewed the recommendations of the City of Ashland Tree and Wildfire Mitigation Commissions as included in the Planning Staff Report dated June 26, 2018, and considered the public testimony and written comments provided at the public hearing.

After careful thought and consideration, the Commission voted to recommend the City Council approve first reading of the ordinances and resolution as follows:

- Approval of the proposed map amendment to the Physical and Environmental Constraints Wildfire Lands Map to designate the entire Urban Growth Boundary and City Limits as Wildfire Lands.
- Approval of the proposed ordinance amending Chapter 18 of the Ashland Land Use Ordinance to amend the development standards for wildfire lands, and the applicability of tree removal permits.
- Approval of the proposed ordinance amending Chapter 9 of the Ashland Municipal Code to declare Prohibited Flammable Plants a nuisance.
- Approval of the resolution establishing the proposed General Fuel Modification Area Prohibited Flammable Plant List for application in Ashland's designated Wildfire Lands.

