

# MINUTES

Planning Commission  
Sloat Room – Atrium Building – 99 West 10<sup>th</sup> Avenue

November 8, 2004  
11:30 a.m.

PRESENT: John Belcher, Mitzi Colbath, Rick Duncan, John Lawless, Anne Marie Levis, , Members;  
Tom Coyle, Ex officio member; Planning Director Susan Muir, Kurt Yeiter, Steve  
Nystrom, City of Eugene Planning and Development Department;

## I. PUBLIC COMMENT

There were no members of the public wishing to speak.

## II. APPROVAL OF MINUTES

On the minutes of September 20, Mr. Belcher made corrections to page 3, fourth paragraph from the bottom of the page, he clarified his comment with the following; “He said a question for the Jefferson/Westside Neighborhood was whether the mixed use zone was working in terms of retaining residential character and residential use. In the last line of the page Mr. Belcher clarified that it was difficult to apply policies to land use decisions.

Ms. Levis, on page 2, offered formatting suggestions. On page 3, first paragraph, she offered wording suggestions.

For the minutes of October 25, page 4, Ms. Levis said Patricia should have a last name.

Mr. Belcher, seconded by Ms. Levis, moved to approve the minutes of September 20, and October 25, as amended. The motion passed unanimously.

## II. PUBLIC HEARING: Cell Tower Placement

Mr. Lawless opened the public hearing.

Ms. Muir reviewed the information submitted to the commission to date. She called attention to the meeting packet. She noted that the evening hearing for the subject had been cancelled for lack of a quorum. She distributed the written material submitted by the public to date.

City Attorney Jerry Lidz said the proposed ordinance was in response to council direction received in April 2004. He said the City Council had requested expanded setbacks for cell towers to be 1000 feet from all schools and 800 feet from residences. He said legal staff had interpreted 800 feet from residences to mean 800 feet from residential zones. He said council had requested codification of the

requirement that an independent consultant review, if it was needed, to verify an applicant's statements in a siting application. He noted the review would be at the applicant's cost. He said the third thing requested was that the council asked for a provision that would flatly prohibit or express zero tolerance for interference with emergency communications.

Mr. Lidz said the primary issue was with the proposed setbacks. He said a blanket setback, as requested by council, would violate the Telecommunications Act by not allowing some companies to provide service in certain areas of the City. He said a variance was being proposed that would allow companies to provide service within setback areas. He said siting in setback areas would have to comply as closely as possible with the proposed setback requirements.

Mr. Lidz said that this variance made the setback rule illusory. He said *all* new cell towers in the City would have to use the variance process. He said it would be hard to administer a rule that asked for 'as close as possible compliance' for placing cell towers. He said this raised some concern that it would cause complications in clear standards.

Regarding independent review consultants, Mr. Lidz said the only recommended change in the ordinance language was that 'may' had been changed to 'shall.' He said 'shall' was in accordance with what past practice had been.

Regarding the zero tolerance provision of the ordinance, Mr. Lidz said that the majority of case law showed that it was preempted by federal law and noted that the Federal Communications Commission was of the same opinion. He noted, however, that there was no case law against putting such a regulation in the ordinance. He said the chances of successfully defending the provision in court were very slim.

Mr. Lidz suggested asking the industry representatives to be specific about what burdens the proposed ordinance would place on them. He noted that a letter had been distributed from *Buck and Gordon* appeared to answer some of those questions. He said the question to ask opponents of cell towers was to question the extent of the problem and the risks that prompted them to go to the City Council and ask for the ordinance. He added the question of to what extent the capabilities of stealth design would address their concerns.

Mr. Lidz noted that he had drafted some options for the commission to move the matter forward to the City Council. Referring to maps displayed for the commission, he showed areas of school property and proposed buffer zones. He noted that the map used a 500 foot zone around schools and a 400 setback around residential areas and added that this was actually much less than the setbacks asked for by the City Council.

Ms. Muir noted that red X's on the map indicated where cell towers had been approved.

Mr. Lawless called for questions from the commission.

In response to a question from Mr. Duncan regarding the use of terms and whether the commission was including all towers for telecommunication or just cell phone towers, Mr. Nystrom said the ordinance was specifically geared toward cell towers. He noted that there were emerging industries that might confuse the distinction but said that there would be discussion over which were included under the definition of cell towers.

In response to a question from Mr. Duncan regarding the maps and the scattered residential housing zone and whether there were actually houses located in the areas identified on the maps, Mr. Nystrom said there had been no field check but expressed his confidence that there were houses in the identified areas. He said the maps were more for illustrative purposes and continuing the discussion.

In response to a question from Ms. Levis regarding reasoning of using 500 and 400 foot setbacks in the maps displayed, Mr. Lidz said the distances were not a proposal but were meant to show the effects of half of what was requested by the City Council.

In response to a question from Ms. Levis regarding why something that would be challenged in a lawsuit should be put into the ordinance, Mr. Lidz said a service provider had questioned the legality of putting the provision in the ordinance but had not threatened a lawsuit. He noted that other providers had challenged similar provisions in court and had all triumphed.

In response to a question from Mr. Lawless regarding where the setback distances for the County came from, Mr. Lidz said he had no information about how the setback distances were chosen.

Mr. Belcher noted that the current ordinance prohibited cell towers in the Willamette Waterway and the Ridgeline. He commented that this would make siting new towers even more difficult if the proposed ordinance were implemented.

In response to a question from Mr. Belcher regarding more intensive co-location could not be used, Mr. Lidz said the issue had to do with intensity of use in a given area. He said the more people used cell phones in a given area the more antennas were needed for the area.

Mr. Nystrom said showed a graph of existing towers and noted that there had been one tower built in the previous three years. He said this indicated a strong use of co-location on existing towers.

In response to a question from Mr. Belcher regarding the fee requirement for consultants and whether it should be limited to actual costs, Mr. Nystrom said the provision currently allowed the city to hire an independent consultant and the fee was geared toward recovering the costs of that consultant.

In response to a question from Mr. Belcher regarding a lawsuit in the City of Hillsborough and whether aesthetics could be used as a factor for placing cell towers, Mr. Nystrom said aesthetics was a significant reason for opposition of cell tower placement.

In response to a question from Ms. Colbath regarding regulating for aesthetics, Mr. Lidz said stealth design would help to mitigate concerns around aesthetics. He noted that, in some cases, stealth design towers were not attractive.

Mr. Nystrom said the best stealth design he had seen was when companies were co-locating on an existing building and were blended into the architectural design.

In response to a question from Ms. Levis regarding the requirement for an independent consultant and the required fees, Mr. Lidz said the intent was to actually have consultants and not provide a loophole for cellular companies.

In response to a concern raised by Ms. Levis that the variance procedure would become the standard procedure for cell tower placement in the City, Mr. Lidz stressed that the variance procedure would require the service provider to meet the ordinance language as closely as possible.

In response to a question from Mr. Belcher regarding stealth design and how to define what stealth design was, Mr. Nystrom said no objective standards of stealth design had been established to date. He surmised that no stealth standards would be universally accepted.

Ms. Muir added that stealth design had been incorporated into many other ordinances. She noted that the idea could be forwarded to the City Council but said that stealth concepts were not part of the direction of the City Council.

Mr. Belcher stressed that aesthetics were a reason why citizens were against the placing of cell towers.

Mr. Lidz said, in many cases, design and site were picked by negotiation between city staff and cellular companies. He said this was not good planning process but said that this was often the result.

In response to a question from Mr. Duncan regarding the distinction between residential and school setbacks, Mr. Lidz said those were the numbers that were provided by the City Council.

Mr. Belcher said the City was relying on cellular companies to tell about the need for towers and there was no way to assess real need. He stressed the importance of making decisions by customer needs versus business needs.

Mr. Nystrom acknowledged that this was a key issue. He said there were many answers to seek that depended on who was asked.

Mr. Lawless called for public testimony.

**Ron Fowler**, 6940 SW Dale Avenue, Beaverton Oregon, spoke representing AT&T Wireless and Singular. He showed a map of the city identifying 8 areas where cell towers were needed in the area. He noted that 6 of the 8 areas were in residential areas. He noted that EWEB would not allow co-location on power poles that went above the power grid. He expressed his confusion over the origin of the setback distances and asked why the standard was being requested. He showed the outlined schools on the map and where they mixed with areas that needed towers. He said he was fine with an independent consultant. He said codes worked better when the industry worked with the public and used the planning department as a moderator. He cited Washington County as an example where the process had worked best. He stressed that capacity was full in the area and new towers would be needed to increase that capacity. He noted that co-location could become overcrowded. He predicted that the Eugene area would receive up to 30 cell tower applications over the course of the next year. He emphasized that cell tower construction was expensive and took place from service need rather than to anger neighbors.

In response to a question from Mr. Belcher regarding how far a tower could be moved to placate residents, Mr. Fowler said it would depend on terrain. He added that it was all a matter of demand on traffic and technology.

In response to a question from Ms. Colbath regarding potential use of stealth technology, Mr. Fowler said the problem with stealth was that there were no official standards of what stealth was.

**Craig Harbison**, 87140 Territorial Road, Veneta, Oregon, spoke for Mona Linstromberg. He read a letter from Ms. Linstromberg to the commission and submitted that written material into the record.

In response to a question from Mr. Belcher regarding the proposed setback for schools, Mr. Harbison said one concern was that the towers would be an attractive nuisance for children.

**Martha Johnson**, 110 East Hilyard Lane, Eugene, said the proposed setbacks came from an ordinance in Massachusetts that had stood up to legal challenges. She said she had been lobbying the City Council to amend the current code for the past three years. She said the City Attorney's draft code amendment made setbacks an illusion. She said the draft was a waste of city money because it was essentially a rewrite of existing code with loopholes that a truck could drive through. She said, with the passage of Measure 37, the City should consider compensating entire neighborhoods for the loss of property values of homes near cell tower locations. She urged the Planning Commission to revise the ordinance language to preserve the setback distances proposed by the City Council.

Ms. Muir noted that she had received an e-mail from Mona Linstromberg requesting an evening public hearing for the matter. She submitted the e-mail into the record.

**Kevin Mathews**, Friends of Eugene, said balancing communications with land use impacts needed to take consideration of advancing technology. He said it was not too difficult to ask industry to work harder toward solutions with fewer impacts.

Seeing no one else wishing to speak, Mr. Lawless closed the hearing and called for comments from the commission.

In response to a question from Ms. Levis regarding whether an evening hearing should be held, Ms. Muir said it was the commission policy to have evening public hearings for judicial and legislative public hearings. She noted that the City Council would have the issue before it at its November 22, meeting, which would leave little time for the commission to have another hearing.

Mr. Coyle said staff's view was that the commission was in a position of being responsive to the City Council as quickly as possible. He said the commission was being asked to make a recommendation on whether the City Council's recommendation to staff was feasible or not. He said the variance was the answer to make the proposed ordinance legally defensible.

Ms. Levis raised concern that the variance would become the standard practice for siting towers.

Mr. Lawless said he felt that cell towers were being made a conditional use in all zones of the City. He said it was counter intuitive to have variances in every case.

Mr. Duncan suggested that the existing ordinance was behind the times. He said the proposed changes were not a win for anyone. He suggested asking the city council to allow a rework of the ordinance.

Ms. Colbath suggested recommending a different approach to the City Council. She said the commission could show a way of making the council's request work but also show it a better way the ordinance could be made. She also stressed the importance of having more public input. She said the technology was changing rapidly and it would take more time to sort things out.

Mr. Belcher said there was an impact for home owners when cell towers were located in neighborhoods. He said creating a variance that was a standard practice was disingenuous to constituents and added that the proposed ordinance did the opposite of what it was supposed to do.

Mr. Belcher suggested responding to the ordinance as drafted by not accepting it and moving towards a better process.

Ms. Levis said the proposed ordinance was not the correct solution.

Ms. Levis, seconded by Mr. Duncan, moved that the council make no changes to the existing ordinance. (EC 9.5750)

Ms. Levis suggested a more comprehensive review of the tower siting process.

Mr. Belcher suggested a friendly amendment, which was accepted, to make sure that the piece about mandatory fees be recommended to the City Council.

Ms. Muir noted that this was currently the City's administrative practice.

The motion, as amended, passed unanimously.

Ms. Levis, seconded by Mr. Duncan, moved to ask the city council to add to the planning division work program a high priority item, with funding, that allowed staff to review Section 9.5750 of the Eugene Code regarding cell tower siting provisions and criteria which included, but were not limited to, aesthetics, appropriate setbacks, upcoming technology, stealth design, and clear and certain language in the code. The motion passed unanimously.

### **III. LAND USE CODE MINOR FIXES**

Mr. Lawless noted that the 'minor fixes' were listed on page 3-2 of the meeting packet. He called for questions from the commission.

In response to a question from Ms. Colbath regarding the definition of canopy trees, Mr. Nystrom said he had not been part of the commission discussion but said there was no reason why a broader spectrum of canopy trees could not be used in parking lot standards.

In response to a question from Mr. Belcher regarding EC 9.2175 and how it would be change, Mr. Nystrom said there a range of percentages for zoning districts and staff were envisioning something in between C1 and C2 zoning. He said GO zoning would meet those requirements.

In response to a question from Mr. Duncan regarding Development Sites 9.0500 and how ownership was defined, Mr. Nystrom said it currently required common ownership as a prerequisite. He said the proposed change was that if a parcel was bisected by a street, the only time they could be considered part of a development site was if they had been created outside of a subdivision or a plat. He cited the Faith Center Master Plan as an example of this policy.

Mr. Duncan suggested a discussion of not tying a development site to specific ownership or not being defined under ownership.

Ms. Muir said she would put that on the list of items to discuss later.

Ms. Colbath, seconded by Mr. Duncan, moved to forward the recommended amendments in the land use code to public hearing as stated on page 3-2 of the meeting packet. The motion passed unanimously.

#### **IV. WORK SESSION: Downtown Area Housing Policy Analysis**

The item was postponed until a later meeting.

#### **V. ITEMS FROM COMMISSION AND STAFF**

##### **a. Other Items from Staff**

Ms. Muir distributed a draft ordinance on Measure 37 that would be presented to the City Council that evening. She said Measure 37 would go into effect on December 2.

In response to a question from Mr. Duncan regarding whether anyone had come up with a standardized claim form, Ms. Muir said there had not been time to standardize any forms but noted that several jurisdictions were working on their own versions.

Mr. Duncan noted that licensed and certified needed to be distinctively defined in the ordinance language.

##### **b. Other Items from Commission**

Mr. Belcher noted that he lived less than 500 feet from the subject property owned by the Faith Center and did not wish to participate in any deliberations that might occur.

The meeting adjourned at 1:30 pm.

(Recorded by Joe Sams)