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2 **BEFORE THE CITY COUNCIL**
3 **CITY OF ASHLAND, JACKSON COUNTY, OREGON**

4 **July 28, 2010**

5 **IN THE MATTER OF A REQUEST FOR A)**
6 **CONDITION USE PERMIT AND SITE REVIEW))**
7 **APPROVAL TO INSTALL ROOFTOP)** **Planning Action # 2009-01244**
8 **WIRELESS COMMUNICATION FACILITIES)**
9 **(WCF) ON THE EXISTING ASHLAND)**
10 **STREET CINEMA BUILDING LOCATED AT)**
11 **1644 ASHLAND STREET, JACKSON)**
12 **COUNTY, OREGON AND ASSOCIATED)**
13 **GROUP-MOUNTED WCF ACCESSORY)**
14 **EQUIPMENT; THE WCF INSTALLATION)**
15 **CONSISTS OF 12 ARCHITECTURALLY)**
16 **INTEGRATED PANEL ANTENNAS. THIS)**
17 **PLANNING ACTION ALSO INCLUDES A)**
18 **REQUEST FOR AN ADMINISTRATIVE)**
19 **VARIANCE TO THE SITE DESIGN AND USE)**
20 **STANDARDS' REQUIRED LANDSCAPE)**
21 **BUFFER FOR THE GROUP-MOUNTED)**
WCF EQUIPMENT. [PA #2009-01244])
APPLICANT(S): Goodman Networks, Inc.)
for AT&T Wireless, LLC)
APPELLANT: Roderick J. Newton)

16 **NOTICE OF APPEAL TO COUNCIL**

- 17 • Pursuant to Ashland Municipal Code ("AMC") 18.108.110, Roderick J. Newton
18 ("Appellant") hereby provides notice of his appeal of Findings, Conclusions and
19 Orders issued by the City of Ashland's appointed Planning Commission on
20 June 13, 2010 in connection with the above-captioned Planning Action # 2009-
21 01244 ("Planning Commission's Decision").

NOTICE OF APPEAL TO COUNCIL
Planning Action # 2009-01244

Page -1-

DAVIS, HEARN
SALADOFF & BRIDGES
A Professional Corporation
515 EAST MAIN STREET
ASHLAND, OREGON 97520
(541) 482-3111 FAX (541) 488-4455

1 • Appellant respectfully requests a public hearing, and review and reversal
2 of the Planning Commission's Decision by the City of Ashland's elected
3 Council.

4 • **AMC 18.108.110 (Appeal to Council) Information**

5 • Pursuant to the Ashland Municipal Code ("AMC"), Appellant
6 provides the following information addressing the requirements of
7 AMC 18.108.110 (Appeal to Council).

8 • **AMC 18.108.110.A:** "Appeals of Type II decisions -shall be initiated by a
9 notice of appeal filed with the City Administrator. The standard Appeal
10 Fee shall be required as part of the notice. All the appeal requirements
11 of Section 18.108.110, including the appeal fee, must be fully met or the
12 appeal will be considered by the city as jurisdictionally defective and will
13 not be heard or considered."

14 **Response:** *Appellant tenders the appropriate appeal fee with this*
15 *Notice of Appeal.*

16 • **AMC 18.108.110.A.1:** "The appeal shall be filed prior to the effective
17 date of the decision of the Commission."

18 **Response:** *Type II Planning Actions become effective "13 days*
19 *after the findings adopted by the Commission are signed by the*
20 *Chair of the Commission and mailed to the parties, . . .". AMC*
21 *18.108.070.B.3.a (emphasis added). The Planning Commission's*

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- **Appellant standing as a Party:**
 - **Appellant is co-owner of Hidden Springs Wellness Center (1651 Siskiyou Blvd.), which is adjacent to the property which is the subject of the Planning Commission's Decision.**
 - **Appellant is adversely affected and aggrieved by the Decision.**
 - **Appellant appeared at the public hearing before City's Planning Commission, and presented both written evidence and oral testimony for the Record. AMC 18.108.110.4.E.**
- **Date of Planning Commission's Decision:**
 - **Date Decision signed by Chair: July 13, 2010;**
 - **Date Decision mailed to Parties by staff: July 16, 2010.**
- **Clear and distinct identification of the specific grounds for which the Decision should be reversed or modified by City's Council, based on identified applicable criteria or procedural integrity:**
 - **See attached Exhibit "A" (with it's numbered Sub-Exhibits), all of which are fully incorporated herein by reference.**
- **AMC 18.108.110.A.4: Except upon the election to re-open the record as set forth in subparagraph 4.B. below, the review of a decision of the Planning Commission by the City Council shall be confined to the record**

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of the proceeding before the Planning Commission. The record shall consist of the application and all materials submitted with it; documentary evidence, exhibits and materials submitted during the hearing or at other times when the record before the Planning Commission was open; recorded testimony (including DVDs when available); and the executed decision of the Planning Commission, including the findings and conclusions. In addition, for purposes of City Council review, the notice of appeal, and the written arguments submitted by the parties to the appeal, and the oral arguments, if any, shall become part of the record of the appeal proceeding

- **Response: Appellant designates the Record in its entirety, including the application and all materials submitted by Opponents during the Planning Commission public hearing process; all recorded testimony (including DVDs) from the Planning Commission public hearing process; the executed Decision of the Planning Commission, including the Findings, Conclusions, and Order; this Notice of Appeal with its attached Exhibit "A" and numbered Sub-Exhibits attached to Exhibit "A", any written arguments submitted by Appellant and other**

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opponents in advance of the public hearing on this Appeal; and any oral arguments submitted by Appellant and any other opponents who submit evidence, argument, and/or testimony in connection with this Appeal proceeding. Applicant does not request the Record be reopened.

- **AMC 18.108.110.B**: The Council may reopen the record and consider new evidence on a limited basis, if such a request to reopen the record is made to the City Administrator together with the filing of the notice of appeal and the City Administrator determines prior to the City Council appeal hearing that the requesting party has demonstrated:

- **AMC 18.108.110.4.B.a**: That the Planning Commission committed a procedural error, through no fault of the requesting party, that prejudiced the requesting party's substantial rights and that reopening the record before the Council is the only means of correcting the error; or,

- **AMC 18.108.110.4.B.b**: That a factual error occurred before the Planning Commission through no fault of the requesting party which is relevant to an approval criterion and material to the decision; or,

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- **AMC 18.108.110.4.B.c.**: That new evidence material to the decision on appeal exists which was unavailable, through no fault of the requesting party, when the record of the proceeding was open, and during the period when the requesting party could have requested reconsideration. A requesting party may only qualify for this exception if he or she demonstrates that the new evidence is relevant to an approval criterion and material to the decision. This exception shall be strictly construed by the Council in order to ensure that only relevant evidence and testimony is submitted to the hearing body.

Re-opening the record for purposes of this section means the submission of additional written testimony and evidence, not oral testimony or presentation of evidence before the City Council.

- **AMC 18.108.110.C**: Oral argument on the appeal shall be permitted before the Council. Oral argument shall be limited to ten (10) minutes for the applicant, ten (10) for the appellant, if different, and three (3) minutes for any other Party who participated below. A party shall not be permitted oral argument if written arguments have not been timely submitted. Written arguments shall be submitted no less than ten (10) days prior to the Council consideration of the appeal. Written and oral

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arguments on the appeal shall be limited to those issues clearly and distinctly set forth in the Notice of Appeal; similarly, oral argument shall be confined to the substance of the written argument.

- **Response: *Appellant requests a public hearing on this appeal before City's Council in conformity with the above. Appellant intends to submit written argument in support of the appeal no less than ten (10) days before the public hearing before City's Council on this Appeal.***
- **AMC 18.108.110.E:** The Council may affirm, reverse, modify or remand the decision and may approve or deny the request, or grant approval with conditions. The Council shall make findings and conclusions, and make a decision based on the record before it as justification for its action. The Council shall cause copies of a final order to be sent to all parties participating in the appeal. Upon recommendation of the Administrator, the Council may elect to summarily remand the matter to the Planning Commission. If the City Council elects to remand a decision to the Planning Commission, either summarily or otherwise, the Planning Commission decision shall be the final decision of the City, unless the Council calls the matter up pursuant to Section 18.108.070.B.5 .

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- ***Response: Appellant requests that City’s Council reverse the Decision on the grounds reflected in attached Exhibit “A”, or on any other grounds which City’s Council finds appropriate following the public hearing on this appeal.***

- ***AMC 18.108.110.F:*** Appeals may only be filed by parties to the planning action. "Parties" shall be defined as the following:
 1. The applicant;
 2. Persons who participated in the public hearing, either orally or in writing. Failure to participate in the public hearing, either orally or in writing, precludes the right of appeal to the Council;
 3. Persons who were entitled to receive notice of the action but did not receive notice due to error.

- ***Response: Appellant qualifies as a “Party” entitled to appeal the Decision based on AMC 18.108.110.F.2, above. Appellant participated in the public hearing before City’s Planning Commission.***

- ***AMC 18.108.160.B:*** Appellant notes that: ***“The Council has the authority to modify any interpretation of the Ashland Land Use Ordinance made by the Planning Commission.”*** ***AMC 18.108.160.B. Appellant respectfully requests that City’s Council review the evidence, testimony, and arguments of Appellant and other opponents offered in connection with this appeal, and exercise its***

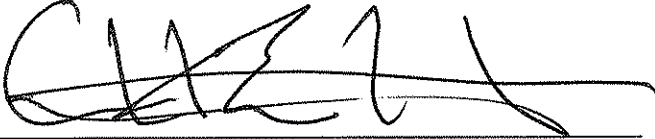
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power to modify the Planning Commission's interpretation of the relevant criteria and the evidence presented. AMC 18.108.160.B.

DATED: July 28, 2010

Respectfully submitted,

DAVIS, HEARN, SALADOFF & BRIDGES, P.C.



CHRISTIAN E. HEARN, OSB #911829
chearn@davishearn.com
Attorneys for Appellant Roderick J. Newton

EXHIBIT "A" TO NOTICE OF APPEAL

PLANNING ACTION # 2009-01244

(Appellant: Roderick J. Newton; Applicant: AT&T Wireless, LLC)

APPELLANT'S IDENTIFICATION OF GROUNDS SUPPORTING CITY COUNCIL'S REVERSAL OR MODIFICATION OF THE PLANNING COMMISSION'S DECISION DATED JULY 13, 2010. *AMC 18.108.110.A.2.*

NOTE:

- ATTACHED SUB-EXHIBITS (FROM THE RECORD BEFORE THE PLANNING COMMISSION) ARE INCORPORATED BY REFERENCE.
- APPELLANT WILL PROVIDE FURTHER LEGAL ARGUMENT IN SUPPORT OF HIS APPEAL PRIOR TO THE PUBLIC HEARING BEFORE COUNCIL.
- **CONDITIONAL USE PERMIT CRITERIA**. *AMC 18.104.050.C.* Applicant failed to meet its burden of proof in addressing the Conditional Use Criteria for the reasons set forth in attached Sub-Exhibits 9. The Planning Commission Decision is not based on substantial evidence in light of the Record. More specifically the Application failed to meet the conditional use criteria pertaining to adverse material effects on livability within the impact area when compared to the development of the subject lot with the target use of the zone. *See: attached Sub-Exhibits 1 through 9.*
- **COLLOCATION**.
 - *AMC 18.72.180.B.6.* Applicant was required to submit, *inter alia*, a "Collocation Feasibility Study that adequately indicates collocation efforts were made and states the reasons collocation **cannot** occur." *AMC 18.72.180.B.6.* Applicant did not submit such a study and to the extent later submissions concerning collocation efforts were submitted by Applicant, they were insufficient to meet applicant's burden of proof under this criteria. *See attached sub-exhibits.* The Planning Commissions determination that Applicant met its burden of proof in adequately addressing this criteria was not based on substantial evidence and the Council should reverse or modify the Decision. *See attached Sub-Exhibits 1 through 9.*
 - *AMC 18.04.04.* Applicant failed to meet the standards imposed by *AMC 18.04.04* for the reasons set forth in attached Sub-Exhibit 1 @ page 1.

- AMC 18.72.180.C. The Planning Commission found that the criteria reflected in AMC 18.72.180.C were not mandatory criteria which Applicant was required to meet. This finding was not supported by substantial evidence in the Record. The Council, as City's elected policy-making body, is empowered to interpret it's own AMC. Appellant respectfully requests that Council do so in conformity with Sub-Exhibits 1 through 9, attached and incorporated herein by reference. See, for example, Sub-Exhibit 1 @ pages 1 - 7; See also Sub-Exhibit 2. Appellant also contends that the findings at pages 15 and 16 of the Decision are not based on substantial evidence in light of the Record. See: attached Sub-Exhibits. The decision that approval would have no greater adverse affect on livability was also not based on substantial evidence. *See attached Sub-Exhibits.*
- **FAILURE TO PROVIDE LEASE WITH APPLICATION.** This is an approval criteria, and it's relegation to a mere condition of approval was improper.
- **FAILURE TO MEET CRITERIA REQUIRED FOR ADMINISTRATIVE VARIANCE.** *AMC 18.72.090.* The Findings of the Planning Commission reflected at pages 27 and 28 of the decision were not based on substantial evidence in the Record. *See attached Sub-Exhibits 1 through 9.*
- **INCLUSION OF SPECIFIC ISSUES RAISED IN DETAIL IN ATTACHED SUB-EXHIBITS 1 THROUGH 9 AS ADDITIONAL ISSUES FOR APPEAL.** Attached Sub-Exhibits 1 through 9 raise several additional issues in a clear and distinct fashion. *See attachments.* Appellant raises all the specific issues reflected in attached Sub-Exhibits 1 through 9 as additional grounds for this Appeal, and hereby incorporates the Sub-Exhibits here as if fully set forth verbatim.

Commissioners,

My name is Aaron Brian. I live at 307 North Main in Ashland. I am an attorney and I submit this letter in opposition to the application submitted by Goodman Networks, on behalf of AT&T, to install a wireless communication facility on top of the Ashland Street Cinemas.

The reasons for my opposition are, essentially, twofold. First, collocation is possible at the Holiday Inn Express --- where Verizon Wireless has antennas --- and the Ashland Municipal code requires collocation where feasible. Second, locating at the Ashland Street Cinema creates a series of problems at and around the cinema building, including the negative impact on visual and aesthetic qualities and the lack of sufficient space for future wireless facilities.

COLLOCATION

Before discussing the sections of the Ashland Municipal Code (AMC) that apply specifically to wireless communication facilities, it is important to consider two of the more general sections. First, section 1.04.04 of the Ashland Municipal Code (AMC) states that:

“The provisions of this code and all proceedings under them are to be construed with a view to effect their objects and to promote justice.”

Second, section 18.04.020, concerning land use, states that:

“The purpose of this Title is to encourage the most appropriate and efficient use of land; to accommodate orderly growth; to provide adequate open space for light and air; to conserve and stabilize the value of property; to protect and improve the aesthetic and visual qualities of the living environment; to aid in securing safety from fire and other dangers; to facilitate adequate provisions for maintaining sanitary conditions; to provide for adequate access to and through property; and in general to promote the public health, safety and the general welfare[.]”

Thus, according to the above sections, the code should be construed to give effect to the stated objectives, which include: to encourage the most appropriate and efficient use of land, to accommodate orderly growth, to conserve and stabilize the value of property and to protect and improve the aesthetic and visual qualities of the living environment.

In addition to these general guidelines, the City of Ashland enacted specific rules for determining the proper location to install wireless facilities. Section 18.72.180 of the Ashland Municipal Code sets forth the “Development Standards for Wireless Communication Facilities.” The purpose and intent of AMC 18.72.180 is:

“to establish standards that regulate the placement, appearance and impact of wireless communication facilities, while providing residents with the ability to access and adequately utilize the services that these facilities support.” AMC 18.72.180(A).

Thus, when the commission considers Goodman/AT&T’s application, it should construe AMC 18.72.180 to give effect to these objectives. And, based on AMC 1.04.04, the commission shall factor the considerations and guidelines of AMC 18.72.180 into its decision making process.

When the City enacted AMC 18.72.180, it included a subsection specifically for selecting what location to install new wireless facilities. AMC 18.72.180(C)(2) states, in relevant parts, that:

- “a. Where possible, the use of existing WCF sites for new installations shall be encouraged. Collocation of new facilities on existing facilities shall be the preferred option.
- b. If (a) above is not feasible, WCF shall be attached to pre-existing structures, when feasible.”

The code is straightforward: If collocation is feasible, collocation is required. If collocation is not feasible, then the wireless facilities shall be attached to pre-existing structures, if that is feasible. If that is not feasible, then the code allows for alternative methods of installation.

The code is clear that collocation is the preferred and even required method of installation. The commission should thoroughly consider those facts that show collocation is feasible. In its application, Goodman/AT&T conceded that it was feasible to collocate at the Holiday Inn Express, where Verizon has wireless facilities. According to Goodman, The Holiday Inn Express is “located about a half mile from the center of the search ring, a reasonable location according to the search map. It is also possible to add false architectural elements to screen installation at the Holiday Inn.” (February 12, 2010 letter from Goodman Networks to Derek Severson, submitted as part of Goodman/AT&T’s application).

Moreover, Goodman admitted that, “AT&T believes collocation is the best possible solution to deployment of systems needed to meet the growing demand

for wireless services.” (February 12, 2010 letter from Goodman to Derek Severson, submitted as part of Goodman/AT&T’s application). Despite this belief, Goodman/AT&T applied to install its wireless facilities at a new location. When asked to provide a “collocation feasibility study,” Goodman/AT&T wrote back that although collocation was feasible, wireless facilities at the Holiday Inn Express would not be as efficient as antennas at the Ashland Street Cinemas.

No explanation was given as to how much less efficient the Holiday Inn Express site would be. Rather, Goodman stated that the Holiday Inn site would be less efficient because the hotel was lower in elevation than the cinema and because more coaxial cable would be needed at the hotel than at the cinema. Goodman/AT&T did not provide any technical studies or relevant materials to substantiate those claims. Those claims were, however, studied by Vitaly Geyman, who spent 10 years designing base stations for cellular towers in Australia. His response, which he has submitted to the commission, was as follows:

“AT&T has given two reasons why the Ashland Cinema location is their preferred site, lower elevation and the need for a longer run of coaxial cable at the Holiday Inn Express location.

“To address their first reason, we measured the altitude difference to be 16 feet. This is a relatively insignificant difference, particularly given the surrounding topography and should not affect the feasibility of this site in a substantial way.

“As for the longer run of coaxial cable, it appeared that the excessive cable necessary would be minimal, and this is actually not a technical impediment. There are a variety of signal amplifiers that can be installed if required.

“In conclusion, based on my technical experience, and my review of the location, the two reasons AT&T has given for the Holiday Inn site not being feasible are not justifiable.”

The evidence before the commission overwhelmingly supports the conclusion that collocation at the Holiday Inn Express is feasible. In fact, there is no evidence that collocation at the Holiday Inn Express is not feasible.

To encourage, even require, collocation does not violate the approval criteria for conditional use permits. AMC 18.104.050 allows the commission to take into account “[o]ther factors found to be relevant by the Hearing Authority for review of the proposed use.” There is no question that the code’s own guidelines regarding collocating are relevant to Goodman/AT&T’s application.

The Telecommunications Act of 1996 was mentioned numerous times at the May 11, 2010 public hearing. It is important to point out that that act specifically reserved to local authorities the right to determine where and how to locate wireless facilities:

“Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification or personal wireless facilities.”

The only limitation is that the environmental effects of radio frequency emissions cannot be the basis for a decision if the proposed facility meets federal emissions regulations. That is not the basis of my opposition. Rather, I am asking that the commission follow the guidelines established by the Municipal Code. And, as it relates to wireless facilities, the code prefers, even requires, collocation where feasible. It would be remarkable if the commission did not give substantial weight to that guideline.

To recap:

1. The Ashland Municipal Code prefers, even requires, collocation if feasible;
2. AT&T believes collocation is the best solution to deploy wireless facilities;
3. Collocation is feasible at the Holiday Inn Express, where Verizon has installed a wireless facility;
4. The Holiday Inn Express and the Ashland Street Cinema are the same distance from the center of AT&T's search ring; and
5. Signal amplifiers can alleviate the alleged inefficiencies of the Holiday Inn Express site.

It should be remembered that AT&T is not entitled to the location of its choice simply because it prefers one location over the other. The commission must first consider and then approve the application. In considering the application, the commission must consider AMC 18.72.180, which quite plainly states that collocation is the preferred and even required method. The commission must also consider the evidence presented that collocation is feasible at the Holiday Inn. To grant AT&T's application despite the presence of an equally reasonable site for collocation would render AMC 18.72.180 meaningless.

Moreover, to the extent Goodman/AT&T intend to appeal a denial of their application, it is important to note that federal district courts place a heavy burden on applicants who argue that denial is impermissible because there are no

Exhibit 1
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alternative sites. As the First Circuit Court of Appeals held in *Southwestern Bell Mobile Systems, Inc. v. Todd*, 244 F 3d 51 (Mass. 2001):

“For a telecommunications provider to argue that a permit denial is impermissible because there are no alternative sites, it must develop a record demonstrating that it has made a full effort to evaluate the other available alternatives and that the alternatives are not feasible to serve its customers.”

For example, an applicant in another case put evidence into the record that it had examined 771 different parcels to assess where else they could place their tower. *Industrial Communications & Electronics, Inc. v. O'Rourke*, 582 F Supp 2d 103 (D.Mass., 2008). Because one of those parcels had the potential to serve the applicant's needs, the zoning authority's denial of the application to install at a different site was upheld.

There is no evidence that Goodman/AT&T made a “full effort to evaluate the other available alternatives[.]” The only evidence in the record is that the Holiday Inn Express is a feasible site for collocation, but that AT&T preferred to install new equipment at the Ashland Street Cinemas. There was some testimony at the public hearing that AT&T could not find any willing landlords and that the Ashland Street Cinema was “the only option.” (Testimony of Gary Spanovich, representative from Goodman). That testimony is either unsupported or flatly contradicted by the materials in the application. Those inconsistencies were pointed out to Mr. Spanovich at the May 11, 2010 hearing but he was unable to explain them.

Based upon the federal case law cited above, the commission is well within its authority and well within the limitations imposed by the Telecommunications Act, to deny the application because collocation at the Holiday Inn Express is feasible.

POTENTIAL PROBLEMS AT ASHLAND STREET CINEMAS

As a condition of its application, Goodman/AT&T was required to submit a signed lease “showing that the lease agreement does not preclude collocation.” AMC 18.72.180. This requirement supports the code's overall preference to collocation over other methods of installation. It makes sense, then, that the lease between Goodman/AT&T and the cinema building owner allow for other cellular companies to collocate their facilities on the cinema in the future.

Although the application was to be deemed void if a signed copy of the lease was not provided, Goodman/AT&T did not submit a signed copy of the lease. Instead, Goodman stated that:

“AT&T’s proposed placement of antennas on the existing Ashland Street Cinemas will allow for potential future collocation of additional antennas, provided the minimum separation between antennas is satisfied and a future collocation facility company could come to an agreement with the Ashland Street Cinema for ground space and space on the roof.” (March 2, 2010 letter from Goodman to Derek Severson, submitted with the Goodman/AT&T application).

However, this response does not answer the central question, which is whether the lease precludes collocation. Instead, the response says, basically, if later agreements can be reached and there is sufficient room, then collocation might work. That is a far cry from what the code requires.

By refusing to provide the lease, or a straightforward answer as to future collocation at the Ashland Street Cinema, Goodman placed the commission in the position of having to rule based partly on guesswork:

1. Does the lease allow for collocation?
2. Is there room on the roof for additional antennas, given the engineering requirement for certain distance between each antenna?
3. Is there room on the ground for additional ground equipment? Recall that AT&T has applied for a variance to install its own ground equipment; is there room around the cinema for the ground equipment necessary with any future collocation?
4. Will the roof support additional WCF? The theater operators have testified to concerns over safety at the theater, including problems with water leaks and damage to their equipment. Has an engineering study been performed?

Without answers to these questions, the commission cannot know if future collocation is permitted, or even possible, at the Ashland Street Cinemas. And, given the amount of time that has elapsed during this application process, it is hard to believe that Goodman/AT&T could not provide better information concerning these valid and specific issues. The lack of information certainly raises this question: Would the answers to these questions further encourage collocation at the Holiday Inn Express site?

Installing the facilities at the Ashland Street Cinemas will also impact the livability and the visual and aesthetic qualities of the area. Several tenants of neighboring buildings testified to the effect these towers will have. Dr. Deborah Gordon and Suzanne Sky testified at the public hearing about the lost views of Grizzly Peak caused by raising the roofline of the cinema. These losses will only be further aggravated by any future collocation on the cinema.

I am opposed to the application because collocation is feasible at the Holiday Inn Express and because there are substantial problems, known and unknown, with construction of a new wireless facility at the Ashland Street Cinemas.

Thank you for taking the time to consider my opposition.

Kind Regards,
Aaron Brian

Exhibit 1
Page 7 of 7

Vitaly Geyman (B.Eng. MBA)
1172 N.Main st.
Ashland, OR 97520
541-482-9166 office

May 17, 2010

Ashland Planning Commission
51 Winburn, Ashland, OR 97520

Commissioners,

I worked for Telecom Australia for 10 years as a senior engineer. The last four years I designed 400-500 base stations for cellular networks all across Australia. I also conducted financial evaluation for the network.

I recently completed a site visit to both the Ashland Cinema and Holiday Inn Express sites. What follows is my professional opinion of the relative feasibility of each site. AT&T has given two reasons why the Ashland Cinema location is their preferred site, lower elevation and the need for a longer run of coaxial cable at the Holiday Inn Express location.

To address their first reason, we measured the altitude difference to be 16 feet. This is a relatively insignificant difference, particularly given the surrounding topography and should not affect the feasibility of this site in a substantial way.

As for the longer run of coaxial cable, it appeared that the excessive cable necessary would be minimal, and this is actually not a technical impediment. There are a variety of signal amplifiers that can be installed if required.

In conclusion, based on my technical experience, and my review of the location, the two reasons AT&T has given for the Holiday Inn site not being feasible are not justifiable. Apparently Verizon also came to the same conclusion, based on the fact that they located their wireless installation there.

Vitaly Geyman (B.Eng. MBA)

541-482-9166 office



RECEIVED

MAY 17 2010

City of Ashland

Exhibit 2
Page 1 of 1

RECEIVED

May 19, 2010

MAY 19 2010

Cate Hartzell
892 Garden Way
Ashland, Oregon 97520

City of Ashland
Community Development

Ashland Planning Commission
20 East Main Street
Ashland, Oregon 97520

Dear Planning Commissioners,

I would like to add to my existing comments regarding my opposition to AT&T's request to place a microwave system atop the Ashland Street Cinema.

- 1) I believe that the Planning Commission should require AT&T to present incontrovertible evidence that collocation at any other existing site is not possible. As you noted in your last meeting on this application, the applicant was presenting conflicting evidence.

If AT&T doesn't present additional information that sets the record straight, then I hope the Commission will reject the application on the basis that they did not sufficiently meet the collocation clause in our codes.

If AT&T DOES offer evidence to resolve their conflicting statements, then the Planning Commission faces another challenge. Given that AT&T itself confused the record with conflicting information, it is logical that the commission would want some third party assessment of what is presented to resolve the conflict. However, the record is closing so the Commission can't ask staff to hire out for an independent assessment. Ashland Municipal staff are not microwave experts.

It is not uncommon for lay decision makers to defer to corporate information because that information is highly technical. I ask that you not make that mistake. The burden of demonstrating that standards are met is the applicant's. If they fail to do that, or worse, confuse the decision makers with conflicting evidence, then the public's ability to trust the process or to respond to information on the record is compromised.

If AT&T is required to study collocation, our law is meaningless if any study concludes that it is not "the BEST" location. We KNOW it may not be the best, but we have the rule because it is our intent to use it when it is possible. It appears that it is a discretionary decision as to what level of quality we will award in site placement. If the commission determines that each applicant deserves 100% placement quality every time, then we should repeal the rule. Since corporations are able to rent out space in their site, it will always be more profitable to establish one's OWN site. It will always be optimal to place it at the exact GIS

Exhibit 3
Page 1 of 2

spot for the right connections. It will always be optimal to have the security of your facility completely under your control and access.

- 2) It appears that city staff may be acting in an extra-cautiously in its role with this application because it involves federal law that is unusually prescriptive. I understand this, but advise Commissioners to recognize that the Commission's role as citizen decision makers is different. Please consult with staff and ensure that you understand the nature of the discretion that you have as a decision making body.
- 3) From January 2005 to December 2009 I worked in an office directly adjacent to Mr. Rydbom's office. In working with him, I learned that he is responsive to the needs of his tenants and that he cares about this community. I fully expect that he has been surprised by the response of his business neighbors to what he expected to be a harmless fixture. I fully expect that, if given the opportunity, he will terminate any lease he has signed with AT&T in order to remain consistent with his own business principles.

Mr. Rydbom has the Shopping Center on the market to sell. Anything that creates a controversy in the papers or jeopardizes the health of the businesses in the Shopping Center has the potential of lowering the value on the market. As you know, there is an abundance of commercial property on the market in Ashland now, so lowering the desirability of the property in this market is not in Mr. Rydbom's interest. I suspect that his motivation is high to resolve this matter in a way that protects his financial and business interests.

- 4) It is my understanding that AT&T failed to provide the Lease to access the property in the timeframe that staff requested. While I trust that the City Attorney will advise the Commissioners that it doesn't matter because it was part of the pre-app report, I believe that it does matter. Members of the public have access to the pre-app report and have a reason to expect that the recommendations of staff will be adhered to. When a legal document that they expected to be able to review in a timely way is not provided, they are disadvantaged in their right to review and respond to projects. I know there was a guessing game on the Friday before the hearing: citizens were trying to figure out who was leasing the property to AT&T.

I appreciate your attention to this letter of opposition to the project. I suspect that this project will come back to you for further review if it is approved. In the meantime, I ask that you initiate a revision of Ashland's laws regarding the cell/microwave equipment placement. I am happy to offer several examples from other municipalities.

Thank you for your service on the Commission.

Respectfully submitted,
Cate Hartzell

Exhibit 3
Page 2 of 2



Goodman Networks
Network Knowledge... Delivered.

February 12, 2010

Derek Severson
Associate Planner
City of Ashland
20 E. Main
Ashland, OR 97520

Re: PA# 2009-001244, 1644 Ashland Street (AT&T MD-01)
Additional Submittals- Collocation Study and Lease Agreement

Dear Mr. Severson:

You have requested additional information regarding efforts by AT&T to utilize existing telecommunications facilities in the City of Ashland as an alternative to the installation of antennas inside the parapet wall of the Ashland Street Cinema. This is a summary of those efforts.

AT&T believes that collocation is the best possible solution to deployment of systems needed to meet the growing demand for wireless services. Building new structures is costly and the marginal cost per customer is typically greater when new structures must be built. Installing antennas on existing structures reduces consumer cost of wireless service, and reduces the visual impact on the community being served.

The Ashland Street Cinema is an ideal location for AT&T. It is located near the center of the RF Engineering search ring which identifies that area in Ashland where improved service delivery is planned. It is an existing structure, so this location represents one less tower that must be built, and seen.

Certainly, we evaluated existing AT&T facilities in the vicinity. Attached is the requested map showing AT&T facilities within a 5 mile radius. The nearest AT&T site, installed at the Ashland Springs Hotel, is 2.2 miles away. To serve the subject area, the antenna system needs to be less than a mile from the center of the search ring. The Cinema is a little over a half mile from the center of the ring.

Other carrier locations were evaluated as well, including the Holiday Inn Express. The Holiday Inn is located about a half mile from the center of the search ring, a reasonable location according to the search map. It is also possible to add false architectural elements to screen an installation at the holiday Inn. However the elevation of the antennas would only be about 35

Exhibit

4

Page

1

of

3

feet above the existing ground. While this is the same elevation planned for the Cinema antennas, differences in topography place the planned Cinema antennas about 25% higher than would be possible at the Holiday Inn. This slight increase in ground elevation would make the projected signal coverage area of the Cinema installation larger and more efficient, potentially serving more customers. Further, when evaluating locations for radio equipment at the Holiday Inn, we discovered that the length of the coax run from the radio to the antennas would be much greater than the run designed for the Cinema. This additional length would result in an additional loss of signal, adding to the inefficiency of a possible Holiday Inn installation.

Conclusion:

AT&T believes that these collocation efforts are consistent with the requirements of AMC 18.72, and looks forward to approval of the proposed Conditional Use Permit, and the opportunity to provide better service to the citizens of Ashland.

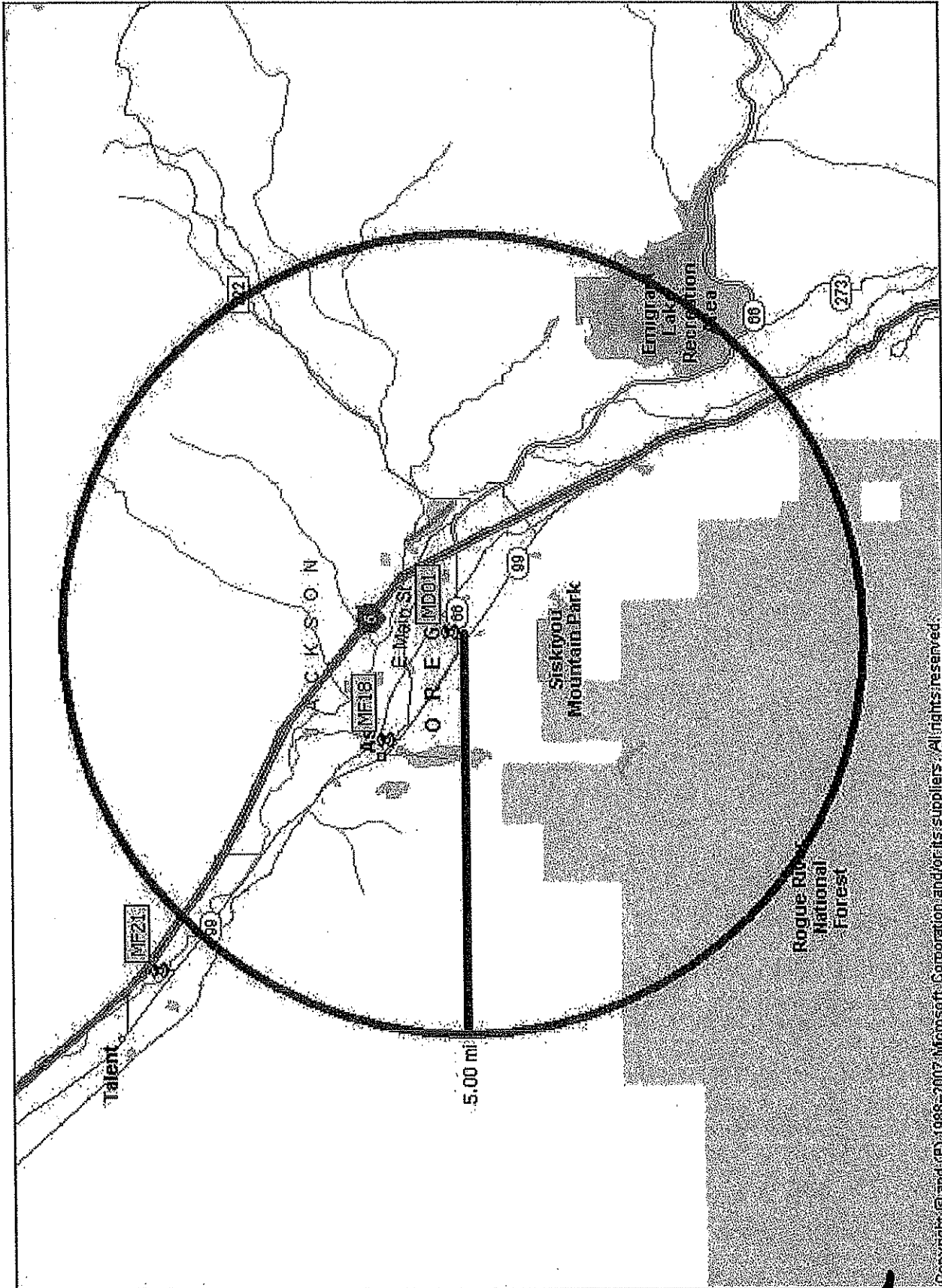
Sincerely,

Doug Henderson, AICP
Senior Site Acquisition and Zoning Specialist
Goodman Networks, Inc.
6400 International Parkway
Plano, TX 75093

817-729-7006

Exhibit 4
Page 2 of 3

...#2009-001213: AT&T Sites w/in a 5 mile radius of proposed site at 1644 Ashland Street, Ashland, Oregon,



Copyright © and (P) 1998-2007 Microsoft Corporation and/or its suppliers. All rights reserved.

Exhibit 4
Page 3 of 3

April, Please could you print the attached photo of JPR's Central Hall and include it also in the Record for PA 2009-01244.

MAY 18 2010

Planning Commissioners,
(cc Rod & Brooks Newton)

City of Ashland
Community Development

Please deny PA 2009-01244 (1644 Ashland Street) for the following reasons:

Our ALUO (18.72.180 Development Standards for Wireless Communication Facilities - Submittals B(6) requires:

A collocation feasibility study that adequately indicates collocation efforts were made and states the reasons collocation can or cannot occur.

The applicant submits extremely limited evidence of "collocation efforts" which I find to be totally inadequate considering the sensitivity of the situation. The alternative proposed freeway site seems ideal. But has AT&T even looked at co-locating with existing antennae on the nearby SOU campus - where wireless facilities already exist?

Examples of possible collocation sites are with the screened antennae atop the RVTV building, the disc antennae atop the SOU Gymnasium or alongside the many JPR arrays atop Central Hall. All these locations seem to be near the current site proposal and the location at Central Hall has a higher elevation and presumably would have better propagation and coverage.

Such antennae are a Permitted Use in SO Zone rather than Conditional. (It should be noted that even allowing such Conditional Use was only recently added to the C-1 zones 18 months ago in the 2008 omnibus changes to our code by our short-lived prior Planning Director. Perhaps this was a mistake.)

As an example of the inadequacy of the applicant's efforts to co-locate with existing facilities, the following is a copy of recent correspondence received from JPR's executive director:

from Ronald Kramer <rkramer@jeffnet.org>
to Colin Swales <colinswales@gmail.com>
cc will@hiddenspringswellness.com
date Mon, May 10, 2010 at 12:37 PM
subject RE: ATT Co-locate with JPR?

Hi Colin,

No one has ever approached us about co-locating cellphone antennas on our Ashland towers (although we have rented space for cellphone antennas on some of our towers outside of Jackson County).

Because of the "zones" that cell antennas cover, I don't know whether a location on our Central Hall roof would give ATT the coverage that they are apparently trying to get a bit more to the NE (if they are trying to put something on the roof at the shopping center) but we certainly have room for them on our roof and would happy to have the tenant. We also have the 300 foot tower on the north side of town, at the freeway interchange, which is

Exhibit 5

Page 1 of 6

KSJK's AM tower. We have leased space out on it but would likely have room for another user.

We're happy to talk with AT&T if they have any interest in our locations.

Good luck...

Ron

Impact

Our Comprehensive Plan states

Chapter VII

Economic Element

GOAL

To ensure that the local economy increases in its health, and diversifies in the number, type and size of businesses consistent with the local social needs, public service capabilities, and the retention of a high quality environment.

VII-5 The City shall encourage economic development of the local resources and enhance employment opportunities for existing residents. The City's policy is that economic development shall always have as its primary purpose the enhancement of the community's economic health.

To meet these goals the Employment Opportunities Analysis (EOA) was recently undertaken which shows the Increasing importance of the Health services industry in Ashland. (Recent testimony before the Commission stated neighboring businesses would be negatively threatened by the applicant's proposal):

Some extracts from the EOA:

Transit: Transit access is most important for businesses in Health Services, which has a high density of jobs and consumer activity, and serves segments of the population without access to an automobile.

The economic effects of this demographic change include a slowing of the growth of the labor force, an increase in the demand for healthcare services,

Projections from the Bureau of Labor Statistics indicate that U.S. employment growth will continue to be strongest in professional and business services, healthcare and social assistance, and other service industries

The sectors that added the most employees were Construction, Health & Social Assistance, and Retail. Manufacturing lost the most employees.

The sectors with the greatest employment are: Public Administration (18%), Accommodation and Food Services (17%), Health Care and Social Assistance (16%), and Retail Trade (14%). These sectors accounted for 5,973 or 67% of Ashland's jobs.

Ashland's quality of life and access to health care make it an attractive place for elder care facilities.

...the following are growth industries or are likely to be growth industries in Ashland: Accommodations and Food Services; Retail; Health and Social Assistance; Arts, Entertainment, and Recreation; Information; and Professional, Scientific and Technical Services.

When employment in Ashland is compared with employment in Jackson County and Oregon, the sectors with comparatively high concentration of employment in Ashland are: Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Accommodations and Food Services.

The 2005 Business Retention and Expansion Survey targeted firms involved in the following sectors: Accommodations and Food Services, Manufacturing, Retail Trade, and Health Care.

The sectors that will lead employment growth in Oregon for the ten-year period are Professional and Business Services, Health Care & Social Assistance, Leisure & Hospitality, and Retail Trade. Together, these four sectors are expected to add 146,900 new jobs or 61% of employment growth in Oregon.

Three of the sectors with the largest share of employment in Ashland are forecast to grow the fastest in Region 8: Health Care & Social Assistance, Leisure & Hospitality (including Accommodations and Food Services), and Retail Trade.

The aging population in Ashland, both from aging of existing residents and in-migration of retirees, may attract healthcare related firms that provide services to older people

Population growth, changing demographics, and tourism may drive more development of small and specialty retail shops, as well as offices for business, professional, and health care services.

The economic effects of this demographic change include a slowing of the growth of the labor force, an increase in the demand for healthcare services...

Jackson County has added more than 8,250 jobs, with the most growth in Construction, Health & Social Assistance, and Retail.

Our Comprehensive Plan also has goals and policies such as providing :

Specific development guidelines which will ensure that:

- 2) Development along Siskiyou Boulevard and Ashland Street will not primarily be automobile-oriented, but will also include attractive landscaping and designs that encourage pedestrian, bicycle, and mass transit forms of travel.
- 4) Retail, office, and traveler's accommodations and neighborhood shopping in residential areas, at development intensities that are appropriate to the area.
- 5) Commercial or employment zones where business and residential uses are mixed.

(This comp. plan policy is reason enough to deny the requested administrative variance that seeks to ignore such required "attractive landscaping" and buffering)

Chapter XII
Urbanization
GOAL

It is the City of Ashland's goal to maintain a compact urban form...

This is usually referred to as Ashland's "infill" policy.

Yet this application ensures that the surrounding underdeveloped lot forever remain as a single story strip-mall. A possible second story would effectively block wireless signal propagation from the proposed antennae. This same limiting effect would also affect neighboring properties as well. Anybody that wanted to build to the allowed (and encouraged) height and density in order to provide a viable transit-oriented development would immediately get opposition from cell-phone users who might worry about having their cell phone reception negatively affected.

Therefore, such an antenna installation would not allow "development of adjacent properties as envisioned in the Comprehensive Plan."

Commissioner Dotterer also requested Staff to suggest to the PC some "Other factors found to be relevant"

If such suggestions are forthcoming, I would like to request that Public hearing be re-opened to allow further oral testimony on the subject, and that the Record also remain open for written testimony, so that the public has a full opportunity to address any such "other factors" fully in writing.

Colin Swales

143 Eighth Street, Ashland, Oregon.

ALUO: 18.104.050 Approval Criteria

"Impact Area" - That area which is immediately surrounding a use, and which may be impacted by it. All land which is within the applicable notice area for a use is included in the impact area. In addition, any lot beyond the notice area, if the hearing authority finds that it may be materially affected by the proposed use, is also included in the impact area.

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

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

C. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone:

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

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

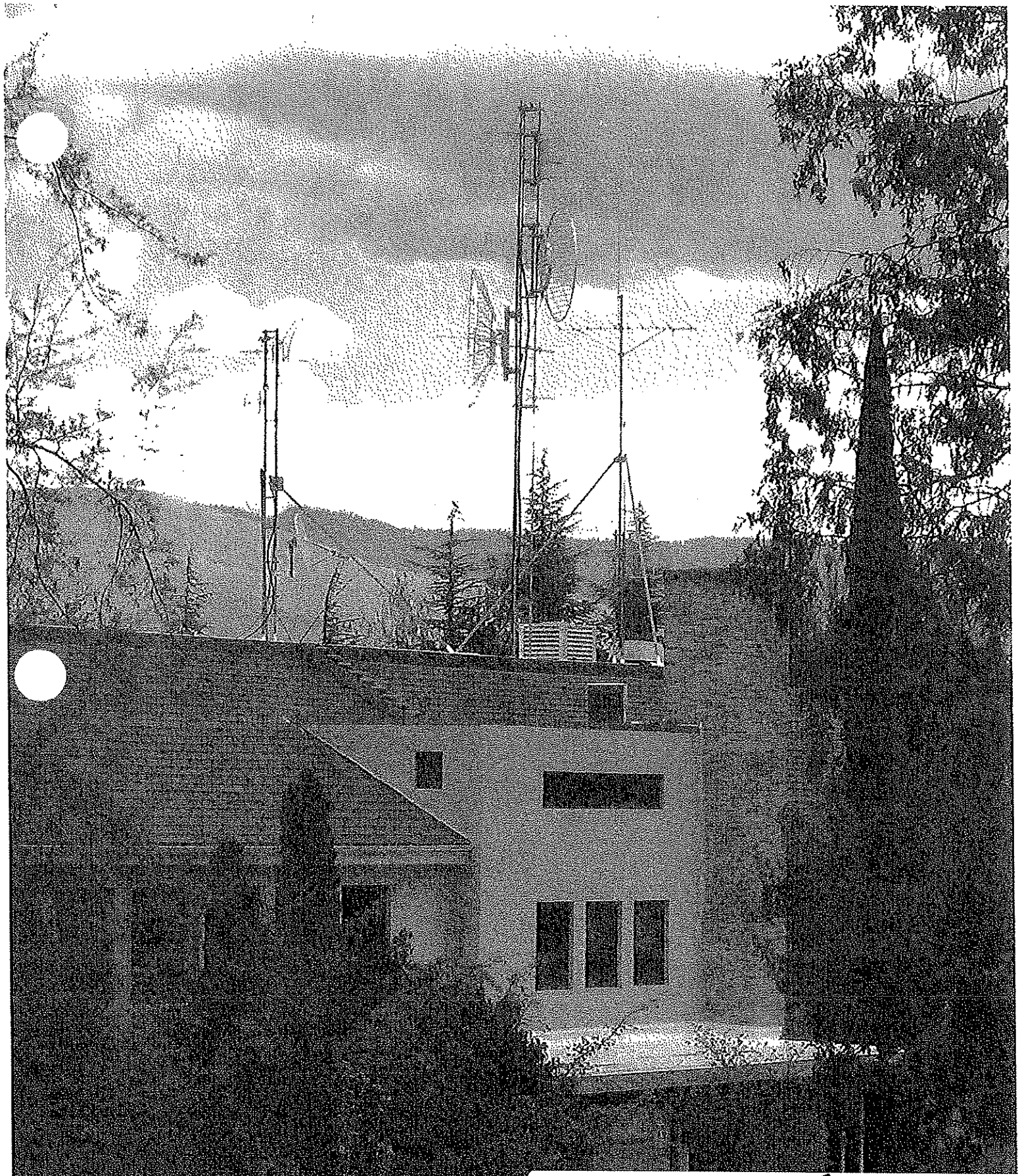


Exhibit 5
Page 6 of 6

RECEIVED

From: Rod <rod@mind.net>
To: <lucasa@ashland.or.us>
Date: 6/15/2010 11:06 AM
Subject: PA 2009-01244 Cell Tower app.

JUN 15 2010

City of Ashland
Community Development

Collocation Considerations:

Planning Commissioners,

Please consider this additional evidence to support denial of PA 2009-01244 (1644 Ashland Street): Verizon's conditional use permit at the Holiday Inn Express site would not have been granted if collocation at that site were not feasible. The fact that Verizon has installed and is operating a wireless facility demonstrates the feasibility of an installation at that site. The only reasonable logical reason for AT&T not collocating at that site would have to be based on location. Yet in their documents AT&T has admitted the location was feasible, saying the Holiday Inn Express site is "a reasonable location according to the search map" and in their latest letter of May 19th they stated, "The co location on the Holiday Inn Express could work-purely from an RF perspective."

AT&T's went on to state, however, that collocating at the Holiday Inn Express would not work because access to their equipment cabinet would be dangerous. First of all, AT&T did not mention this in their application, or in their response to staff for collocation feasibility studies. It is curious that AT&T is now claiming this as a reason that collocation will not work. Secondly, and even more curious, this is the same location that Verizon is already using. How is it that Verizon can manage this "dangerous location" but AT&T cannot? AT&T's newly stated reason that collocation will not work simply does not make sense. In fact, all of the reasons that AT&T is giving now, after the fact, cannot be considered evidence that they considered collocation seriously. It appears that they are retrospectively trying to justify their decision to not collocate. If they had explored collocation seriously, surely they would have included those studies in their application.

A prime example of this retrospective justification is their reason in their May 19th letter for not collocating at the SOU site, "lengthy approval process for lease." Ron Kramer, from SOU writes, "No one has ever approached us about co-locating cellphone antennas on our Ashland towers... We're happy to talk with AT&T if they have any interest in our locations." AT&T doesn't give any documentation that they talked with anyone at SOU to determine that the lease negotiations would be lengthy, or even what their definition of lengthy is. Even if the approval process for the lease were lengthy, that cannot be considered a valid reason to not collocate. Collocation in that case is feasible, just not as convenient as AT&T would like it to be. Whatever AT&T might submit on the last day the record is open, without giving citizens a chance to check the facts, must be held equally suspect.

It might be argued that legally, the applicant doesn't need to justify their reasons why collocation is not feasible, just that they have explored the possibility of collocation. That interpretation makes a mockery of the intent of the Ashland law. The intent of the law is very clear: Collocation is the preferred method. I urge you to uphold that intention and deny AT&T's conditional use permit.

Thank you,
Rod Newton
1196 Timberline Terrace,
Ashland resident for 25 years

Exhibit 6
Page 1 of 1

RECEIVED

JUN 15 2010

City of Ashland
Community Development

From: Colin Swales <colinswales@gmail.com>
To: April Lucas <lucasa@ashland.or.us>
Date: 6/15/2010 6:16 AM
Subject: 2009-01244 - Cell Phone Antennae

*For the Record PA 2009- 01244 *

Reason to Deny - #1

The approval of a conditional use permit (CUP) requires the conditional use to be compared with the "target use" for the particular zone

For the C-1 zone on the Ashland Shopping Center, the Target Use is defined thus:

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

Mr. Rydbom's Ashland Shopping Plaza is already developed in excess of the retail commercial Target Use at a gross floor to area ratio (FAR) of .36 (total of 93,084 sq. ft per applicant's submittal, on a 257,439 sq. ft lot = 5.91 ac., per Jackson County records.)

The property also doesn't currently "comply with all ordinance requirements" - especially as regards to required parking.

[see letter from Goodman Networks 3/17/10
http://ashland.or.us/Files/2010-05-11_PC_Packet_Web.pdf Pages 33-36.]
According to the Applicant's own submitted calculations the current uses on the site require 440 parking spaces - yet only 341 are provided. This is over *22% less than* *what is already* required, and no account is taken of where AT&T's maintenance staff's vehicles would park.

The Planning Commission should not permit further development of this site until the subject property - or its current uses - are brought into conformity.

Reason to Deny- #2

The applicant also asserts (without any evidence or proof) that some of their late attempts at a few other possible co-location sites would not work due to possible lengthy or complicated Lease negotiations. Yet previous evidence submitted by such as an email from JPR's Executive Director would suggest totally otherwise.

This cell antenna siting idea first came to the City as a pre-app in early May of 2009, and a formal Planning Application not received until late September of that year. The applicant then took only a few days shy of the nearly the 6 months maximum to provide required missing information (Lease *still *not provided), and now they seek an extension to the 120 days time limit. It seems somewhat disingenuous to only now imply that time is of the essence.

Reason to Deny - #3

The somewhat unique topography for the site is important when one considers that the low rooftop antennas radiate with a horizontal component directly

Exhibit 7
Page 1 of 4

at nearby buildings and passers-by. (see applicant's own submitted polar diagrams.)

The FCC's own information points to problems when humans are too long in the same plane and in front of the closely-focused signal propagation, rather than below it at a presumed "ground level" where it would be much more safe being beneath this concentrated horizontal RF beam.

*<http://www.fcc.gov/cgb/consumerfacts/rfexposure.html>

**Human Exposure To Radio Frequency Fields: Guidelines For Cellular & PCS Sites Background*

Primary antennas for transmitting wireless telephone service, including cellular and Personal Communications Service (PCS), are usually located outdoors on towers, water tanks, and other elevated structures like rooftops and sides of buildings. The combination of antenna towers and associated electronic equipment is referred to as a "cellular or PCS cell site" or "base station." Cellular or PCS cell site towers are typically 50-200 feet high. Antennas are usually arranged in groups of three, with one antenna in each group used to transmit signals to mobile units, and the other two antennas used to receive signals from mobile units.

At a cell site, the total radio frequency (RF) power that can be transmitted from each transmitting antenna depends on the number of radio channels (transmitters) that have been authorized by the Federal Communications Commission (FCC) and the power of each transmitter. Although the FCC permits an effective radiated power (ERP) of up to 500 watts per channel (depending on the tower height), the majority of cellular or PCS cell sites in urban and suburban areas operate at an ERP of 100 watts per channel or less.

An ERP of 100 watts corresponds to an actual radiated power of 5-10 watts, depending on the type of antenna used. In urban areas, cell sites commonly emit an ERP of 10 watts per channel or less. For PCS cell sites, even lower ERPs are typical. As with all forms of electromagnetic energy, the power density from a cellular or PCS transmitter rapidly decreases as distance from the antenna increases.

Consequently, normal ground-level exposure is much less than the exposure that might be encountered if one were very close to the antenna and in its main transmitted beam. Measurements made near typical cellular and PCS cell sites have shown that ground-level power densities are well below the exposure limits recommended by RF/microwave safety standards used by the FCC.

Guidelines

*In 1996, the FCC adopted updated guidelines for evaluating human exposure to RF fields from fixed transmitting antennas such as those used for cellular and PCS cell sites. The FCC's guidelines are identical to those recommended by the National Council on Radiation Protection and Measurements (NCRP), a non-profit corporation chartered by Congress to develop information and recommendations concerning radiation protection. The FCC's guidelines also resemble the 1992 guidelines recommended by the Institute of

Electrical and Electronics Engineers (IEEE), a non-profit technical and professional engineering society, and endorsed by the American National Standards Institute (ANSI), a non-profit, privately-funded, membership organization that coordinates development of voluntary national standards in the United States.*

In the case of cellular and PCS cell site transmitters, the FCC's RF exposure guidelines recommend a maximum permissible exposure level to the general public of approximately 580 microwatts per square centimeter. This limit is many times greater than RF levels typically found near the base of cellular or PCS cell site towers or in the vicinity of other, lower-powered cell site transmitters.

Calculations corresponding to a "worst-case" situation (all transmitters operating simultaneously and continuously at the maximum licensed power) show that, in order to be exposed to RF levels near the FCC's guidelines, an individual would essentially have to remain in the main transmitting beam and within a few feet of the antenna for several minutes or longer. Thus, the possibility that a member of the general public could be exposed to RF levels in excess of the FCC guidelines is extremely remote.

When cellular and PCS antennas are mounted on rooftops, RF emissions could exceed higher than desirable guideline levels on the rooftop itself, even though rooftop antennas usually operate at lower power levels than free-standing power antennas. Such levels might become an issue for maintenance or other personnel working on the rooftop. Exposures exceeding the guidelines levels, however, are only likely to be encountered very close to, and directly in front of, the antennas. In such cases, precautions such as time limits can avoid exposure in excess of the guidelines. Individuals living or working within the building are not at risk. [emphasis added]

The Applicant takes no precaution whatsoever to limit this exposure to those in the direct path of the focused signal transmission on this sloping site. According to their polar diagrams and roof plan, the antennae are not angled to propagate parallel to the slope of the average ground plane, especially along Sector C and Sector B that are pointed towards higher elevations to the south (azimuths 252 degrees and 124 degrees respectively). This is directly toward the pedestrian access roads to the shopping center.

That such potentially dangerous excessive exposure would be similarly deemed "extremely remote" as perhaps a normal ground level exposure is not necessarily the case in the Applicant's suggested siting atop the local cinema on this sloping site.

Procedural concerns:

Is *ADDITIONAL *evidence *NEW *Evidence?*

ORS *197.763 (6) (c) *If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed,

Exhibit 7
Page 3 of 4

the hearings authority shall reopen the record pursuant to subsection*.
[emphasis added]

1. A large amount of *additional *evidence was submitted while the Record was left open from May 11 - May 19, 2010.
2. Most of this additional evidence was not new but merely repeating similar oral testimony received from opponents during the Public Hearing on May 11.
3. After close of Record, Applicant filed a request, citing ORS 197.763, to re-open the Record to allow their *

*"...presentation of additional evidence in response to the additional evidence that was presented after the conclusion of the public hearing on May 11..." *[emphasis added]*

* *This request did not comply with the strict requirements of ORS concerning allowing an opportunity to respond to *new *evidence and therefore the request should have been denied. * *(see ORS above)*

4. *Regardless*, *according to Staff's advisory Memo to the PC:*
"...After consultation with the City Attorney, it appears that the Planning Commission is obligated under the ORS to honor the request to re-open the record to admit evidence submitted since the hearing closed...". *Staff's advice was erroneous because the Request was not only late and improper, it also did not specify the precise nature of any *new *evidence submitted, and therefore was in direct contravention of *Ashland's Planning Commission Rules** *concerning such a reconsideration request.*

*"...failure to provide statements or evidence sufficient to afford the commission an opportunity to respond to the issue precludes a reconsideration request..."

It is the considered opinion of this writer that all evidence submitted after the Commission's original May 19th deadline should not be included in the Record of this Planning Action and that the Planning Commission should have promptly deliberated and reached their decision based on evidence timely received into said Record prior to their May 19 deadline.

I respectfully ask that the Commissioners fully question Staff on this matter so that similar mistakes are not repeated in the future which only serve to unnecessarily hamper the efficient workings of Ashland's Planning process.*

submitted 6/15/10 6:15 a.m.

Colin Swales

Exhibit 7
Page 4 of 4

Will Wilkinson
2940 Old Highway 99 South,
Ashland, OR 97520

RECEIVED

JUN 16 2010

June 15, 2010

City of Ashland
Community Development

Collocation Rebuttal:

Planning Commissioners,

New evidence has arisen to strongly support denying PA 2009-01244.

In written submission from Goodman Networks dated May 19, they state: "The collocation on the Holiday Inn Express could work - purely from an RF perspective. a. However, the Holiday Inn required ATT to place their cabinets in an inaccessible closet located above the drive through area where guests are dropped off. The only way to access the equipment would be by ladders above a driveway, which is an extremely unusual and dangerous way for ATT's maintenance personnel and guests to access the site. Because of the proposed dangerous location for the equipment cabinets, AT&T rejected the Holiday Inn as a potential location for this site." (My highlighting)

So, according to AT&T's own statement (above), if the installation location were not "dangerous" this site would work fine.

I spoke with John Warren, the owner of the Holiday Inn Express, on June 10. He informed me that in his brief conversations with the AT&T representatives who scouted his facility he had recommended the described installation location as his first preference. However, he told me that he has changed his mind and is now willing to have them install their equipment at ground level. A safe place.

This eliminates the one problem that AT&T has identified with this site.

Please deny this application and request that AT&T reopen negotiations with John Warren, owner of the collocation site at the Holiday Inn Express.

Thank you,

Will Wilkinson

PS:

As stated above, Mr. Warren is no longer asking that the AT&T installation be placed in what Goodman Networks has called a "dangerous location." How on earth, then, if this IS the primary reason this site was rejected - yet collocation is the legally preferred option - could you permit a different location, especially when so many of us in the community oppose it?

Exhibit 8
Page 1 of 1

Memo

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

Background

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

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

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

www.ashland.or.us/1644ashland

Issues Raised

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

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

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

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

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

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

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

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

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

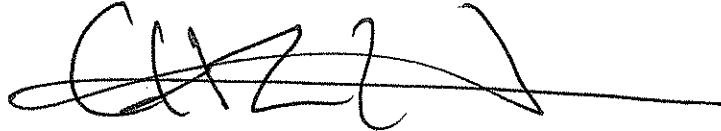
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CERTIFICATE OF FILING

I hereby certify that on July 28, 2010, I caused the original Notice of Appeal to Council (PA #2009-01244) with the City of Ashland via hand delivery to the city of Ashland's Administrative Offices located at 20 East Main St., Ashland, Oregon.

DATED: July 28, 2010

DAVIS, HEARN, SALADOFF & BRIDGES, P.C.



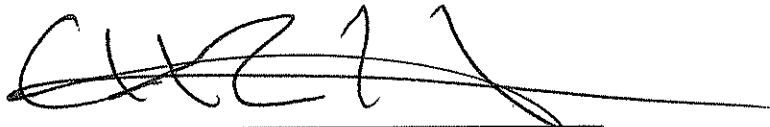
CHRISTIAN E. HEARN, OSB #911829
Of Attorneys for Appellant Roderick J. Newton

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2010, I transmitted a true copy of the foregoing Notice of Appeal with attached Exhibits via email transmission to Richard Appicello, City Attorney, City of Ashland, applicelr@ashland.or.us.

DATED: July 28, 2010

DAVIS, HEARN, SALADOFF & BRIDGES, P.C.



CHRISTIAN E. HEARN, OSB #911829
Of Attorneys for Appellant Roderick J. Newton

CERTIFICATE OF SERVICE AND FILING

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