

TUALATIN CITY COUNCIL

Monday, MAY 14, 2018

TUALATIN POLICE TRAINING ROOM 8650 SW Tualatin Road Tualatin, OR 97062

WORK SESSION - CANCELLED
BUDGET COMMITTEE MEETING begins at 5:00 p.m.
BUSINESS MEETING begins at 7:00 p.m.

Mayor Lou Ogden

Council President Joelle Davis

Councilor Robert Kellogg Councilor Frank Bubenik
Councilor Paul Morrison Councilor Nancy Grimes
Councilor Jeff DeHaan

Welcome! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for your comments on its agenda, following Announcements, at which time citizens may address the Council concerning any item not on the agenda or to request to have an item removed from the consent agenda. If you wish to speak on a item already on the agenda, comment will be taken during that item. Please fill out a Speaker Request Form and submit it to the Recording Secretary. You will be called forward during the appropriate time; each speaker will be limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the City website at www.tualatinoregon.gov/meetings, the Library located at 18878 SW Martinazzi Avenue, and on file in the Office of the City Manager for public inspection. Any person with a question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011. Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised *live* the day of the meeting through Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org. Council meetings can also be viewed by live *streaming video* on the day of the meeting at www.tvalatinoregon.gov/meetings.

Your City government welcomes your interest and hopes you will attend the City of Tualatin Council meetings often.

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A *legislative* public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

- 1. Mayor opens the public hearing and identifies the subject.
- 2. A staff member presents the staff report.
- 3. Public testimony is taken.
- 4. Council then asks questions of staff, the applicant, or any member of the public who testified.
- 5. When the Council has finished questions, the Mayor closes the public hearing.
- 6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *deny*, or *continue* the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A *quasi-judicial* public hearing is typically held for annexations, planning district changes, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partititions and architectural review.

- 1. Mayor opens the public hearing and identifies the case to be considered.
- 2. A staff member presents the staff report.
- 3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
- 4. Council then asks questions of staff, the applicant, or any member of the public who testified.
- 5. When Council has finished its questions, the Mayor closes the public hearing.
- 6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either *approve*, *approve with conditions*, or *deny the application*, or *continue* the public hearing.

TIME LIMITS FOR PUBLIC HEARINGS

The purpose of time limits on public hearing testimony is to provide all provided all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 3 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

An Executive Session is a meeting of the City Council that is closed to the public to allow the City Council to discuss certain confidential matters. An Executive Session may be conducted as a separate meeting or as a portion of the regular Council meeting. No final decisions or actions may be made in Executive Session. In many, but not all, circumstances, members of the news media may attend an Executive Session.

The City Council may go into Executive Session for certain reasons specified by Oregon law. These reasons include, but are not limited to: ORS 192.660(2)(a) employment of personnel; ORS 192.660(2)(b) dismissal or discipline of personnel; ORS 192.660(2)(d) labor relations; ORS 192.660(2)(e) real property transactions; ORS 192.660(2)(f) information or records exempt by law from public inspection; ORS 192.660(2)(h) current litigation or litigation likely to be filed; and ORS 192.660(2)(i) employee performance of chief executive officer.



OFFICIAL AGENDA OF THE TUALATIN CITY COUNCIL MEETING FOR MAY 14, 2018

A. CALL TO ORDER Pledge of Allegiance

B. ANNOUNCEMENTS

- Tualatin Youth Advisory Council Update for May 2018
- **2.** Proclamation Declaring May 13-19, 2018 as National Police Week in the City of Tualatin
- 3. New Employee Introduction Taylor Nopson, Police Officer
- **4.** New Employee Introduction- Onnie Neumann, Permit Technician

C. CITIZEN COMMENTS

This section of the agenda allows anyone to address the Council regarding any issue not on the agenda, or to request to have an item removed from the consent agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

- 1. Consideration of Approval of the Minutes for the Special Work Session of April 12, 2018 and Regular Meeting of April 23, 2018
- 2. Consideration of Approval of a New Liquor License Application for Wine and Design
- **3.** Consideration of **Resolution 5364-18** Awarding the Bid for the Construction of the 2018 Pavement Maintenance Program

E. PUBLIC HEARINGS - Quasi-Judicial

 Continued Hearing for Request for Review of MAR17-0041, Tualatin Professional Center Parking Lot Improvement Land Use Decision located at 6464 SW Borland Road Continued Hearing for the Request for Review (Appeal) of a Planning Commission Decision Approving a Variance (VAR17-0001) to the Separation Requirements of Wireless Communication Facilities

F. GENERAL BUSINESS

If you wish to speak on a general business item please fill out a Speaker Request Form and you will be called forward during the appropriate item. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

- 1. Tualatin Interceptor and Syphon Improvement Project Update
- **2.** Consideration of **Resolution No. 5365-18** to adopt Solid Waste and Recycling Rate Adjustment and Interim Surcharge
- 3. Parks and Recreation Master Plan Project Update

G. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

- H. COMMUNICATIONS FROM COUNCILORS
- I. ADJOURNMENT

City Council Meeting

Meeting Date: 05/14/2018

ANNOUNCEMENTS: Tualatin Youth Advisory Council Update, May 2018

ANNOUNCEMENTS

Tualatin Youth Advisory Council Update for May 2018

A. YAC Update

May 14, 2018

Tualatin Youth Advisory Council

Youth Participating in Governance

Project FRIENDS

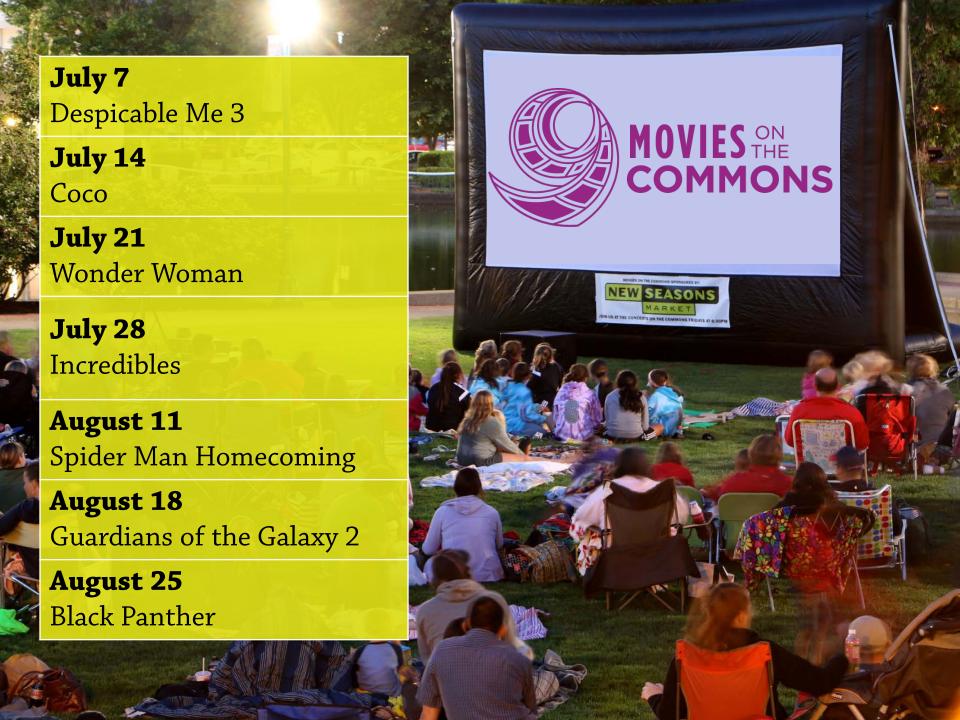


Youth Summit 2018



Blender Dash





City Council Meeting

Meeting Date: 05/14/2018

ANNOUNCEMENTS: Proclamation Declaring May 13-19, 2018 as National Police Week

ANNOUNCEMENTS

Proclamation Declaring May 13-19, 2018 as National Police Week in the City of Tualatin

SUMMARY

The week of May 13-19, 2018 has been designated as National Police Week by the Congress of the United States of America. In addition, May 15th of each year is designated as Police Memorial Day in honor of the Federal, State and Municipal Officers who have been killed or disabled in the line of duty. The City of Tualatin is proud of our law enforcement officers and wishes to recognize their commitment to the public safety profession.

Police Week Proclamation

Proclamation

Proclamation Declaring the Week of May 13 – 19, 2018 as National Police Week in the City of Tualatin

WHEREAS the Congress of the United States of America has designated the week of May 13 - 19, 2018 to be dedicated as "National Police Week" and May 15 of each year to be "Police Memorial Day" in honor of the Federal, State and Municipal Officers who have been killed or disabled in the line of duty; and

WHEREAS it is known that on average, one law enforcement officer is killed in the line of duty somewhere in the United States every 58 hours. Since the first known line-of-duty death in 1791, more than 21,000 U.S. law enforcement officers have made the ultimate sacrifice; and

WHEREAS law enforcement officers, including Tualatin Police Officers are our guardians of life and property and defenders of the individual rights of freedom; and

WHEREAS the City of Tualatin is proud of our law enforcement officers and wish to recognize their commitment to the public safety profession; and

WHEREAS the Tualatin Police Department and officers provide the highest quality services and are committed to the highest professional standards, working in partnership with our community, to meet the challenges of reducing crime, creating a safe environment, and improving our quality of life.

NOW, THEREFORE BE IT PROCLAIMED that the City of Tualatin designates the week of May 13-19, 2018 as "Police Memorial Week" in the City of Tualatin to call attention to Tualatin Police Officers for the outstanding service they provided to our community. The City Council also calls upon our residents and businesses to express their thanks to the men and women who make it possible for us to leave our homes and family in safety each day and return to our homes knowing they are protected by men and women willing to sacrifice their lives if necessary, to guard our loved ones, property, and government against all who would violate the law.

INTRODUCED AND ADOPTED this 14th day of May, 2018.

CITY OF TUALATIN, OREGON
BY
Mayor
ATTEST:
BY
City Recorder

City Council Meeting

Meeting Date: 05/14/2018

ANNOUNCEMENTS: New Employee Introduction - Taylor Nopson, Police Officer and Evan Wheaton, Police Officer

ANNOUNCEMENTS

New Employee Introduction - Taylor Nopson, Police Officer



STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Nicole Morris, Deputy City Recorder

DATE: 05/14/2018

SUBJECT: Consideration of Approval of the Minutes for the Special Work Session of April

12, 2018 and Regular Meeting of April 23, 2018

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve the minutes for the Special Work Session of April 12, 2018 and Regular Meeting of April 23, 2018.

RECOMMENDATION:

Staff respectfully recommends that the Council adopt the attached minutes.

Attachments: Special City Council Work Session Minutes of April 12, 2018

City Council Regular Meeting Minutes of April 23, 2018



OFFICIAL MINUTES OF THE SPECIAL WORK SESSION OF THE TUALATIN CITY COUNCIL FOR APRIL 12, 2018

Present: Mayor Lou Ogden; Council President Joelle Davis; Councilor Frank Bubenik;

Councilor Paul Morrison; Councilor Jeff DeHaan; Councilor Robert Kellogg

Staff Sherilyn Lombos, Sean Brady, Bill Steele, Paul Hennon, Don Hudson, Aquilla

Present: Hurd-Ravich, Nicole Morris, Tom Steiger, Tanya Williams, Jerianne Thompson, Jonathan Taylor, Kelsey Lewis, Rich Mueller, Darius Ontiveros, Erin Engman, Jeff

Fuchs, Dominique Huffman, Bates Russell, Karen Fox, Matthew Warner, Stacy

Ruthrauff

A. CALL TO ORDER

Council President Davis called the meeting to order at 5:53 p.m.

B. AGENDA

1. Fiscal Year 2018-2019 Discussion

Finance Director Don Hudson spoke to the 2018-19 budget process. Director Hudson stated the budget premise this year was to look at what is needed to provide and maintain services, while identifying savings wherever possible. Budget instructions for staff were reviewed and remained the same as previous years.

City Manager Lombos presented a recap of the Council's mid-term check-in held on March 16. The seven Council goals and progress for 2017 for each were reviewed. City Manager Lombos spoke to projects and activities that are underway or have been completed in relation to each goal.

City Manager Lombos reviewed priorities for the 2018 year. Priorities include passing the transportation bond, start concept planning for Basalt Creek, partner with Family Promise, create a Tourism Plan, finish Development Code updates, Parks and Recreation Master Plan adoption, plan for a city hall, begin conversations about strategies for the water supply, and work on emergency management.

Director Hudson stated no funds in relation to the bond measure are being programmed into the budget at this time. Staff will know the results of the measure before the second budget meeting and can make changes at that time. A new position is being proposed to manage the transportation items from the bond and would be included in the changes at that time.

Councilor Davis asked if the position would be permanent. Director Hudson stated it would be and funding would come from the road operating fund.

Director Hudson addressed the upcoming projects in relation to council goals including trail expansions, pole banners, and the addition of a Code Compliance Officer in the Building Department. He then provided a general overview of the 2018-19 budget stating that the proposal maintains all current service levels. The fiscal health model was reviewed noting the model helps to align ongoing expenditures and revenues and is a tool to assist Council and management in maintaining fiscal health. There is a positive gap right now, noting positive growth in particular revenue areas throughout the city. He spoke to PERS increases based on the advisory rates the state provided.

Councilor Bubenik asked how long the PERS reserves the city has will last. Director Hudson stated there is a potential to use it in 2022 based on the projections.

Councilor Morris asked how the liquor, cigarette, and marijuana tax could be spent. He would like to see some of those dollars go to non-profits. Director Hudson explained how those funds are directed to the police department at this time and how the dollars are spent there.

Councilor Kellogg asked about a side account for PERS. Director Hudson stated he is unsure of the benefit of side account for the city at this time.

Director Hudson spoke to project highlights from other funds including the Ibach Park play area renovation, the Parks and Recreation Master Plans, Mysolony Bridge and waterline, A1, B2, and C1 Reservoirs, and the Sagert Street Pedestrian project. Director Hudson spoke to the 2018 Pavement Maintenance Program including the slurry seals, overlays, and crack seals. Director Hudson presented the proposed utility rate increases of 4.25% based on the master plan. The total increase for an average residential home will be \$5.41.

Director Hudson spoke to the Transient Lodging Tax that was passed by Council. It is proposed to set aside the tourism restricted dollars while spending 2018-19 working on a larger tourism plan.

Director Hudson stated there is a full budget committee in place for this year with three new members joining the committee as well as a youth member. The first budget meeting is scheduled for May 14 and the second meeting is scheduled on May 30.

Councilor Morrison asked what classifies parks maintenance workers as part time. Director Hudson stated it is part time based on the total fiscal year hours.

Councilor Kellogg asked about the status of this year's budget to date. Director Hudson stated all trends show the city is currently on budget. Nothing at this time has been identified as out of alignment.

C. COMMUNICATIONS FROM COUNCILORS

None.

D. ADJOURNMENT

Sherilyn Lombos, City Manager	
	/ Nicole Morris, Recording Secretary
	/ Lou Ogden, Mayor



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR APRIL 23, 2018

Present: Mayor Lou Ogden; Councilor Frank Bubenik; Council President Joelle Davis;

Councilor Nancy Grimes; Councilor Paul Morrison; Councilor Robert Kellogg

Absent: Councilor Jeff DeHaan

Staff City Manager Sherilyn Lombos; City Attorney Sean Brady; Police Chief Bill Steele; Present: Community Services Director Paul Hennon; Planning Manager Aquilla Hurd-Ravich;

Deputy City Recorder Nicole Morris; Program Coordinator Kathy Kaatz; Library

Manager Jerianne Thompson; Parks and Recreation Manager Rich Mueller; Associate

Planner Erin Engman; City Engineer Jeff Fuchs; Project Engineer Dominique Huffman; IS Director Bates Russell; Human Resources Director Stacy Ruthrauff

A. CALL TO ORDER

Pledge of Allegiance

Mayor Ogden called the meeting to order at 7:04 p.m.

B. ANNOUNCEMENTS

1. Proclamation Declaring the Week of April 22 – April 28, 2018 as Volunteer Appreciation Week in the City of Tualatin

Mayor Ogden presented information regarding Tualatin Volunteers noting nearly 2,000 volunteers served 21,000 volunteer hours in the past year. He presented the Outstanding Volunteer Awards. The nomination process includes City employees nominating volunteers based on a list of criteria.

Nominees for each category were announced:

Outstanding Youth Volunteer- Marco Sixtos

Outstanding Adult Volunteer- Jennifer Eidson, Brett Hamilton, Jeanine Juliana,

Sruthy Menon, Edward Palumbo, Stan Sutton, and Leona Ulberg

Outstanding Lifetime Volunteer Achievement- Don Swygard

Outstanding Group Volunteer- Community Emergency Response Team (CERT)

Winners were announced for each category:

Outstanding Youth Volunteer- Marco Sixtos

Outstanding Adult Volunteer- Jennifer Eidson, Jeanine Juliana, Sruthy Menon, and Stan Sutton

Outstanding Lifetime Volunteer Achievement- Don Swygard

Outstanding Group Volunteer- Community Emergency Response Team (CERT)

Mayor Ogden read the proclamation declaring April 22-28, 2018 as Volunteer Appreciation Week in the City of Tualatin.

2. Proclamation Declaring the Week of May 6-12, 2018 as Public Service Recognition Week in the City of Tualatin

Council President Davis read the proclamation declaring the week of May 6-12, 2018 as Public Service Recognition Week in the City of Tualatin.

3. New Employee Introduction- Tabitha Boschetti, Assistant Planner

Community Development Director Aquilla Hurd-Ravich introduced Assistant Planner Tabitha Boschetti. The Council welcomed her.

4. New Employee Introduction- Casey Fergeson, Project Engineer

Public Works Director Jeff Fuchs introduced Project Engineer Casey Fergeson. The Council welcomed him.

5. New Employee Introduction- Quinn Wolf, Water Division-Utility Technician I

Public Works Director Jeff Fuchs introduced Water Division Utility Technician Quinn Wolf. The Council welcomed him.

C. CITIZEN COMMENTS

This section of the agenda allows anyone to address the Council regarding any issue not on the agenda, or to request to have an item removed from the consent agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

None.

D. CONSENT AGENDA

The Consent Agenda will be enacted with one vote. The Mayor will ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under, Items Removed from the Consent Agenda. The entire Consent Agenda, with the exception of items removed from the Consent Agenda to be discussed, is then voted upon by roll call under one motion.

MOTION by Councilor Robert Kellogg, SECONDED by Councilor Nancy Grimes to adopt the consent agenda.

Aye: Mayor Lou Ogden, Councilor Frank Bubenik, Council President Joelle Davis, Councilor Nancy Grimes, Councilor Paul Morrison, Councilor Robert Kellogg

Other: Councilor Jeff DeHaan (Absent)

MOTION CARRIED

- 1. Consideration of Approval of the Minutes for the Work Session and Regular Meeting of April 9, 2018
- 2. Consideration of Approval of 2018 Liquor License Renewals-Late Submittals
- Consideration of <u>Resolution No. 5363-18</u> Awarding the Contract for the C-1 Reservoir Rehabilitation Project to CBI Services, LLC and Authorizing the City Manager to Execute a Contract
- 4. Consideration of <u>Resolution No. 5358-18</u> Granting a Conditional Use Permit with Conditions for a Fire Station Use in the Light Manufacturing (ML) Planning District on Land adjacent to 7100 SW McEwan Road (Tax Map 2S1 13DD, Tax Lot 1601) (CUP-17-0002)

E. SPECIAL REPORTS

1. Annual Report for the Tualatin Library Advisory Committee

Tualatin Library Manager Jerianne Thompson and Tualatin Library Advisory Committee (TLAC) Vice Chair Nicholas Schiller presented the TLAC annual report. Member Schiller reviewed the committee's roles. Committee activities for 2017 included providing recommendations on Library policies, participation in the Parks and Recreation Master Plan update, work on the Americans with Disabilities Act Transition Plan, and participated with the Tualatin Mobile Makerspace. The committee's 2018 action plan includes providing input on the Parks and Recreation Master Plan update, review of Library services prioritized in the strategic plan, continued review of Library operational policies, and supporting social equity and inclusion with Library programs and services.

Councilor Morrison stated he is thankful to be part of a Council that supports inclusion and equity. He congratulated the committee on their great work in this area.

Mayor Ogden thanked the committee for all their hard work and efforts.

2. Update on Tualatin Ballot Measure 34-282 Public Information Efforts

City Manager Sherilyn Lombos provided an update on the public information process for Tualatin Ballot Measure 34-282. She shared the website that has been created for the measure. The priority projects map section was highlighted. She noted the frequently asked questions section has been populated and will continued to be updated as questions come in. In addition to the website, articles have been place in the Tigard-Tualatin Times, the City newsletter, and Tualatin Life. Ballots will be mailed between April 25 and May 1. A second mailer on the ballot measure will be sent on April 25.

Councilor Bubenik commented he attended the last two CIO meetings. He stated people have been visiting the website and have liked the interactive project list.

Councilor Morrison stated he made presentations on the measure to Hazelbrook PSO and the Timberwolves Support Organization. He added attendees knew about

the measure and gave positive feedback.

Mayor Ogden stated the Council is unified in support of the measure. He encouraged everyone to vote.

F. PUBLIC HEARINGS - Quasi-Judicial

1. Request for Review of MAR17-0041, Tualatin Professional Center Driveway Adjustment Land Use Decision Located at 6464 SW Borland Road

Mayor Ogden opened the hearing for a request for review of MAR17-0041, Tualatin Professional Center driveway adjustment land use decision located at 6464 SW Borland Road.

Associate Planner Erin Engman stated the applicant came to staff to modify their driveway access in response to construction on Sagert Street. The original hearing was held on December 11, 2017 and continued on January 8, 2018. The request was then suspend so the applicant could submit a variance application to the Tualatin Planning Commission. The variance request was approved. Staff is requesting a motion to extend the hearing to May 14 so there is adequate time to renotice the hearing and prepare a staff report.

Dorothy Cofield, Attorney for the Tualatin Professional Center, stated she is in support of staff's requested motion. She added she was happy the Planning Commission was able to approve the requested variance.

Councilor Morrison asked if the Planning Commission has the authority to handle this request for review. Community Development Director Aquilla Hurd-Ravich stated the commission can review Conditional Use Permits and this is a Minor Architectural Review. City Attorney Brady stated the Council is reviewing this because it was appealed and the Council is the review authority in this case.

MOTION by Council President Joelle Davis, SECONDED by Councilor Paul Morrison extend the request for review of MAR17-0041 to a date certain of May 14, 2018.

Aye: Mayor Lou Ogden, Councilor Frank Bubenik, Council President Joelle Davis,

Councilor Nancy Grimes, Councilor Paul Morrison, Councilor Robert Kellogg

Other: Councilor Jeff DeHaan (Absent)

MOTION CARRIED

G. COMMUNICATIONS FROM COUNCILORS

Councilor Morrison asked about follow-up on citizen comments from the last meeting. City Manager Lombos stated she will follow-up with staff to check on the status.

Councilor Bubenik thanked the Library Foundation for another wonderful Vine2Wine event.

Councilor Bubenik stated he was disappointed with Metro's decision on the Basalt Creek findings.

Councilor Bubenik stated on May 6, from 11am-1pm, Neighbors Nourishing Communities will hold their plant start handout.

Council President Davis echoed Councilor Bubenik's feelings on the Metro decision.

Council President Davis stated the Tualatin Soccer and METCHA club will be holding a fundraiser on May 19. She encouraged everyone to get out and participate in the event.

H. ADJOURNMENT

Mayor Ogden adjourned the meeting at 8:28 p.m.

Sherilyn Lombos, City Manager	
	/ Nicole Morris, Recording Secretary
	/ Lou Ogden, Mayor



STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Nicole Morris, Deputy City Recorder

DATE: 05/14/2018

SUBJECT: Consideration of Approval of a New Liquor License Application for Wine and

Design

ISSUE BEFORE THE COUNCIL:

The issue before the Council is to approve a new liquor license application for Wine and Design.

RECOMMENDATION:

Staff respectfully recommends that the Council approve endorsement of the liquor license application for Wine and Design.

EXECUTIVE SUMMARY:

Wine and Desing has submitted a new liquor license application under the category of limited on-premises sales. Under the category of limited on-premise sales, they would be permitted to sell factory-sealed containers of malt beverages, wine, and cider for on-site consumption. The business is located at 18041 SW Lower Boones Ferry Road, Unit 3. The application is in accordance with provisions of Ordinance No.680-85 which establishes procedures for liquor license applicants. Applicants are required to fill out a City application form, from which a review by the Police Department is conducted, according to standards and criteria established in Section 6 of the ordinance. The Police Department has reviewed the new liquor license application and recommended approval. According to the provisions of Section 5 of Ordinance No. 680-85 a member of the Council or the public may request a public hearing on any of the liquor license requests. If such a public hearing request is made, a hearing will be scheduled and held on the license. It is important that any request for such a hearing include reasons for said hearing.

FINANCIAL IMPLICATIONS:

A fee has been paid by the applicant.

Attachments: Attachment A - Vicinity Map

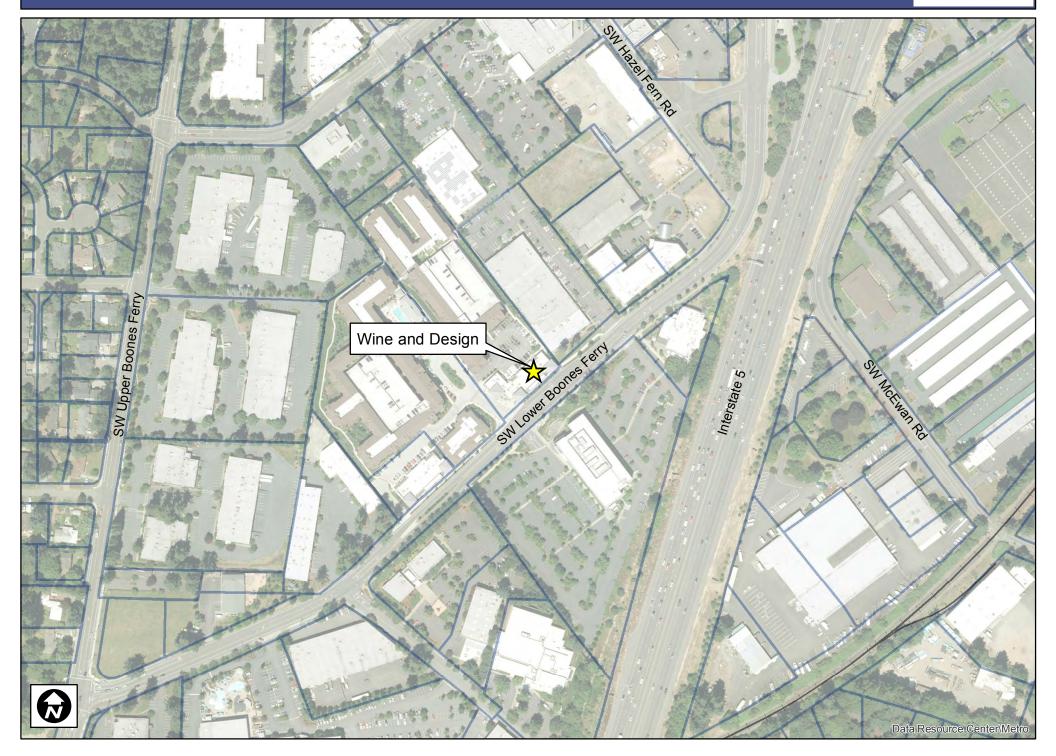
Attachment B- License Types

Attachment C Application

Attachment C- Application

Wine and Design - 18041 SW Lower Boones Ferry Rd





OREGON LIQUOR CONTROL COMMISSION LICENSE TYPES

FULL ON-PREMISES SALES

Commercial Establishment

Sell and serve distilled spirits, malt beverages, wine, and cider for consumption at that location (this is the license that most "full-service" restaurants obtain). Sell malt beverages for off-site consumption in securely covered containers provided by the customer. Food service required. Must purchase distilled liquor only from an Oregon liquor store, or from another Full On- Premises Sales licensee who has purchased the distilled liquor from an Oregon liquor store.

Caterer

Allows the sale of distilled spirits, malt beverages, wine, and cider by the drink to individuals at off-site catered events. Food service required.

Passenger Carrier

An airline, railroad, or tour boat may sell and serve distilled spirits, malt beverages, wine, and cider for consumption on the licensed premises. Food service required.

Other Public Location

Sell and serve distilled spirits, malt beverages, wine, and cider for consumption at that location, where the predominant activity is not eating or drinking (for example an auditorium; music, dance, or performing arts facility; banquet or special event facility; lodging fairground; sports stadium; art gallery; or a convention, exhibition, or community center). Food service required.

Private Club

Sell and serve distilled spirits, malt beverages, wine, and cider for consumption at that location, but only for members and guests. Food service required.

LIMITED ON-PREMISES SALES

Sell and serve malt beverages, wine, and cider for onsite consumption. Allows the sale of malt beverages in containers (kegs) for off-site consumption. Sell malt beverages for off-site consumption in securely covered containers provided by the customer.

OFF-PREMISES SALES

Sell factory-sealed containers of malt beverages, wine, and cider at retail to individuals in Oregon for consumption off the licensed premises. Eligible to provide sample tastings of malt beverages, wine, and cider for consumption on the premises. Eligible to ship manufacturer-sealed containers of malt beverages, wine, or cider directly to an Oregon resident.

BREWERY PUBLIC HOUSE

Make and sell malt beverages. Import malt beverages into and export from Oregon. Distribute malt beverages directly to retail and wholesale licensees in Oregon. Sell malt beverages made at the business to individuals for consumption on or off-site.

WINERY

Must principally produce wine or cider in Oregon. Manufacture, store, and export wine and cider. Import wine or cider *If bottled, the brand of wine or cider must be owned by the licensee*. Sell wine and cider to wholesale and retail licensees in Oregon. Sell malt beverages, wine, and cider to individuals in Oregon for consumption on or off-site.



CITY OF TUALATIN

LIQUOR LICENSE APPLICATION

Return Completed form to: City of Tualatin Attn: Deputy City Recorder 18880 SW Martinazzi Ave Tualatin, OR 97062

Date 4-13-18

IMPORTANT: This is a three-page form: You are required to complete all sections of the form. If a question does not apply, please indicate N/A. Please include full names (last, first middle) and full dates of birth (month/day/year). Incomplete forms shall receive an unfavorable recommendation.

Thank you for your assistance and cooperation: TV OF TUALATIN

SECTION 1: TYPE OF APPLICATION		APR 1 3 2018
Original (New) Application - \$100.00 Change in Previous Application - \$75 Renewal of Previous License - \$35.00 license, License #	.00 Application Fee.	COMM SYCS_ENG & BEDG_LIBRARY_ nt must possess current business
☐ Temporary License - \$35.00 Application	on Fee.	
SECTION 2: DESCRIPTION OF BUSIN	ESS	
Name of business (dba): (Dine c	and Design	
Business address 1804 SW lower B	one City Tigard	State OR Zip Code 97224
Mailing address 108415W Lawer Boones Fe		
Telephone # 971-717-51(1	Fax #	
Name(s) of business manager(s) First_H	ecution Middle Tiller	ene Last Pelzer
Date of birthSocial Secur	ity#	DL#
Home address (attach additional pages i necessary)		
Type of business Avts and ente	rtainment, DAIN	t and sip
Type of food served NoNL		
Type of entertainment (dancing, live music	c, exotic dancers, etc.)	NONE
Days and hours of operation 12pm to	O lopin Francisco	the 7days Aucel
Food service hours: Breakfast	Lunch	Dinner
Restaurant seating capacity (o(p	Outside or patio se	ating capacity 🛇
How late will you have outside seating?	How late will y	rou sell alcohol? 9:30

Page 1 of 3 (Please Complete ALL Pages)

How many full-time employees do you l	have?Part-time employees?
SECTION 3: DESCRIPTION OF LIQU	OR LICENSE
Name of <i>Individual, Partnership, Corpo</i> Dwyer <u>One Styolze</u>	ration, LLC, or Other applicants Heather I Pelzer Int. C. orm) Limited
Type of liquor license (refer to OLCC fo	rm) Limited
Form of entity holding license (check or	ne and answer all related applicable questions):
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for each partner. If more than two p	necked, provide full name, date of birth and residence address artners exist, use additional pages. If partners are not
	rtner a description of the partner's legal form and the
information required by the section of	. , ,
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Residence address	
Full name	Date of birth
Residence address	
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	than 50% of the outstanding shares of the corporation? If
	I name, date of birth, and residence address.
Residence address	Date of birth
Noolaanoo aaaroo	
(c) Are there more than 35 sharehold	ders of this corporation?YesNo. If 35 or fewer
	tion's president, treasurer, and secretary by full name, date of
birth, and residence address.	
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Residence address:	
Full name of treasurer:	65 / 611/4
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Residence address:	
OTHER: If this box is checked, use reasonable particularity every entity with	e a separate page to describe the entity, and identify with the interest in the liquor license.
SECTION 4: APPLICANT SIGNATUR	₹ <i>E</i>
A false answer or omission of any requunfavorable recommendation.	uested information on any page of this form shall result in an
umavorable recommendation.	
	4-12-10
Signature	4 -13 -18 Date
	For City Use Only
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DMV by M VLEDS by	TuPD Records by
Public Records by	
Number of alcohol-related incide	ents during past year for location.
Number of Tualatin arrest/suspe	ct contacts for Iteather Petrer
It is recommended that this application	on be:
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Cause of unfavorable recommen	idation:
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Kent W. Barker Bill SIEGIG	

Chief of Police
Tualatin Police Department



STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Kelsey Lewis, Management Analyst II

Bert Olheiser, Street/Sewer/Storm Manager

DATE: 05/14/2018

SUBJECT: Consideration of **Resolution 5364-18** Awarding the Bid for the Construction of

the 2018 Pavement Maintenance Program

ISSUE BEFORE THE COUNCIL:

Award the construction contract for the 2018 Pavement Maintenance Program that overlays certain streets, replaces adjacent ADA curb ramps, and retrofit catchbasins.

RECOMMENDATION:

Staff recommends that Council approve the resolution to allow the City Manager to execute a contract with Brix Paving Northwest, Inc. to construct the 2018 Pavement Maintenance Program in the amount of \$636,325.00.

EXECUTIVE SUMMARY:

The project will overlay portions of 90th Avenue, 100th Court, Arapaho Road, Blake Street, Pamlico Court and Spokane Court. The project map is attached. The map also shows the limits of slurry sealing and crack sealing, but this contract only includes the pavement overlay work, associated ADA curb ramps, and catchbasin retrofits within the pavement limits.

The City consulted with OTAK Engineering for design of the project. The project was advertised in the Daily Journal of Commerce on April 9 and 11, 2018. Five (5) bids were received prior to the close of the bid period on April 25, 2018. Brix Paving Northwest, Inc. is the lowest responsible bidder for the project in the amount of \$636,325.00.

FINANCIAL IMPLICATIONS:

Funds for this project are available in Road Utility and Storm Drain Funds.

Attachments: Resolution 5364-18

Project Map

RESOLUTION NO. 5364-18

RESOLUTION AWARDING THE BID FOR THE CONSTRUCTION OF THE 2018 PAVEMENT MAINTENANCE PROGRAM.

WHEREAS, the Notice of Construction of the 2018 Pavement Maintenance Program was published in the *Daily Journal of Commerce* on April 9 and 11, 2018;

WHEREAS, five proposals were received and publically opened and read on April 25, 2018;

WHEREAS, the procurement complies with the City's public contracting requirements; and

WHEREAS, funds are available for this project in the FY 2018/19 Road Utility Fund:

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Brix Paving Northwest, Inc. was the successful responsible low bidder and is hereby awarded a contract to construct the 2018 Pavement Maintenance Program.

Section 2. The City Manager is authorized to execute a contract with Brix Paving Northwest, Inc. in the amount of \$636,325.00.

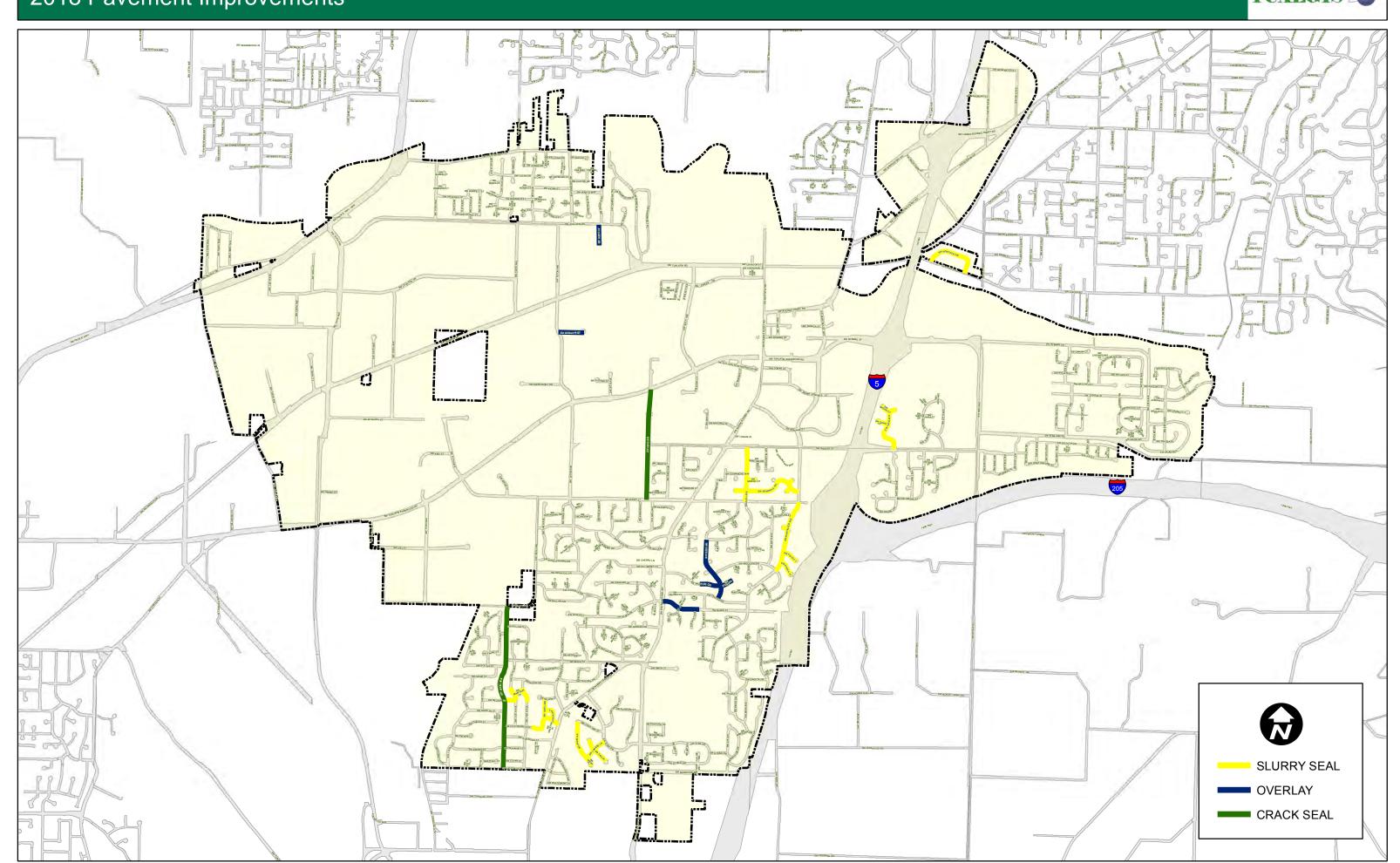
Section 3. The City Manager or designee is authorized to execute Change Orders totaling up to 10% of the original contract price.

Section 4. This resolution is effective upon adoption.

Adopted by the City Council this 14th day of May, 2018.

	CITY OF TUALATIN OREGON
	BY
	Mayor
APPROVED AS TO FORM	ATTEST
BY	BY
City Attorney	City Recorder







STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Erin Engman, Associate Planner

Aquilla Hurd-Ravich, Community Development Director

DATE: 05/14/2018

SUBJECT: Continued Hearing for Request for Review of MAR17-0041, Tualatin Professional

Center Parking Lot Improvement Land Use Decision located at 6464 SW Borland

Road

ISSUE BEFORE THE COUNCIL:

The Tualatin Professional Center (TPC) Minor Architectural Review, MAR17-0041 was approved with conditions by staff on October 12, 2017 (Attachment 101). On October 26, 2017 TPC, represented by Dorothy Cofield of Cofield Law, submitted a request for review, otherwise known as an appeal, of MAR17-0041 (Attachment 102). This item was first heard by the City Council on December 11, 2017. The applicant requested that the record be left open to provide new evidence at the January 8, 2018 hearing. Staff also provided a clarifying memo at this hearing. The item was continued a second time to the April 23, 2018 hearing, in order for TPC to submit a Variance application. VAR18-0001 was approved by the Planning Commission Resolution 6-18TPC (Attachment 103) on April 19, 2018. Again the item was continued to the May 14, 2018 hearing to prepare new evidence.

TPC is asking Council to modify Conditions 5 and 6 of MAR17-0041 to match their approved Variance decision and issue a new approved Minor Architectural Review. The applicant provided a revised plan set and corresponding narrative in response to the MAR17-0041 conditions and VAR18-0001 decision (Attachment 104).

Council must make a final decision on the MAR17-0041 Request for Review before May 31, 2018 to meet the 120-day rule extension.

RECOMMENDATION:

Staff requests that City Council consider the staff report and attachments, and direct staff to prepare a resolution that conforms to the City Council's direction.

EXECUTIVE SUMMARY:

This is a quasi-judicial hearing before Council to consider new evidence for the approval of MAR17-0041, Tualatin Professional Center Parking Lot Improvement. The scope of work includes adjustments to two access drives; modifications and improvements to the southern parking lot, landscaping, and pedestrian network. The applicant received approval of VAR18-0001 (Attachment 103) to vary from Tualatin Development Code standards 73.360(6)(a) (Off-Street Parking Lot Landscape Islands) and 73.400(11) (Access). TPC is asking Council to modify Conditions 5 and 6 and consider the revised plan set (Attachment 104) in addressing the remaining Conditions.

MAR17-0041 was approved by staff with seven Conditions of Approval, as listed below:

1. Prior to applying for permits on the subject site, the applicant must submit one revised paper plan set—24 x 36, a paper narrative, and electronically in Adobe PDF file format—for review and approval to the Planning Division that meet the conditions of approval below. The narrative must explain how and on what page each condition of approval has been met. The submittal must contain page numbers and a table of contents. No piecemeal submittals will be accepted. Each submittal will be reviewed in two (2) weeks.

This condition requires the applicant to submit a revised plan set to address the conditions of approval. The applicant has satisfied this condition through new evidence contained in Attachment 104.

 The applicant must submit plans that illustrates a six foot wide ADA compliant walkway between the main entrance of the southern building of the Tualatin Professional Center complex(Building D) and SW Sagert Street and install to approved plan set pursuant to TDC73.160(1)(a)(i).

The applicant has satisfied this condition in Attachment 104 - Sheet C300, dated 5/2/2018, Keynote 4.

3. The applicant must submit a landscape plan that illustrates areas within the defined project area that are not occupied by buildings, parking spaces, driveways, drive aisles, and pedestrian areas are landscaped and install to approved plan set pursuant to TDC 73.310(3).

The applicant has satisfied this condition in Attachment 104 - Sheet L200, dated 4/23/2018.

4. The applicant must submit a revised landscape plan that notes a clear zone will be provided at the proposed access drive entrances vertically between a maximum of thirty inches and a minimum of eight feet as measured from the ground level pursuant to TDC 73.340(1).

The applicant has satisfied this condition in Attachment 104 - Sheet L200, dated 4/23/2018.

5. The applicant must revise the appropriate sheets to illustrate landscape areas not less than five feet in width on each side of the southern two access drives located off of SW Sagert Street that extend for a distance of at least twenty-five feet from the **property line** and install to approved plan set pursuant to TDC 73.360(6)(a).

VAR18-0001 and Resolution No. 6-18TPC provides relief from TDC 73.360(6)(a) as follows:

The applicant is authorized to construct a landscape area that is five feet in width for a

depth of twenty-five feet from the **back of sidewalk**, rather than property line as required by the standard in TDC 73.360(6)(a).

This condition may be modified to read:

The applicant must install landscape areas not less than five feet in width on each side of the southern two access drives located off of SW Sagert Street that extend for a distance of at least twenty-five feet from the back of public sidewalk pursuant to the applicants revised plan set as seen in Attachment 104- Sheet C300 dated May 2, 2018. and pursuant to Resolution No. 6-18TPC.

Under Council's consideration of Resolution No. 6-18TPC, the applicant has satisfied this modified condition in Attachment 104 - Sheet C300, dated 5/2/2018.

6. The applicant must revise the appropriate sheets to provide evidence that two on-site access drives are thirty-two feet wide for the first **fifty feet from the public right-of-way** and install to approved plan set pursuant to TDC 73.400(11).

VAR18-0001 and Resolution No. 6-18TPC provides relief from TDC 73.400(11) as follows: The applicant is authorized to provide thirty-two foot wide access drives for a depth of **twenty-five feet from the back of sidewalk**, rather than the required fifty feet from right of way as required by the standard in TDC 73.400(11).

This condition may be modified to read:

The applicant must install two on-site access drives that are thirty-two feet wide for the first twenty-five feet from back of sidewalk pursuant to the applicants revised plan set as seen in Attachment 104 - C300 dated May 2, 2018 and pursuant to Resolution No. 6-18TPC.

Under Council's consideration of Resolution No. 6-18TPC, the applicant has satisfied this modified condition in Attachment 104 - Sheet C300, dated 5/2/2018.

- 7. The applicant must apply for and obtain a Public Works Permit for all work within public right-of-way and an Erosion Control Permit for all disturbed area.
 - a.Provide an engineered plan that shows plan and profile of the proposed driveway connections and proposed pedestrian connections. All improvements must match back of sidewalk grades currently being constructed by Lennar Homes as part of public works permit number PW16-0211. Plan must meet requirements of Engineering Division for review and approval pursuant to the Tualatin Public Works Construction Code and must be approved by the Engineering Division.

b. Show back of sidewalk grades that match the elevations of SW Sagert Street right-of-way improvements currently being constructed by Lennar Homes as approved in Public Works Permit No. PW16-0211.

c.If proposed pedestrian connection to the Sagert Street sidewalk is the ADA accessible route to the public right-of-way, then improvements in the right-of-way must meet ADA criteria set forth in the 2010 Public Rights of Way Design Guidelines (PROWAG), including running slope, cross slope, and all other relevant requirements.

The applicant has satisfied this condition in Attachment 104 - Sheet C200, dated 5/2/2018; Sheet C300, dated 5/2/2018; Sheet C400, dated 5/2/2018; and Sheet C501, dated 5/2/2018.

Staff recommends that Council consider a new Condition 8 after review of new evidence in Attachment 104:

8. The applicant must label both of the southern-most parking stalls (one to the west and one to the east) of the western access drive subcompact stalls, pursuant to TDC 73.380(1).

OUTCOMES OF DECISION:

Approval of MAR17-0041 would result in the following:

• Allow the applicants and owners of Tualatin Professional Center to construct two southern access points with modified conditions 5 and 6 and a new condition 8.

Denial of MAR17-0041 would result in the following:

• The applicants and owners of Tualatin Professional Center would not be able to construct two access points as proposed in Attachment 104.

ALTERNATIVES TO RECOMMENDATION:

The alternatives for City Council are:

- Council can approve staff recommendation to modify conditions originally imposed under MAR17-0041.
- Council can approve the original conditions of MAR17-0041.
- Council can deny the MAR17-0041 application.

FINANCIAL IMPLICATIONS:

The appellant submitted the required \$145 fee with the Request for Review for MAR17-0041.

Attachments: Attachment 101 - MAR17-0041 Approval

Attachment 102 - Request for Review

Attachment 103 - Resolution No. 6-18TPC

Attachment 104 - Applicant Evidence

City of Tualatin



www.tualatinoregon.gov

E-mailed and sent via First Class Mail October 12, 2017

Matt Johnson KPFF Consulting Engineers 111 SW 5th Avenue Portland, OR 97204

RE: Minor Architectural Review (MAR17-0041) for access drive and parking lot improvements at the

Tualatin Professional Center at 6464 SW Borland Road, Tualatin, OR 97062

(Tax Lot: 2S1E30B90000)

Dear Mr. Johnson:

Thank you for submitting a Minor Architectural Review (MAR) application to the City of Tualatin Planning Division on Monday, August 21, 2017, to adjust the southern two access drives previously approved through LP83-01, AR83-0006, and Development Agreement 84-16657. Modifications and improvements to the southern parking lot, landscaping, and pedestrian network are also included in the proposal.

Pursuant to Tualatin Development Code (TDC), the City of Tualatin Planning Division approves the proposal as described, illustrated, and sited on the submitted Sheet C300 (Plot Date 8/16/17) with the following conditions:

Prior to Erosion Control Permit Approval:

- 1. Prior to applying for permits on the subject site, the applicant must submit one revised paper plan set—24 x 36, a paper narrative, and electronically in Adobe PDF file format—for review and approval to the Planning Division that meet the conditions of approval below. The narrative must explain how and on what page each condition of approval has been met. The submittal must contain page numbers and a table of contents. No piecemeal submittals will be accepted. Each submittal will be reviewed in two (2) weeks.
- The applicant must submit plans that illustrates a six foot wide ADA compliant walkway between the main entrance of the southern building of the Tualatin Professional Center complex (Building D) and SW Sagert Street and install to approved plan set pursuant to TDC 73.160(1)(a)(i).
- 3. The applicant must submit a landscape plan that illustrates areas within the defined project area that are not occupied by buildings, parking spaces, driveways, drive aisles, and pedestrian areas are landscaped and install to approved plan set pursuant to TDC 73.310(3).
- 4. The applicant must submit a revised landscape plan that notes a clear zone will be provided at the proposed access drive entrances vertically between a maximum of thirty inches and a minimum of eight feet as measured from the ground level pursuant to TDC 73.340(1).

- 5. The applicant must revise the appropriate sheets to illustrate landscape areas not less than five feet in width on each side of the southern two access drives located off of SW Sagert Street that extend for a distance of at least twenty-five feet from the property line and install to approved plan set pursuant to TDC 73.360(6)(a).
- 6. The applicant must revise the appropriate sheets to provide evidence that two on-site access drives are thirty-two feet wide for the first fifty feet from the public right-of-way and install to approved plan set pursuant to TDC 73.400(11).
- 7. The applicant must apply for and obtain a Public Works Permit for all work within public right-of-way and an Erosion Control Permit for all disturbed area.
 - a. Provide an engineered plan that shows plan and profile of the proposed driveway connections and proposed pedestrian connections. All improvements must match back of sidewalk grades currently being constructed by Lennar Homes as part of public works permit number PW16-0211. Plan must meet requirements of Engineering Division for review and approval pursuant to the Tualatin Public Works Construction Code and must be approved by the Engineering Division.
 - b. Show back of sidewalk grades that match the elevations of SW Sagert Street right-of-way improvements currently being constructed by Lennar Homes as approved in Public Works Permit No. PW16-0211.
 - c. If proposed pedestrian connection to the Sagert Street sidewalk is the ADA accessible route to the public right-of-way, then improvements in the right-of-way must meet ADA criteria set forth in the 2010 Public Rights of Way Design Guidelines (PROWAG), including running slope, cross slope, and all other relevant requirements.

The Following Code Requirements Apply to the Site in an On-Going Manner:

- Accessways must be constructed, owned and maintained by the property owner. TDC 73.160(1)(g)
- All landscaping approved through the AR process must be continually maintained, including
 necessary watering, weeding, pruning and replacement, in a manner substantially similar to that
 originally approved by the AR decision, unless subsequently altered with Community
 Development Director's approval. TDC 73.100(1)
- All building exterior improvements approved through the AR process must be continually
 maintained, including necessary painting and repair, so as to remain substantially similar to
 original approval through the AR process, unless subsequently altered with Community
 Development Director's approval. TDC 73.100(2)
- Site landscaping and street trees must be maintained to meet the vision clearance requirements of TDC 73.400(16).
- The proposed development must comply with all applicable policies and regulations set forth by the TDC.

Response to Additional Claims Made in Your Letter of October 3, 2017.

Your attorney, Ms. Dorothy Cofield, submitted a letter dated October 3, 2017, where she made two additional legal claims: (1) that TPC believes the Minor Architectural Review process is not required for your improvements; and (2) that the parking lot is a nonconforming use and, therefore, you are allowed to make the improvements without complying with the design standards in the TDC. Neither of those arguments are supported by the TDC. In fact, the TDC specifically requires Architectural Review for your proposed improvements to demolish and reconstruct your parking lot. In addition, the TDC prohibits alterations of nonconforming uses.

MAR17-0041: Approval October 12, 2017 Page 3 of 4

1. The Architectural Review Process is Required for the Proposed Improvements to the Parking Lot.

You submitted an application for a Minor Architectural Review (MAR) and propose to make improvements to the parking lot at your site. In particular, you state in your application that "[t]he Tualatin Professional Center will make site improvements to its existing parking lot in order to match the proposed Sagert Street improvements. This will include the demo of and modification of the parking drive aisle and parking layout."

Under TDC 73.040 Architectural Review is required for a "parking lot improvement or expansion." TDC 31.060 defines "parking lot improvement or expansion" as "[t]he alteration of land or expansion of existing off-street parking, including grading, paving or installation of landscaping, on land intended to be regularly used for the temporary storage of motor vehicles. Parking lot improvement does not include resurfacing existing asphalt parking or re-striping of parking lots." ¹

The proposed improvements to demolish and reconstruct your parking lot fit the definition of "parking lot improvement or expansion" under the code. As a result, your proposed improvements require Architectural Review approval. ² Your claim that you are not required to comply the Architectural Review process is without merit.

2. Alteration of Nonconforming Uses is Prohibited under the TDC.

You also claim that your parking lot is a nonconforming use and that, therefore, the improvements do not need to comply with the design standards in the TDC. To the contrary, the TDC requires alterations of nonconforming uses to comply with design standards.

Under TDC 35.030, nonconforming uses cannot be altered or enlarged, unless "such alteration or enlargement will bring the structure or use into conformity with the Planning District Standards for the planning district within which the use or land is located." As you state in your application, you are proposing the "demo of and modification of drive aisles." Your proposal is an alteration under the code.

The driveway cuts at the location have already been installed by the Sagert Farms Development. You are not proposing minor paving activities to simply connect the driveway cuts to the existing site. Rather, you are proposing the demolition and reconstruction of the parking lot itself. As a result, even if your parking lot is a nonconforming use, you cannot make alterations without complying with the City's development code and its design standards. See, TDC 35.030; 31.110.³

¹ You point out in your letter that you were not required to go through the Architectural Review process a few years ago to "re-asphalt" your lot. The reason for this is because resurfacing of existing parking lots is excluded from the definition of "parking lot improvement or expansion" that would otherwise trigger the Architectural Review process.

² TDC 31.110 provides, "[n]o person shall erect, construct, reconstruct, alter or maintain or use any land, building or structure contrary to the provisions of the Tualatin Community Plan, the Tualatin Planning District Standards, or the Tualatin Development Code."

³ As has been pointed out on a number of occasions, you may submit an application for a variance under TDC Chapter 33, for those code requirements that "cause an undue or unnecessary hardship."

MAR17-0041: Approval October 12, 2017 Page 4 of 4

Appeal Process

If you disagree with this approval, you may appeal this decision to the City Council. To appeal the decision, submit an application, a fee of \$145, a narrative indicating the code section(s) you want to appeal, the requested revision, and your reason for appealing. City Council will hear the appeal in accordance with the process outlined in TDC Section 31.075. The appeal must be submitted before 5 pm on the 14th calendar day after the notice of decision.

Please contact me with any questions at 503.691.3024 or eengman@tualatin.gov.

Thank you,

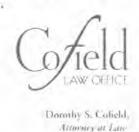
Erin Engman Assistant Planner

cc: Aquilla Hurd-Ravich, AICP, Planning Manager

Sean Brady, City Attorney

Tony Doran, Engineering Associate Dorothy Cofield, cofield@hevanet.com Dr. Walker, jpw@tualatinendo.com

File: MAR17-0041





October 26, 2017

City Council City of Tualatin 18880 SW Martinazzi Avenue Tualatin, Oregon 97062-7092

VIA: HAND DELIVERY

Re: Request for Review to Tualatin City Council of Minor Architectural Review (MAR17-0041)Tualatin Professional Center, 6464 SW Borland Street, Tualatin, OR 97062

Dear Tualatin City Council,

This narrative letter, along with an appeal application and fee of \$145.00, is submitted to appeal the Tualatin Planning Department's Minor Architectural Review (MAR) for access drive and parking lot improvements at the Tualatin Professional Center at 6464 SW Borland Street, Tualatin, OR 97062 (Tax Lot 2S1E30B90000) dated October 12, 2017. The Decision determined that a Request for Review to the City Council is the appropriate body to hear the appeal. Decision, p. 4. This Request for Review is being filed within fourteen (14) days of the Notice of Decision. Please incorporate the entire record below as part of this Request for Review.

As outlined in my letter to Assistant Planner Erin Engman dated October 3, 2017 (Exhibit 1) sent on behalf of my client Tualatin Professional Center (TPC) and my client's engineer, Matt Johnson with KPFF Consulting Engineers, our appeal involves the Tualatin Development Code (TDC) sections outline below. Beneath the relevant TDC section, we have included the reason for our appeal and revision we are requesting of City Council.

1. TDC 73.400(11) – Access; Minimum Access Requirements for Commercial, Public and Semi-Public Uses

The Planning Department incorrectly applied TDC 73.400(11) to TPC's restoration of its two southern accesses per the Sagert Farm's subdivision approval (SB15-0002) Conditions Nos. 16 and 48.

Lennar Homes Northwest, the applicant for Sagert Farms, submitted and was approved for a site plan for the two southern TPC accesses. See Exhibit 2. During the application approval process for Sagert Farms, the City applied TDC Chapter 75 which required TPC to change its southwestern access to right-in-right-out due to the development of the Sagert Farm subdivision and Sagert Street. As part of

Appeal to Tualatin City Council October 26, 2017 * Page 2

the Sagert Frams subdivision review, TPC appealed the City's requirement that its southwestern access be modified to a "right-in-right-out." In denying TPC's request, the extensive findings for TPC's appeal of the "right-in-right-out" requirement made clear that: "Tualatin Professional Center will have substantially similar access as compared to its current condition." Exhibit 5 (Staff Report, Request for Review SB 15-0002 "M." Findings Related to TPC). To be clear, its current condition included approval of the two southern accesses in SB15-0002.

As explained in detail in my letter attached as Exhibit 1 but mentioned here only for context, after the City approved SB 15-0002, TPC attended a scoping meeting with the City on February 22, 2017 to discuss restoring the two southern accesses. During the scooping meeting, the City did not indicate a revision of the parking lot would be required or otherwise suggest it would deem the restored accesses as a "parking lot improvement or expansion" as defined by the TDC. TPC then submitted construction plans that conformed with staff's direction provided during a April 5, 2017 pre-application conference attended by TPC and its engineer, Matt Johnson. Only after the conforming construction plans were submitted did TPC learn Planning Staff would impose the access standards under TDC 73.400(11) and require the imposition of the MAR land use process to its construction plans.

TDC applies when there is "an increase" to ingress and egress uses of a property. However, here, TPC is seeking to restore its two southern accesses which aligns with the approval already granted in SB15-0002.

With staff's imposition of TDC 73.400(11), TPC will lose up to 19 parking spaces in its existing, nonconforming use parking lot by requiring extension of each 32' wide access for the first 50 feet from the right-of-way of Sagert Street. This is not *substantially similar access* as represented in the Staff Report attached as Exhibit 5.

As Ms. Engman notes in her letter dated October 12, 2017, TDC 73.040 Architectural Review Approval applies to "parking lot improvement or expansion" and goes on to provide the TDC's definition of "parking lot improvement or expansion." As part of the Architectural Review Procedure found in TDC 31.071, TPC would be required to attend a pre-application conference, which it has already completed, and submit detailed site plans, which it has already submitted and for which it received approval with SB 15-0002. The City has no reason to require additional land use review when it has already made significant findings regarding access and design of this proposal and determined that TPC is afforded "substantially similar access as compared to its current condition." Exhibit 5, Staff Report. There is no need for a variance application because TPC does not need to vary its approved accesses to comply with TDC 73.400(11). Although not entirely relevant here, TPC was told a variance to TDC 73.400(11) would not be granted because the need for the variance is a "self-created" hardship.

At the appeal hearing, TPC will have its traffic engineer, Chris Clemow available to explain why the KPFF submitted construction plans with a 25' foot access drive aisle is safe and meets the Lennar approved access plan in C-220. The City Council relied on its city engineer and Lennar's private engineer when it approved C-220 in the Sagert Farms Subdivision review. The two realigned accesses were found to be safe then and they are safe now and in conformance with the Lennar access plan.

Appeal to Tualatin City Council October 26, 2017 Page 3

2. Other Conditions in the MAR Decision

The MAR Decision sets out seven (7) conditions labeled "Prior to Erosion Control Permit Approval." Some of these conditions exceed the C-220 Sagert Farms Access Plan that Lennar submitted and the City approved in Conditions 16 and 48. The applicant has submitted construction plans consistent with the Sagert Farms Decision and those should be approved by the City Council. To the extent the City is imposing additional code provisions beyond what it already approved in the Sagert Farm's Decision and they are inconsistent with the 25' access aisles, they cannot legally be imposed now. For instance, it should be noted that Condition 2 (ADA six-foot compliant walkway under TDC 73.160(1)(a)(i) was a five-foot walkway in the Lennar approved plan (C-220). The applicant may be able to revise its construction plans to show a six-foot walkway but objects to the imposition of TDC 73.160(a)(i) as non-applicable to the approval of its construction plans. Condition 5 (TDC 73.360(6)(a) which requires landscape areas not less than five feet in width on each side of the southern two drives for twenty-five (25) feet from the property line cannot be imposed because it is inconsistent with the Lennar approved plan of a 25' access aisle for the two southern driveways. The same is true of the following other conditions: Clear Zone Landscape Revisions under TDC 73.340(1); Landscape Plan under TDC 73.310(3); Plan and Profile for proposed driveway to meet PS 16-0211; Back of Sidewalk to meet PW16-0211 and Right-of-Way Pedestrian Connection (2010 Public Rights-of-Way Design Guidelines PROWAG). The MAR Decision goes beyond what the City approved in its Sagert Farm Decision and cannot be changed and added to now.

3. TDC 35.020 - Continuation of Non-Conforming Use; TDC 35.030 - Alteration or Enlargement Prohibited

As raised above, the City already approved the two realigned accesses in the Sagert Farms Subdivision review. However, even if the City hadn't already reviewed and approved the realigned accesses, TPC has used these two accesses since 1983. The two accesses are lawful because the City approved them in 1983. Under TDC 35.020, a nonconforming use and structure(s) may be continued they existed on the date of the adoption of the TDC. TPC has lawfully existed since 1983 and in fact, dedicated right-of-way for the future Sagert Street as well as funding for the future Sagert Street improvements. The proposed restoration of the lawfully existing two southern accesses is not a prohibited alternation or enlargement as those terms are defined in TDC 35.030. That code provision allows TPC to alter or enlarge its use and structure(s) when it will bring the structure or use into conformity with the Planning District Standards. Here, the only reason for the restoration of TPC's two accesses is to make them comply with Lennar's construction of Sagert Street. But for the Sagert Farm Subdivision review process, TPC would not have needed to alter its two southern accesses. For that reason, the MAR decision is incorrect that TPC does not meet TDC 35.030.

4. The MAR decision violates TDC 36.162

Because the City already approved the two realigned southern accesses in SB 15-0002, and TPC is not requested any modification to the approved plan (C-220), the City cannot make TPC go through an additional land use review and require expensive changes to the approval. See e.g. David Hill Dev. LLC v. City of Forest Grove, 688 F. Supp. 2d 1193, 1205-1207 (2010). Oregon's land use program provides that a preliminary plat gives a developer certainty that if the final plat is in substantial

Appeal to Tualatin City Council October 26, 2017 Page 4

conformance with the preliminary plat, the City cannot require additional and new requirements. Here, the City is imposing TDC 73.400(11) for the first time and requiring a 50' deep drive aisle when a 25' foot drive aisle was approved in SB 15-0002. The City is also imposing TDC 73.160(1)(g) as to the portion of the two accesses' driveways and finding they must be owned by the property owner, when a portion of the drive aisles will be in the public right-of-way. The additional requirements are changing what was approved which is not legal under ORS 92.040 and ORS 227.178(3) (Right to Stationary Goalposts).

5. The MAR decision imposes future standards under TDC 73

The Mar decision states that a number of code sections will be imposed on TPC as part of this MAR review. See e.g. p. 2 "Following Code Standards Will Apply to the Site in an On-Going Manner." The City cannot impose code standards before TPC makes a development application or changes its legal, nonconforming use and structures that exceed TDC 35.030. If the City believes TPC is using its property in violation of zoning standards, the correct process is a zoning enforcement which gives TPC certain due process rights. See e.g. TDC 31.077. It is unclear why the MAR decision raises future code requirements in this review. All uses under the TDC are subject to be in compliance with the TDC and there is no reason to raise a separate section in this access process. TDC 31.114.

TPC respectfully asks the City Council to review the MAR Decision and modify it as follows:

- 1. Approve the KPFF construction plans in Exhibit 4 of the MAR Decision;
- 2. Delete the 50' access aisle requirement under TDC 73.400(11)
- Delete the provision for future imposition of TDC 73.160(1)(g) and any future requirements to exterior building maintenance through the AR process;

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4. Remove any other conditions inconsistent with the approval of C220 from SB 15-0002.

I look forward to explaining this matter to the City Council so that the MAR decision can be remedied consistent with the City's approval of the two southern accesses in SB 15-0002.

Very truly yours,

Dorothy S. Cofield

Enclosures:

ce: Client

Matt Johnson Margot Seitz City Attorney



City of Tualatin

www.tualatinoregon.gov

REQUEST FOR REVIEW

COMMUNITY DEVELOPMENT

A Request for Review must be received by the Community Development Department - Planning N Division or Engineering Department by 5:00 p.m. of the 14th calendar day after the Notice of the Decision. Only those persons who submitted comments during the notice period may submit a request for review. You must provide all of the information requested on this form, as required by TDC 31.075. This form must be signed and submitted in writing. You will be notified of the hearing date.

Name of Party requesting reviewTualatin Professional Center
Address6464 SW Borland Road, Tualatin, OR 97062
Date $10/26117$ Telephone $(503)542-3858$
Did you submit comments on the proposal during the notification period?
You represent or you are: X The applicant Architectural Review Board (ARB) member City Councilor City Manager Government agency Other City-recognized neighborhood association
I request a review of Case No. MAR17-0041
This form is used in part to determine the appropriate hearing body for review. Check which portion of the decision for which you are requesting review: AR/Arch. Features Interpretations Subdivisions AR/Public Facilities Partitions Transitional Use Permit Historic Landmark Reinstatement of Use Variances Industrial Master Plan Sign Variance
Project: Minor Architectural Review (MAR17-0041) for access drive and parking lot improvements at t
(Give description of subject property or proposed name of project) Tualatin Professional Center Explain clearly which portions of the decision you are asking to be reviewed (attach separate sheet if needed). This should specify how you are adversely affected by the decision and how the decision is allegedly not in conformance with applicable TDC requirements: The attached letter from Cofield Law Office detailing the applicable TDC sections relevant to this appear how the above-referenced decision does not conform with the TDC and how the applicant is adversely affected by the decision.
Appeal of Staff Architectural Review decision to ARB: \$0. Appeal of Decision to Council: Please see Your signature current fee schedule.
FOR OFFICE USE ONLY: Received by Planning Received by Engineering Date received: Fee received Receipt No Check # The review will be heard by the APR City Council Date of bassing:

COFIELD LAW OFFICE 2716 NW MONTE VISTA TER PORTLAND, OR 97210

JPMorgan Chase Bank, N.A. www.Chase.com

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10/26/2017

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Request for Appeal MAR 17-0041

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City of Tualatin

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NOTICE OF ADOPTION of a Planning Commission Decision

On April 19, 2018, the City of Tualatin Planning Commission adopted **Resolution No. 6-18TPC** (File No. VAR18-0001) granting a resolution for a Variance application submitted by the Tualatin Professional Center for a variance to the standards imposed under TDC 73.360(6)(a) (Off-Street Parking Lot Landscape Islands) and TDC 73.400 (11) (Access) located at 6464 SW Borland Rd. (Tax Map 2S1E 30B 9000).

A copy of the resolution is available for review at the Tualatin Community Development Department – Planning Division located at 18880 SW Martinazzi Avenue from 8:00 a.m. to 5:00 p.m., Monday through Friday.

This decision is final unless a Request for Review is filed within 14 calendar days from the date of this mailing. A written Request for Review must be received by the Community Development Department – Planning Division at 18880 SW Martinazzi Avenue, Tualatin, OR 97062 before 5:00 p.m. The appeal must be submitted on the City Request for Review (i.e.Appeal) form with all the information requested, as required by TDC 31.078, and signed by the appellant. Only those persons who submitted comments during the notice period or testified at the public hearing may submit a Request for Review. The appeal forms must include reasons, the appeal fee, and meet the requirements of Section 31.078 of the Tualatin Development code.

Date notice mailed: May 1, 2018

file: VAR18-0001

RESOLUTION NO. 6-18TPC

A RESOLUTION OF THE PLANNING COMMISSION ADOPTING THE VARIANCE APPLICATION SUBMITTED BY THE TUALATIN PROFESSIONAL CENTER (VAR-18-0001)

WHEREAS, on April 19, 2018, a quasi-judicial public hearing was held before the Planning Commission for consideration an application submitted by the Tualatin Professional Center for a variance to the standards imposed under TDC 73.360(6)(a) (Off-Street Parking Lot Landscape Islands) and TDC 73.400(11) (Access);

WHEREAS, notice of public hearing was given as required by the Tualatin Development Code;

WHEREAS, the Planning Commission heard and considered the testimony and evidence presented on behalf of the applicant, City staff, and those appearing at the public hearing; and

WHEREAS, after the conclusion of the public hearing the Planning Commission deliberated and by this resolution makes its decision.

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Variance (VAR-18-0001), considered by the Planning Commission is hereby (check one): X Approved as follows:

- A. The applicant is authorized to construct a landscape area that is 5 feet in width for a depth of 25 feet from back of sidewalk, rather than property line as required by the standard in TDC 73.360(6)(a).
- B. The applicant is authorized to provide 32-foot-wide access drives for a depth of 25 feet from back of sidewalk, rather than the required depth of 50 feet from right of way as required by the standard in TDC 73.400(11).

□ Approved with the following Conditions:				
□ Denied.				

Section 2. The Planning Commission adopts as its findings the *Analysis and Findings* set forth in Exhibit 1, which includes the list of conditions, if any, and which is attached and incorporated herein.

Section 3. This resolution is effective upon adoption.

Adopted by the Planning Commission this /9 day of April , 2018.

CITY OF TUALATIN, OREGON

BY Milliams beet

APPROVED AS TO FORM ATTEST:

BY 5-15 BY Limeto Sante

Attorney

TUALATIN PROFESSIONAL CENTER (TPC)

VARIANCE APPLICATION (VAR-18-0001)

ATTACHMENT B: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request to the standards imposed under TDC 73.360(6)(a) (Off-Street Parking Lot Landscape Islands) and TDC 73.400(11) (Access) to restore two existing access driveways onto SW Sagert Street. The medical condominium is located at 6464 SW Borland Road (Tax Map/Lot: 2S1E 30B 90000) and was developed in 1984. At the time, the site was constructed with southern access off a frontage road in the future SW Sagert Street right-of-way. The full-width improvements of SW Sagert Street are currently underway, as a result of the Sagert Farm subdivision project (SB15-0002).

TDC 73.360(6)(a) states, "Except as in (b) below, site access from the public street shall be defined with a landscape area not less than 5 feet in width on each side and extend 25 feet back from the property line for commercial, public, and semi-public development with 12 or more parking..." The applicant is asking to provide a landscape area that is 5 feet in width for a depth of 25 feet from back of sidewalk, rather than property line. Landscaping on the western access drive is proposed at a depth of 17.75 feet from property line and the eastern access drive at a depth of 19.38 feet.

TDC 73.400(11) states, "...ingress and egress for commercial uses shall not be less than the following: 32 feet for first 50 feet from right of way, 24 feet thereafter." The applicant is proposing 32-foot-wide access drives for a depth of 25 feet from back of sidewalk. The western access drive gradually narrows down to 24.78 feet near 50 feet from right of way and the eastern drive narrows down to 27.63 feet.

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.020(1) and three of the four approval criteria of (2)-(5). The applicant prepared a narrative that addresses the criteria, which is included within the application materials (Attachment B), and staff has reviewed this and other application materials and included pertinent excerpts below.

The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in italic font.

<u>Section 33.020 Conditions for Granting a Variance that is not For a Sign or a Wireless Communication</u> Facility.

No variance shall be granted by the Planning Commission unless it can be shown that criterion (1) is met and three of the four approval criteria (2)-(5) are met for non-sign requests:

(1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.

Applicant Response to hardship created by exceptional or extraordinary conditions: The TPC property was developed in the 1980's through a partition of its eastern property and Architectural Review (AR 83-06) of four medical buildings. The project was conditioned to provide half-street improvements along SW

VAR-18-0001 Tualatin Professional Center (TPC) April 19, 2018 Page 2 of 9

Sagert Street. Rather than requiring construction, the City entered into Development Agreement 84-16657 that allowed the development to proceed without making the improvements to SW Sagert Street. TPC's property is unique in that the frontage road to serve the southern accesses was not developed with the planned Sagert Street. Also unique to TPC's property was the fact that the property to the south and east was still being used for farming and essentially undeveloped. In 2015, Lennar Homes Northwest ("Lennar") applied to construct Sagert Farm, a 79 residential lot subdivision to the south and east of the subject property. With the Sagert Farm subdivision review, the full width improvements of SW Sagert Street were approved. These improvements induced changes to TPC's two southern accesses. TPC applied for restoration of its two southern accesses in MAR 17-0041 and learned the two driveway standards in question would create a severe hardship on the loss of existing parking stalls. The parking spaces that would be lost are located close to the two entrances and Building D, allowing safe access for TPC's clients. Additionally, of those 17 parking spaces, which would be lost, 3 are currently dedicated handicapped parking spaces which serve some of TPC's most vulnerable clients.

The four condominium buildings have double frontage (onto SW Borland Road to the north and SW Sagert Road to the south). To the west is SW 65th Street so the site is surrounded on three sides by major city streets (Attachment A - Exhibit 4). Two of the four medical office buildings have lower levels that gain their access from Borland Road. Because of this grade difference of having two levels, there is a nearly ten-foot boulder retaining wall separating the two Borland Road driveways, essentially dividing the west parking lot from the east parking lot (Attachment A -Exhibit 6). The design of SW Sagert Street was constrained by logistical elements. Sagert Street was required to align with the existing three legs of SW 65th Avenue and SW Sagert Road intersection, respect the existing Sagert right-of-way dedication by TPC from the early 1980's, and align with its eastern street connection at Sequoia Ridge. These constraints along with the topography of the site established the location and grade of Sagert Street. The full width of the required improvements of Sagert Street advanced their proximity to the TPC complex, specifically at Building D.

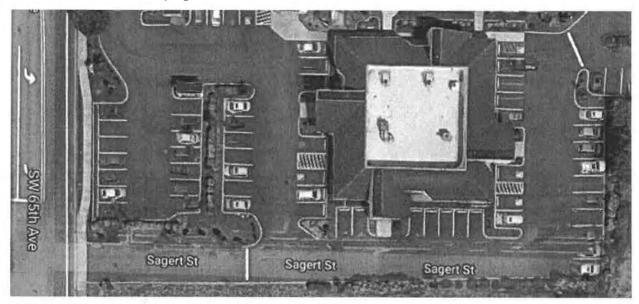
Applicant Response for 73.360(6)(a): Providing a 5-foot wide landscape area for a depth of 25-feet from the TPC property line would result in a loss of at least seventeen parking stalls. This is a hardship that is created by exceptional or extraordinary conditions that do not apply generally to other properties in the vicinity and the conditions are a result of lot size, shape, topography and the physical circumstances applying to the TPC property over which the owner has no control.

The topographical and site constraints with the existing medical buildings makes TPC's property unique. The condominium building development cannot be moved or reconfigured without severe hardship and significant expense to TPC. Therefore, if TPC were required to landscape 25 feet from the property line, as required by TDC 73.360(6), it would cause severe hardship to TPC and its patients by losing valuable parking spaces adjacent to Building "D".

Instead of 25 feet of landscaping along the driveways from the property line as required by this section of the Code, TPC is requesting variance relief to provide a landscape area at a 25-foot depth from the back of sidewalk. TPC is requesting minimal variance relief to landscape area from the property line as follows: 5.8' on the west side and 7.25' on the east side of the west driveway and a 5.62' variance to landscaping on the east side of the east driveway as documented. The west side of the east driveway exceeds the 25-foot standard being 26.97' of landscaping from the property line. The total landscaped area along the two driveways will visually comply with what the Code envisions, as TPC will landscape 25 feet from the back of the sidewalk along its ingress and egress. This will exceed a 25-foot long landscape area as follows: the west driveway will have over 28' of landscaping on either side and on the east driveway there will be 35' on the west side and 28' on the east side. By landscaping to back of sidewalk on either side of both

VAR-18-0001 Tualatin Professional Center (TPC) April 19, 2018 Page 3 of 9

driveways, the visual look of the landscaping on either side of the two driveways will exceed the code standard of 25' of landscaping.



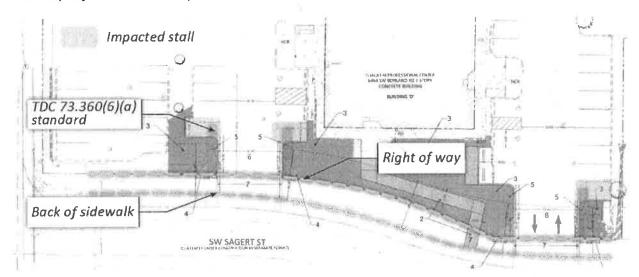
Staff Response: The existing western access drive provides an approximate depth of 12 feet of landscape area from property line. The existing eastern access drive is an extension of the frontage road constructed in the 1980s; therefore, no landscape area defines the depth of the access. The site layout and circulation pattern served the unique needs of the business at the time. Additionally the development was reviewed through Architectural Review (AR 83-06) in 1983, prior to an amendment implementing current code standards (Plan Text Amendment 91-06 and Ordinance 862-92) requiring 25-foot depth of landscaping from the property line. A retrofit of the existing condition would be necessary for the southern two access drives to meet the TDC 73.360(6)(a) standard. This presents a unique physical circumstance for the property owner. The variance is the minimum remedy to allow the business to meet operational needs in light of the physical constraints.

The applicant addresses topographical constraints but provides no calculations or profiles. TualGIS (City program that provides aerial imagery and site data) provides evidence that the site has a high elevation of 228 ft on the west side of the property and slopes down to 214 feet on the east side, a difference of 14 feet. The property was developed with respect to the naturally sloped environment, and the western and eastern areas of the site are separated by a retaining wall, preventing internal circulation.

Staff additionally visited the site on November 29, 2017 and found that the access on TPC property is located approximately 3-4 feet higher than the improved SW Sagert Street. The area of these access drives will need to regraded to match the roadway, providing an additional, unique hardship to the site.

Sheet V1 (below) illustrates a curb tight sidewalk along SW Sagert Street, south of the TPC site. There is approximately 10 feet of landscape strip between the back of sidewalk and southern property line. The applicant is proposing an additional 17.75 to 19.38 feet of landscape area beyond the strip. City road standards generally require a curb tight landscape strip then sidewalk. This section of Sagert Street was modified to match existing conditions of the surrounding vicinity, creating an extraordinary condition. The variance allowance to combine the landscape area in the public right of way and private landscape area

would exceed the intent of 25 foot depth requirement. It will also comply with the intent to use landscaping to visually define the accessway.



There is a discrepancy in evaluating the loss of parking when strictly evaluating this access standard. Two stalls from the proposal will be impacted at the western access drive and one at the eastern access drive if the TDC 73.360(6)(a) standard is imposed. No ADA stalls are impacted. Seven existing stalls take direct access off the former frontage road or SW Sagert Street right of way and are not lost as a result of this standard.

This criterion is met.

Applicant Response for 73.400(11): Providing two 32 foot wide driveways for a length of 50 feet would result in the removal of at least seventeen parking stalls. This hardship is created by the exceptional or extraordinary conditions that do not apply generally to other properties in the vicinity and the conditions are a result of lot size, shape, topography and the physical circumstances applying to the TPC property over which the owner has no control.

TPC has worked with an engineering firm, KPFF, to attempt to reconfigure its parking lot to comply with TDC 73.400(11). Through this effort, KPFF has created a proposal of modified parking spaces and reconfigured TPC's parking lot.

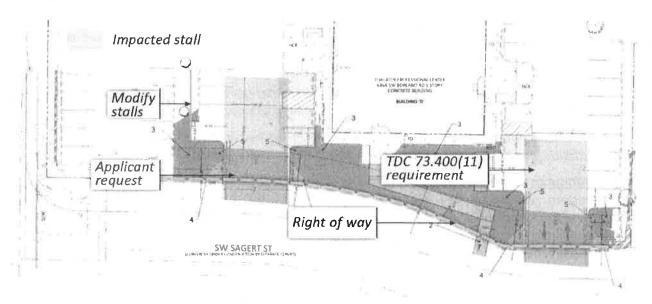
The existing access drives are approximately 24 feet wide. A retrofit of the existing condition would be necessary for the southern two access drives to meet the TDC 73.400(11) standard. This presents a unique physical circumstance for the property owner.

Building D is setback approximately 21 feet from the southern property line and is generally centrally located between the two access drives. Building D has an existing 5 foot wide sidewalk and 3.5 foot wide landscape strip on the west and east elevation. Due to the existing configuration, standard 18.5 foot long parking stalls would be impacted by the required 32 foot wide by 50-foot deep ingress/egress requirement.

There is also a discrepancy in evaluating the loss of parking, when strictly evaluating this access standard. Three stalls from the proposal will be impacted at the western access drive and one at the eastern access drive (below) if the TDC 73.400(11) standard is imposed. Three of the impacted stalls are designated ADA. Four stalls along the western access drive may be modified to avoid impacts. Seven existing stalls take

VAR-18-0001 Tualatin Professional Center (TPC) April 19, 2018 Page 5 of 9

direct access off the former frontage road or SW Sagert Street right of way and are not lost as a result of this standard.



The applicant is proposing 32-foot-wide access drives for a depth of 25 feet from back of sidewalk. The western access drive gradually narrows down to 24.78 feet near 50 feet from right of way and the eastern drive narrows down to 27.63 feet.

The applicant has provided a Technical Letter #2 – Site Access Evaluation, authored by Clemow Associates, LLC and dated January 25, 2018. This letter references the National Cooperative Highway Research Program (NCHRP) Report 659 that contains guidelines for driveway design. Based on the NCHRP Guide, a total necessary driveway throat length of 23-24 feet is recommended for the subject site to avoid potential vehicle stacking or pedestrian conflicts. The applicant is proposing a driveway length of 25 feet from back of sidewalk, which exceeds the professional recommendation in Exhibit 7.

This criterion is met.

(2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or financial situation of the applicant or owner, or from regional economic conditions.

<u>Applicant Response for 73.360(6)(a)</u>: Because the landscaping requirement in this section of the Code is tied to ingress and egress, the resulting hardship is similar to that present in the access variance request below. The hardship results from the sloping nature of the property as well as the use of the buildings as medical offices serving those with intensive medical needs.

If TPC is required to meet this section of the Code with the associated 25-feet of landscaping required in this section of the Code, it will be required to remove some of its most convenient parking spaces, as well as three handicapped spaces, in closest proximity to Building D. If this variance is approved, TPC will landscape the length of the approved driveways to the back of sidewalk, which will effectively offer more than 25-feet of landscaping on the two access driveways, as mentioned elsewhere in this narrative. The City's underlying goal, as noted below where this narrative addresses criteria 4, will be satisfied. The

VAR-18-0001 Tualatin Professional Center (TPC) April 19, 2018 Page 6 of 9

modified landscaping will provide shade for the parking lot, reduce stormwater runoff and beautify the frontage of Sagert Street.

As mentioned in Criterion 1, the proposal involves a retrofit of an existing site to match the full width improvements of SW Sagert Street. Development standards have changed in the 34 years since the property was developed. Ordinance 862-92 through Plan Text Amendment 91-06 incorporated this landscape standard in 1991, creating a unique circumstance to the site's physical features. Additionally, the site is served by two parking areas that are separated by grade, providing no internal circulation. As a result, the applicant needs to retrofit both southern accessways, as opposed to just one.

The hardship does not result from the applicant or owner's actions, from personal circumstance, from financial situation, or from regional economic conditions. This criterion is met.

Applicant Response for 73.400(11): The hardship results from the location of the TPC property, which is a corner lot surrounded on three sides by major roads, two of which provide access to the property. The hardship also results from the sloping nature of the property, as well as, the use of the buildings as medical offices serving those with intensive medical needs. When the property was improved in the 1980's, the developer had limited options to design the approved condominium development because of the slope present on the property, as well as, the built and planned streets that surround three sides of the property (Exhibit 6 and 4). The design that was approved in the 1980's involves four buildings that offer medical services. Building D, is the building that is most impacted by the 32-foot wide by 50-foot depth. Due to the vulnerable, often frail, state of the patients, they need convenient parking close to Building D. If TPC is required to meet this section of the Code and extend its driveway to 50 foot throat lengths, it will be required to remove some of its most convenient parking spaces, as well as three handicapped spaces, in closest proximity to Building D. Exhibit 2. The hardship results from the slope on the property and approved use of the site, not from the actions for the applicant or owner.

As addressed above in TDC 73.360(6)(a), this criterion is met.

(3) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same planning district or vicinity.

Applicant Response for 73.360(6)(a): Because this TDC section is tied closely to TPC's ingress and egress, the underlying purpose of the variance is the same: to allow TPC to continue to use its property for a parking lot to serve its clients in substantially the same layout as has the last thirty years. As it currently exists, the parking lot provides safe, efficient access for TPC's patients into its facility. The current landscaping serves to beautify the City and to create a welcoming, professional appearance for TPC's clients.

With the requested variance, TPC will continue to landscape its access driveways yet will continue to maintain the parking spaces necessary to serve its clients. It will continue to provide a welcoming, professional environment and also designated handicapped parking spots for TPC's most vulnerable patients and convenient access to parking lots both on the east and west sides of the building. Other property owners in the vicinity are permitted parking lots on their property which are designed in a manner to most effectively serve their patrons and which are landscaped in a professional, welcoming manner. With the variance to TDC 73.360(6), TPC requests the same treatment as other property owners in the vicinity.

VAR-18-0001 Tualatin Professional Center (TPC) April 19, 2018 Page 7 of 9

The purpose of landscaping along the access drives is to help define to the public where to access a site. The applicant's proposed landscaping depth in combination with the public right-of-way landscaping will address the intent of the code. This criterion is met.

Applicant Response for 73.400(11): The variance is necessary to allow TPC to continue to use its property for a four building medical complex in substantially the same layout as has existed the last thirty years. As it currently exists, the two southern accesses provide safe, efficient access for TPC's patients into its facility. There are designated handicapped parking spots for TPC's most vulnerable patients and convenient access to parking lots both on the east and west sides of the building. Other property owners in the vicinity are permitted parking lots on their property, which are designed in a manner to most effectively serve their patrons. The parcels to the immediate east and west of the subject parcel are zoned Commercial Office (CO), as is the subject parcel, and are improved with office buildings currently used for medical offices or laboratory services. Both the parcels to the east and west have large parking lots to serve their patrons(Exhibit 4). Similarly, the parcel to the immediate north includes medical offices and the Legacy Meridian Park Medical Center.

The Clemow and Associates evaluation found that the TPC property is in a suburban location in which the relative importance of motor vehicles is high and the other modes (bicycle and pedestrian traffic and availability of public transit) is low (Exhibit 7). The Clemow evaluation concludes that with the two driveway lengths of twenty-five feet from back of sidewalk, TPC will have a parking lot that is safe and efficient. With the variance request to TDC 73.400(11), TPC requests the same treatment as other property owners in the vicinity.

This criterion is met.

(4) The variance shall not be detrimental to the applicable objectives of the Tualatin Community Plan and shall not be injurious to property in the planning district or vicinity in which the property is located.

<u>Applicant Response for 73.360(6)(a):</u> In Goal 1 (General Provisions), the City emphasizes the importance of creating shaded areas in parking lots to reduce glare and heat buildup, reduce impervious surface area and stormwater runoff, provide visual relief within paved parking areas and enhance the visual environment.

As a condition of variance approval, TPC will provide an updated landscape plan, which will provide landscaping along the reduced driveways and include trees, shrubs and other plants to shade the access driveways and parking lots, reduce stormwater runoff and provide visual relief.

Therefore, TPC's variance request will not be detrimental to the applicable objectives of the Tualatin Community Plan. Instead, with the variance proposal, TPC will further the objectives of Tualatin's Community Plan by shaded parking areas, reducing stormwater runoff, providing visual relief and enhancing the natural environment.

The applicant is referencing the Tualatin Development Code 73.320(1) Off-street parking lot landscaping standards, general provisions.

Section 6.040 of the Tualatin Community Plan describes the purpose of each commercial planning district: Office Commercial Planning District (CO). To provide areas suitable for professional office uses adjacent to or across from residential areas. Restaurants may be allowed by conditional use permit when designed as an integral part of a major office complex. It is the intent of this district to provide for office development ranging in size from small buildings with one or two tenants to large complexes housing business

VAR-18-0001 Tualatin Professional Center (TPC) April 19, 2018 Page 8 of 9

headquarters offices. In the design of development in this district, care shall be taken to preserve significant natural resources and to provide extensive perimeter landscaping, especially adjacent to residential areas and streets.

Providing a landscape area that has a depth of 25 feet from back of sidewalk will be compatible with the Tualatin Community Plan. This area will also define the site ingress/egress and will not be injurious to the vicinity. This criterion is met.

<u>Applicant Response for 73.400(11):</u> TDC 11.610 includes Tualatin's Transportation Goals and Objectives. In Goal 1 (Access and Mobility), Goal 2 (Safety) and Goal 4 (Equity), the City emphasizes the importance of providing safe and efficient travel for users of all ages and abilities.

TPC hired Clemow & Associates, transportation engineers, to analyze its proposal at the heart of this variance request for driveway throat lengths of approximately 25 feet. Clemow & Associates determined the "driveways can operate in a safe and efficient manner." Exhibit 7, page 1, Clemow Site Access Evaluation. Further, the "25-foot driveway throat lengths are anticipated to be sufficient to accommodate existing development traffic." Exhibit 7, page 2. TPC's variance request will not be detrimental to the applicable objectives of the Tualatin Community Plan. Instead, with the variance proposal, TPC will further the objectives of Tualatin's Community Plan by creating safe and efficient access to its property and, by continuing to offer four handicapped parking spots near the entrance to its Building D, allowing access for users of all abilities.

The applicant has provided a Technical Letter #2 – Site Access Evaluation, authored by Clemow Associates, LLC and dated January 25, 2018. This letter references the National Cooperative Highway Research Program (NCHRP) Report 659 that contains guidelines for driveway design. Based on the NCHRP Guide, a total necessary driveway throat length of 23-24 feet is recommended for the subject site to avoid potential vehicle stacking or pedestrian conflicts. The applicant is proposing a driveway length of 25 feet from back of sidewalk, which exceeds the professional recommendation in Technical Letter #2.

This criterion is met.

(5) The variance is the minimum remedy necessary to alleviate the hardship.

Applicant Response for 73.360(6)(a): The 5 to 7-foot requested variance to the landscaping standard for driveway accesses is the minimum remedy necessary to alleviate the hardship. As explained above, even though TPC is requested a variance of 5 to 7-foot to the landscaping standard of 25' from the property line, when measured from the back of sidewalk and using the planter ROW strip, the actual landscaping TPC will provide exceeds 25' on both driveways (Exhibit 3). Thus, TPC is requesting the minimum variance and mitigating any adverse result. Furthermore, TPC will reconfigure its existing parking stalls in order to request the minimum remedy necessary to the landscaping standard.

The applicant is proposing to vary from the 73.360(6)(a) standard by 5.62 to 7.25 feet, or by providing a landscape area depth of 19.38 to 17.75 feet from property line as illustrated on Sheet V1, dated 1/26/18. As this stretch of Sagert Street is designed with curb tight sidewalks then landscape strip, the variance proposal will provide a landscape depth of 28.55 to 35.13 feet from back of sidewalk.

The variance request is the minimum necessary to alleviate the hardship. This criterion is met.

VAR-18-0001 Tualatin Professional Center (TPC) April 19, 2018 Page 9 of 9

Applicant Response for 73.400(11): The variance is the minimum remedy necessary to alleviate the hardship. With the requested variance, TPC will still lose 1 parking space in its western parking lot and 4 parking spaces from the eastern parking lot. Also, it will be required to reconfigure its parking lot to reduce the size of the remaining parking spaces.

No parking illustrated on Sheet V1, dated 1/26/18 will be lost if this variance is granted. As stated in Technical Letter #2 – Site Access Evaluation, authored by Clemow Associates, LLC and dated January 25, 2018, the variance requested is the minimum necessary to alleviate the hardship.

This criterion is met.

SUMMARY OF ANALYSIS AND FINDINGS

Based on the application materials and the analysis and findings presented above, staff finds that VAR-18-0001 meets all criteria of TDC 33.020 "Conditions for Granting a Variance that is not For a Sign or a Wireless Communication Facility."



Dorothy S. Cofield, Attorney at Law

To: Tualatin City Council

Subject: Tualatin Professional Center's Continued Request for Review (MAR17-0041) and Request to Council to Reopen Record to Consider New Evidence of the Planning Commission's Variance Decision and TPC's New Plans Incorporating VAR 18-0001

Property Address: 6464 SW Borland Road, Tualatin, OR 97062

Date: May 2, 2018

Background Information

Tualatin Professional Center (TPC) through its engineering firm, KPFF, applied for a Minor Architectural Review permit on August 21, 2017 to restore its two southern driveways which incorporated the Lennar C220 plan and essentially restored the existing driveways that had been used for many years. The site plan that TPC asked the planning division to approve is shown on Sheet No. C-300 (hereinafter "Set 1"). MAR 17-0041. See Attached Exhibit "A" – "Orig Design".

The planning department approved MAR 17-0041, subject to a number of conditions. *See Attached October 12, 2017 Decision Letter.* TPC could not meet Conditions 5 and 6 without severely impacting the existing parking configuration around Building "D." *See Attached Exhibit "B"* (hereinafter MAR Decision)"

The conditions TPC appealed to the Council were¹:

- (1) Tualatin Development Code (TDC) 73.400(11) that required a fifty foot driveway from each southern entrance off of Sagert St. and
- (2) TDC 73.360(6)(a) that required twenty-five feet of landscaping along either side of the two rebuilt fifty foot driveway aisles.

TPC could not construct the MAR Decision, because the fifty-foot driveway aisles reduced the number of parking stalls around the southern portion of Building "D" and took out three handicapped parking spaces. Exhibit "B" shows the result of the October 12, 2017 MAR 17-0041 Decision and why TPC had to appeal the MAR Decision to this Council.

¹ TPC also asked in its Request for Review to delete the section in the Decision entitled "The Following Code Requirements Apply to the Site in an On-Going Manner." The planning director has informed TPC that it no longer puts that language in MAR decisions as shown in the Rivercrest Meadows Apartments Decision, attached hereto and made a part hereof.

TPC appealed MAR 17-0041 in its Request for Review and appeared before the Council on December 11, 2017. The Council advised TPC that it could not grant the appeal without a variance to TDC 73.400(11) and TDC 73.360(6)(a).

To that end, TPC appeared before this Council on January 8, 2018 and requested a suspension of its appeal to April 23, 2018 in order to apply to the planning commission for a variance to TDC 73.400(11) and TDC 73.360(6)(a) so that a revised Set 1 could be approved. *See Record:* "Motion to Suspend Appeal and Future City Council Process if Variance Granted by Planning Commission" - as quoted below in part:

- "Architectural Review Hearing to be held by City Council on or before April 23, 2018.
- Tualatin Professional Center will request that the City Council Consider new evidence of the Planning Commission's Variance Decision.
- o City Staff will need to renotice the Architectural Review Hearing.
- City staff will make a new recommendation to the City Council based upon the Planning Commission's Variance Decision.
- City Council will need to reopen the record of the Architectural Review Hearing to allow submittal of the Variance decision information and evidence.
- City Council will conduct the Architectural Review Hearing.
- Conclude the hearing.
- o Deliberate and decide."

Following the Council procedure stated above, TPC applied for the variance in VAR 18-0001. The planning commission approved the variance request in a 6-0 vote on April 19, 2018. See Staff Record - Resolution No. 6-18TPC. The planning commission approved TPC's proposed plan as is now shown in Plan Set 2, Sheet C300. See Exhibit "D" – "May 2018 MAR Decision With Approved Variance." It shows the two proposed southern driveways with the granted variance allowing two thirty-two foot wide driveways, each having a twenty-five foot driveway aisle as measured from back of sidewalk and landscaping that exceeds the twenty-five foot standard from the back of sidewalk, along each side of the proposed driveways.

On April 23, 2018, TPC supported staff's motion to continue the MAR 17-0041 appeal to May 14, 2018 to allow staff time to incorporate the variance approval into a Resolution and re-notice the MAR 17-0041 Request for Review.

In this May 14, 2018 hearing, TPC is asking Council to modify Conditions 5 and 6 in the MAR Decision and issue a new Decision. Since the Request for Review was filed, TPC has worked very hard to satisfy the other conditions in the October 12th Decision and if the Council grants the Appeal, TPC can then move forward with its building permits. In other words, the Council will be issuing a modified MAR 17-0041 Decision that will allow TPC to build the design shown in complete Plan Set 2. See Attached "Sagert Street Entrances Access Restoration" Sheets C000,

C100, C200, C300, C400, C500, C501, L100, L101, L200, L201 (Plot date 5.2.18) (hereinafter "Set 2").

The MAR 17-0041 Decision (dated October 12, 2017) lays out the requirements for the restoration of TPC's two driveways. This memorandum will track the MAR Decision in regular font for the existing, imposed conditions and explain how each criterion is met *in italics* as follows:

Prior to Erosion Control Permit Approval:

- 1. Prior to applying for permits on the subject site, the applicant must submit one revised paper plan set 24 x 36. a paper narrative, and electronically in Adobe PDF file format for review and approval to the Planning Division that meet the conditions of approval below. The narrative must explain how and on what page each condition of approval has been met. The submittal must contain page numbers and a table of contents. No piecemeal submittals will be accepted. Each submittal will be reviewed in two (2) weeks. The applicant has prepared a paper plan set 24 x 26 (Set 2) which staff has reviewed as part of this continued MAR 17-0041 Request for Review. All conditions can be met as shown in Plan Set 2 and this memorandum. This condition is met.
- 2. The applicant must submit plans that illustrates a six foot wide ADA compliant walkway between the main entrance of the southern building of the TPC complex (Building D) and SW Sagert Street and install to approved plan set pursuant to TDC 73.160(1)(a)(i). Attached Plan Set 2, Sheet C300 shows the ADA walkway that meets all of the requirements of TDC 73.160(a)(i).
- 3. The applicant must submit a landscape plan that illustrates areas within the defined project area that are not occupied by buildings, parking spaces, driveways, drive aisles, and pedestrian areas are landscaped and install to approved plan set pursuant to TDC 73.310(3). Attached Plan Set 2, Sheet 200 shows the new landscaping that meets TDC 73.310(3). It will be maintained and irrigated as shown on Plan Sheet L100 and L101.
- 4. The applicant must submit a revised landscape plan that notes a clear zone will be provided at the proposed access drive entrances vertically between a maximum of thirty inches and a minimum of eight feet as measured from the ground level pursuant to TDC 73.340(1). Plan Set 2, Sheet L200 shows the clear zone areas on each southern driveway labeled as "Vision Clearance Triangle."
- 5. The applicant must revise the appropriate sheets to illustrate landscape areas not less than five feet in width on each side of the southern two access drives located off of Sagert Street that extend for a distance of at least twenty-five feet from the property line and install to approved plan set pursuant to TDC 73.360(6)(a). The applicant appealed this criterion and was granted relief in VAR 18-0001. The attached Plan Set 2, Sheet L200 shows that the two restored driveways will be landscaped from the back of sidewalk, for twenty-five feet. With the granted variance to TDC 73.360(6)(a), this criterion is met.
- 6. The applicant must revise the appropriate sheets to provide evidence that two on-site access drives are thirty-two feet wide for the first fifty feet from the public right-of-way

- and install to approved plan set pursuant to TDC 73.400(11). The applicant appealed this criterion and was granted relief in VAR 18-0001. Plan sheet C300 shows the two driveways which are thirty-two feet wide and are twenty-five feet from the back of sidewalk as approved by the planning commission.
- 7. The applicant must apply for a Public Works Permit for all work within public right-of-way and an Erosion Control permit for all disturbed area. *Plan Set 2, Sheet C200 shows the applicant's proposed erosion control plan. With this information, the applicant can meet this condition as a condition of approval.*
 - (a) Provide an engineered plan that shows plan and profile of the proposed driveway connections and proposed pedestrian connections. All improvements must match back of sidewalk grades currently being constructed by Lennar Homes as part of public works permit number PW 16-0211. Plan must meet requirements of Engineering Division for review and approval pursuant to Tualatin Public Works Construction Code and must be approved by the Engineering Division. Plan Sheet C300 shows the area subject to the public works permit. Plan Set 2, Sheet C300. Note 6, shows how the driveways will connect to the Sagert sidewalk. Plan Sheet C400 shows the grading plan and profile of the proposed driveway connections.
 - (b) Show back of sidewalk grades match the elevations of SW Sagert Street right-of-way improvements currently being constructed by Lennar Homes as approved by Public Works Permit No. PW 16-0211. Plan Set 2, Sheet C400 shows the back of sidewalk grades that will match the elevations of SW Sagert Street.
 - (c) If proposed pedestrian connection to the Sagert Street sidewalk is the ADA accessible route to the public right-of-way, then improvements in the right-of-way must meet ADA criteria set forth in the 2010 Public Rights of Way Design Guidelines (PROWAG) including running slope, cross slope, and all other relevant requirements. Plan Set 2, Sheet C300 shows the portion of the sidewalk that is in the public right-of-way. It will be a concrete sidewalk, six feet wide that meets all of the ADA criteria set forth in the in the 2010 Public Rights of Way Design Guidelines as a condition of approval.

TPC hereby requests the City Council to re-open TPC's continued Request for Review of MAR 17-0041; accept the new evidence offered in this Memorandum as exhibits, as well as the complete VAR 18-0001 planning commission file; grant TPC the Request for Review to modify Conditions 5 and 6 (to allow the twenty-five foot driveway throats and with twenty five feet of landscaping on both sides of each access) and issue its architectural review decision consistent with this Memorandum and Plan Set 2.

Attachments:

Exhibit "A" – August 21, 2018 "Orig Design" from Plan Sheet C300 Exhibit "B" – October 12, 2017 MAR Decision with TDC 73.400(11) Exhibit "C"- October 12, 2017 MAR Decision with Parking Loss Exhibit "D" May 2018 MAR Decision with Approved Variance

KPFF Plan Set 2, Plot Date 5.2.18 Sheets C000, C100, C200, C300, C400, C500, C501, L100, L101, L101, L200, L201 (Sent by KPFF, via City's Server)
Rivercrest Meadows Final Decision AR 17-0007
TPC Motion to Suspend, 1.8.18 (In Record)
Resolution 6-18 & Planning Commission Variance Decision (Staff Submission with Staff Report)

- (a) Provide an engineered plan that shows plan and profile of the proposed driveway connections and proposed pedestrian connections. All improvements must match back of sidewalk grades currently being constructed by Lennar Homes as part of public works permit number PW 16-0211. Plan must meet requirements of Engineering Division for review and approval pursuant to Tualatin Public Works Construction Code and must be approved by the Engineering Division. Plan Sheet C300 shows the area subject to the public works permit. Plan Set 2, Sheet C300, Note 6, shows how the driveways will connect to the Sagert sidewalk. Plan Sheet C400 shows the grading plan and profile of the proposed driveway connections.
- (b) Show back of sidewalk grades match the elevations of SW Sagert Street right-of-way improvements currently being constructed by Lennar Homes as approved by Public Works Permit No. PW 16-0211. Plan Set 2, Sheet C400 shows the back of sidewalk grades that will match the elevations of SW Sagert Street.
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TPC hereby requests the City Council to re-open TPC's continued Request for Review of MAR 17-0041; accept the new evidence offered in this Memorandum as exhibits, as well as the complete VAR 18-0001 planning commission file; grant TPC the Request for Review to modify Conditions 5 and 6 (to allow the twenty-five foot driveway throats and with twenty five feet of landscaping on both sides of each access) and issue its architectural review decision consistent with this Memorandum and Plan Set 2.



March 21, 2018

Michael McLaughlin Myhre Group Architects 620 SW 5th Ave Portland, OR 97204

RE: FINAL DECISION FOR AR17-0007 RIVERCREST MEADOWS APARTMENTS - CLUBHOUSE CONVERSON, 11795 SW TUALATIN ROAD (TAX LOT 2S115C001600)

Dear Mr. McLaughlin,

The 14-day period for requesting a review of the Architectural Review Decision for Rivercrest Meadows Apartments expired at 5:00 pm, March 15, 2018. As no requests for review were filed, the Architectural Review Decision dated March 1, 2018 becomes a final decision.

AR17-0007 is approved with the following Architectural Review conditions:

AF-1 Prior to applying for building permits on the subject site, the applicant shall submit 3 revised paper plan sets—24 x 36, a paper narrative, and electronically in Adobe PDF file format—for review and approval to the Planning Division that meet the conditions of approval below. The narrative shall explain how and on what page each condition of approval has been met. The submittal shall contain page numbers and a table of contents. No piecemeal submittals will be accepted. Each submittal will be reviewed in two (2) weeks.

PRIOR TO APPLICATION FOR A GRADING PERMIT:

- AF-2 In order to remove trees, the applicant must submit a Tree Preservation Site Plan and tree assessment that includes all details outlined in TDC 34.210(1). The granting or denial of a tree removal permit will be based on findings that address criteria in TDC 34.230.
- AF-3 The applicant must identify trees and other plant materials proposed for retention and appropriate protection fencing on grading plan sheets pursuant to TDC 73.250.
- AF-4 All trees depicted and identified on landscape plans (or similar) must be retained unless modified in accordance with TDC 73.100(1).

PRIOR TO APPLICATION FOR A BUILDING PERMIT:

AF-5 The applicant must provide illustrative and written evidence that TDC 73.130(3) is met. A minimum of 1,350 square feet of shared outdoor area must be provided onsite, of which a minimum of 450 square feet shall be dedicated to children's play area.

The applicant must provide evidence that year-round and active shared outdoor areas are provided. Examples of appropriate shared outdoor areas include gazebos, covered spaces, swimming pool areas, walking trails or sport recreation fields. Examples of appropriate children's

- play areas include sand boxes, bark chip areas, play structures, basketball courts, hard surface courts and wading pools.
- AF-6 The applicant must revise the appropriate sheets to note the location of postal delivery areas for the proposed three units pursuant to TDC 73.130(5)(a) and (b). Postal delivery areas must be well lit and provide safe pedestrian access.
- AF-7 The applicant must provide a landscaping plan that illustrates on and above-grade electrical and mechanical equipment is screened with sight obscuring fences, walls, or landscaping pursuant to TDC 73.130(5)(c).
- AF-8 The applicant must revise the appropriate sheets to increase the width of proposed walkways to six feet pursuant to TDC 73.130(7). Curb ramps must be provided wherever a walkway crosses a curb.
- AF-9 The applicant must provide a landscape plan that illustrates all areas not occupied by buildings, parking spaces, drive aisles, and pedestrian areas are landscaped pursuant to TDC 73.300. Proposed landscaping must meet the tree and plant specification standards of TDC 73.260.
- AR-10 The applicant must provide a landscape plan that illustrates a six foot wide landscaped transition area between parking areas and the building pursuant to TDC 73.330(4). Deciduous shade trees located at not less than 30 feet on center shall be located in this transition area. The trees shall meet the requirements of TDC 73.360(7). Groundcover plants mixed with low shrubs must completely cover the remainder of this area within three years. Native trees and shrubs are encouraged.
- AF-11 The applicant must provide a landscape plan that illustrates one additional deciduous shade tree be provided in the parking area pursuant to TDC 73.350(3).
- AF-12 The applicant shall comply with the incorporated Public Facilities Recommendation (PFR) from the City of Tualatin Engineering Division.

PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY:

- AF-13 The applicant must construct and provide the four surface parking stalls as shown and described in the submittal, pursuant to TDC 73.370(2).
- AF-14 The applicant shall submit scaled elevations that illustrate future above-grade mechanical equipment (including rooftop units) screened by a parapet or other method as proposed by the applicant when submitting for a mechanical permit, pursuant to TDC 73.160(4)(a).
- AF-15 The applicant shall construct proposed buildings and all site improvements as illustrated on approved plans and conditions of approval.

AR17-0007 is approved with the following Public Facilities Review conditions:

For questions or comments pertaining to PFR conditions, please contact Tony Doran at 503.691.3035.

PRIOR TO ISSUANCE OF AN EROSION CONTROL PERMIT:

- PFR-1 Obtain a City of Tualatin erosion control permit in accordance with code section TMC 3-5-060.
- PFR-2 Submit plans that are sufficient to obtain a Stormwater Connection Permit Authorization Letter that complies with the submitted Service Provider Letter conditions and obtain an Amended Service Provider Letter as determined by Clean Water Services for any revisions to the proposed plans.
- PFR-3 Submit PDFs of final site and permit plans.



Final Decision – AR17-0007 – Rivercrest Meadows March 21, 2018 Page 3

PRIOR TO ISSUANCE OF BUILDING PERMITS:

PFR-4 Obtain an Erosion Control Permit.

PRIOR TO A CERTIFICATE OF OCCUPANCY:

PFR-5 The applicant shall complete all private improvements.

Sincerely,

Erin Engman Associate Planner

Is

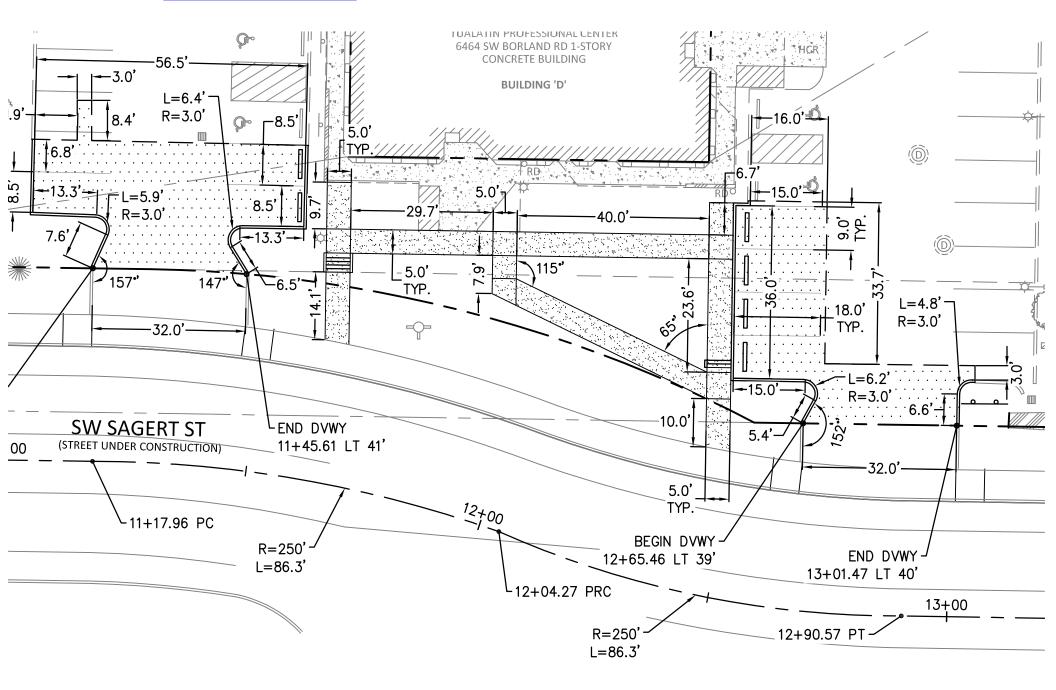
Cc: Aquilla Hurd-Ravich, AICP, Planning Manager

Tony Duran, Associate Engineer

jzuber@colrich.com File: AR17-0007



EXHIBIT A AUG 21, 2017 ORIG DESIGN



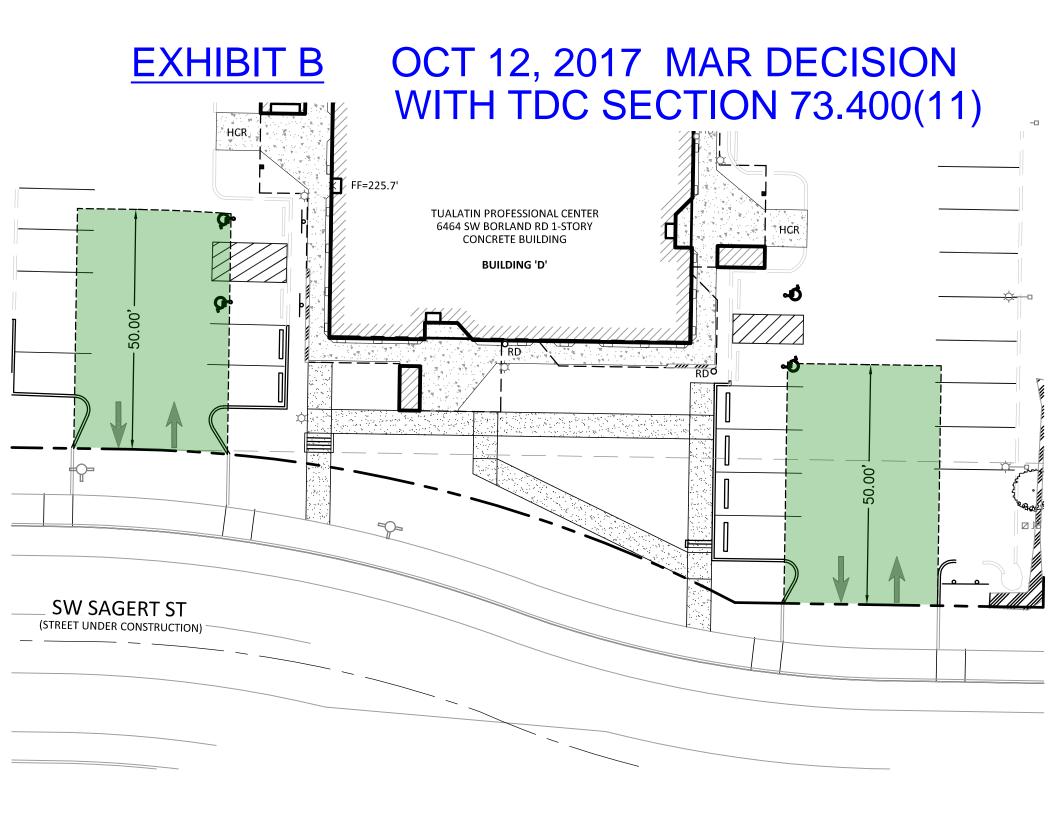


EXHIBIT C

OCT 12, 2017 MAR DECISION WITH PARKING LOSS

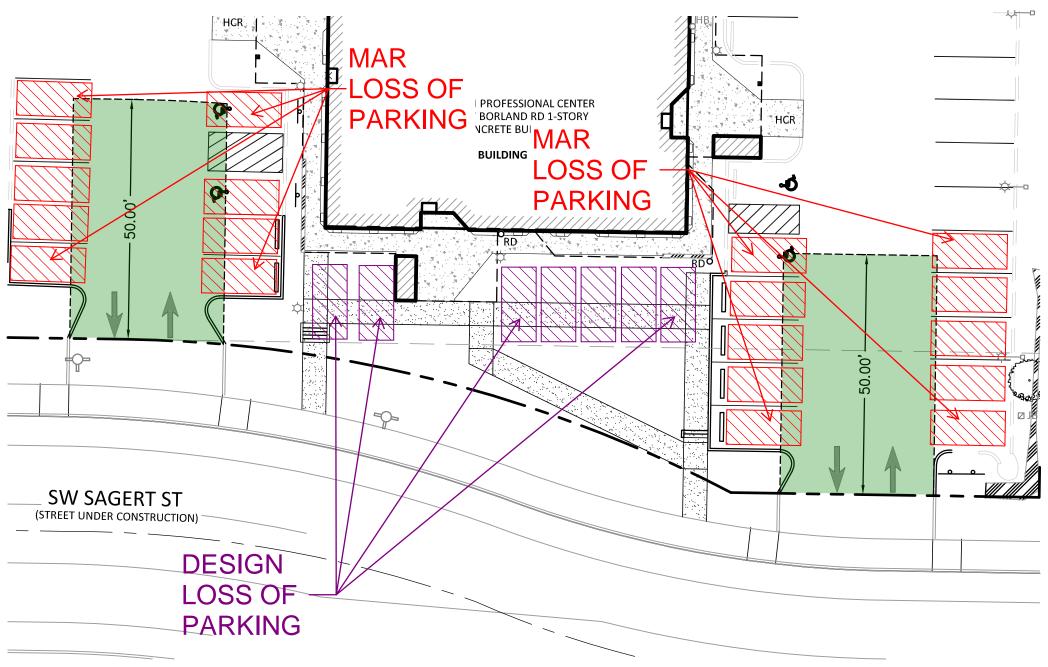
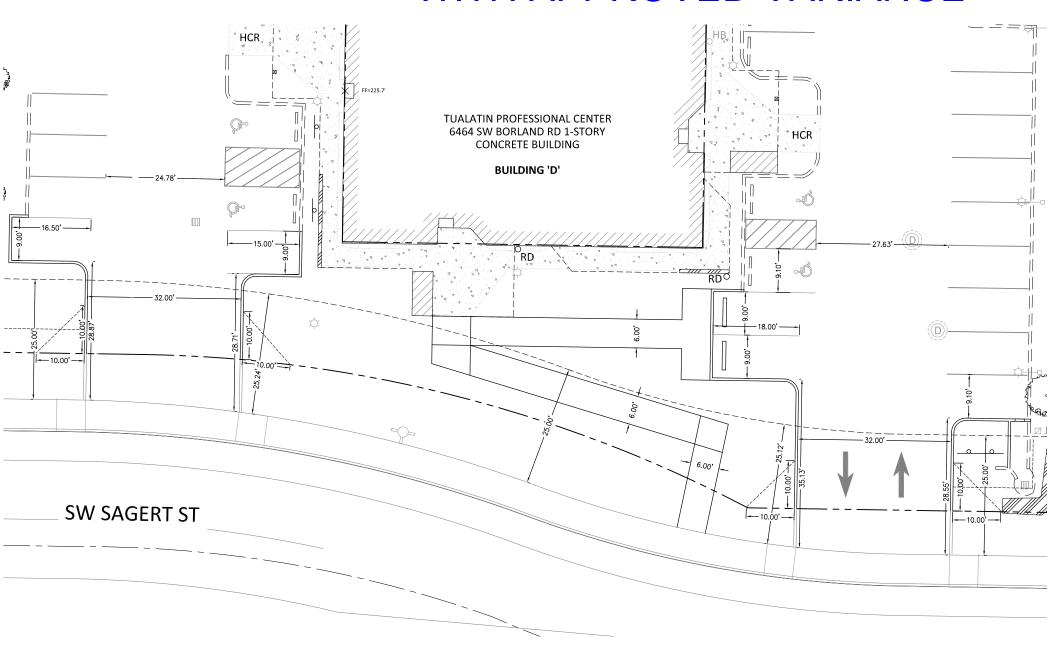


EXHIBIT D

MAY 2018 MAR DECISION WITH APPROVED VARIANCE



TUALATIN, OREGON

GENERAL NOTES

- 1. SURVEY PROVIDED BY KPFF, DATED JUNE 23, 2017. ELEVATIONS ARE BASED ON NAVD 88 (GEOID 12A) VERTICAL DATUM ESTABLISHED THROUGH A 3 MINUTE GPS OBSERVATION ON CONTROL POINT NO.1 USING THE OREGON REAL-TIME GPS NETWORK (ORGN).
- 2. CONSTRUCTION LAYOUT (ALL ACTUAL LINES AND GRADES) SHALL BE STAKED BY A PROFESSIONAL SURVEYOR, REGISTERED IN THE STATE OF OREGON, BASED ON COORDINATES, DIMENSIONS. BEARINGS, AND ELEVATIONS, AS SHOWN, ON THE PLANS.
- PROJECT CONTROL SHALL BE FIELD VERIFIED AND CHECKED FOR RELATIVE HORIZONTAL POSITION PRIOR TO BEGINNING CONSTRUCTION LAYOUT. SEE SHEET C100 AND C300 FOR PROJECT CONTROL
- 4. PROJECT CONTROL SHALL BE FIELD VERIFIED AND CHECKED FOR RELATIVE VERTICAL POSITION BASED ON THE BENCHMARK STATED HEREON, PRIOR TO BEGINNING CONSTRUCTION LAYOUT.
- WHEN DIMENSIONS AND COORDINATE LOCATIONS ARE REPRESENTED DIMENSIONS SHALL HOLD OVER COORDINATE LOCATION. NOTIFY THE CIVIL ENGINEER OF RECORD IMMEDIATELY UPON
- BUILDING SETBACK DIMENSIONS FROM PROPERTY LINES SHALL HOLD OVER ALL OTHER CALLOUTS. PROPERTY LINES AND ASSOCIATED BUILDING SETBACKS SHALL BE VERIFIED PRIOR TO
- CONTRACTOR SHALL PRESERVE AND PROTECT FROM DAMAGE ALL EXISTING MONUMENTATION DURING CONSTRUCTION. THE CONTRACTOR IS RESPONSIBLE FOR COORDINATING AND PAYING FOR THE REPLACEMENT OF ANY MONUMENTS DAMAGED OR REMOVED DURING CONSTRUCTION. NEW MONUMENTS SHALL BE REESTABLISHED BY A LICENSED SURVEYOR.
- SOME SITE DEMOLITION AND UTILITY RELOCATION HAS BEEN PERFORMED. SURVEY MAY NOT BE COMPLETE OR ACCURATE. CONTRACTOR TO VERIFY EXISTING SITE CONDITIONS PRIOR TO CONSTRUCTION. CONTRACTOR SHALL BRING ANY DISCREPANCIES TO THE ATTENTION OF THE ENGINEER PRIOR TO BEGINNING CONSTRUCTION.
- ALL CONSTRUCTION AND MATERIALS SHALL CONFORM TO THESE PLANS, THE PROJECT SPECIFICATIONS AND THE APPLICABLE REQUIREMENTS OF THE 2015 OREGON STANDARD SPECIFICATIONS FOR CONSTRUCTION AND THE 2014 OREGON PLUMBING SPECIALTY CODE
- 10. THE COMPLETED INSTALLATION SHALL CONFORM TO ALL APPLICABLE FEDERAL, STATE, AND LOCAL CODES. ORDINANCES AND REGULATIONS. ALL PERMITS. LICENSES AND INSPECTIONS REQUIRED BY THE GOVERNING AUTHORITIES FOR THE EXECUTION AND COMPLETION OF WORK SHALL BE SECURED BY THE CONTRACTOR PRIOR TO COMMENCING CONSTRUCTION.
- 11. ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER. (NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503) 232-1987). EXCAVATORS MUST NOTIFY ALL PERTINENT COMPANIES OR AGENCIES WITH UNDERGROUND UTILITIES IN THE PROJECT AREA AT LEAST 48 BUSINESS-DAY HOURS, BUT NOT MORE THAN 10 BUSINESS DAYS PRIOR TO COMMENCING AN EXCAVATION, SO UTILITIES MAY BE ACCURATELY
- 12. THE LOCATION OF EXISTING UNDERGROUND UTILITIES SHOWN ON THE PLANS ARE FOR INFORMATION ONLY AND ARE NOT GUARANTEED TO BE COMPLETE OR ACCURATE. CONTRACTOR SHALL VERIFY ELEVATIONS, PIPE SIZE, AND MATERIAL TYPES OF ALL UNDERGROUND UTILITIES PRIOR TO COMMENCING WITH CONSTRUCTION AND SHALL BRING ANY DISCREPANCIES TO THE ATTENTION OF KPFF CONSULTING ENGINEERS, 72 HOURS PRIOR TO START OF CONSTRUCTION TO PREVENT GRADE AND ALIGNMENT CONFLICTS.
- 13. THE ENGINEER OR OWNER IS NOT RESPONSIBLE FOR THE SAFETY OF THE CONTRACTOR OR HIS CREW. ALL O.S.H.A. REGULATIONS SHALL BE STRICTLY ADHERED TO IN THE PERFORMANCE OF THE
- 14. TEMPORARY AND PERMANENT EROSION CONTROL MEASURES SHALL BE IMPLEMENTED. THE CONTRACTOR SHALL ADHERE TO CITY OF TUALATIN FOR MINIMUM EROSION CONTROL MEASURES. THE ESC FACILITIES SHOWN IN THESE PLANS ARE THE MINIMUM REQUIREMENTS FOR ANTICIPATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD. ESC FACILITIES SHALL BE UPGRADED AS NEEDED FOR UNEXPECTED STORM EVENTS AND TO ENSURE THAT SEDIMENT AND SEDIMENT LADEN WATER DO NOT LEAVE THE SITE.
- 15. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING ALL ROADWAYS, KEEPING THEM CLEAN AND FREE OF CONSTRUCTION MATERIALS AND DEBRIS, AND PROVIDING DUST CONTROL AS REQUIRED.
- 16. TRAFFIC CONTROL SHALL BE PROVIDED BY THE CONTRACTOR THROUGHOUT CONSTRUCTION. CONTRACTOR SHALL PROVIDE A TRAFFIC CONTROL PLAN TO THE CITY FOR REVIEW AND APPROVAL PRIOR TO COMMENCING CONSTRUCTION.
- 17. CONTRACTOR SHALL MAINTAIN ALL UTILITIES TO BUILDINGS AT ALL TIMES DURING CONSTRUCTION.
- 18. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING AND SCHEDULING ALL WORK WITH
- 19. NOTIFY CITY INSPECTOR 72 HOURS BEFORE STARTING WORK. A PRECONSTRUCTION MEETING WITH THE OWNER, THE OWNER'S ENGINEER, CONTRACTOR AND THE CITY REPRESENTATIVE SHALL BE REQUIRED.

CONSTRUCTION NOTES

GENERAL

- 1. SUBGRADE AND TRENCH BACKFILL SHALL BE COMPACTED TO AT LEAST 95% OF THE MAXIMUM DRY DENSITY AS DETERMINED BY ASTM D-698. FLOODING OR JETTING THE BACKFILLED TRENCHES WITH WATER IS NOT PERMITTED.
- 2. SPECIAL INSPECTION REQUIRED FOR ALL COMPACTION TESTING.

DEMOLITION

- 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DEMOLITION AND DISPOSAL OF EXISTING AC, CURBS, SIDEWALKS AND OTHER SITE ELEMENTS WITHIN THE SITE AREA IDENTIFIED IN THE PLANS.
- 2. EXCEPT FOR MATERIALS INDICATED TO BE STOCKPILED OR TO REMAIN ON OWNER'S PROPERTY, CLEARED MATERIALS SHALL BECOME CONTRACTOR'S PROPERTY, REMOVED FROM THE SITE, AND DISPOSED OF PROPERLY.
- 3. ITEMS INDICATED TO BE SALVAGED SHALL BE CAREFULLY REMOVED AND DELIVERED STORED AT THE PROJECT SITE AS DIRECTED BY THE OWNER.
- 4. ALL LANDSCAPING, PAVEMENT, CURBS AND SIDEWALKS, BEYOND THE IDENTIFIED SITE AREA, DAMAGED DURING THE CONSTRUCTION SHALL BE REPLACED TO THEIR ORIGINAL CONDITION OR
- 5. CONCRETE SIDEWALKS SHOWN FOR DEMOLITION SHALL BE REMOVED TO THE NEAREST EXISTING CONSTRUCTION JOINT.
- 6. SAWCUT STRAIGHT MATCHLINES TO CREATE A BUTT JOINT BETWEEN THE EXISTING AND NEW PAVEMENT.

UTILITIES

- 1. ADJUST ALL INCIDENTAL STRUCTURES, MANHOLES, VALVE BOXES, CATCH BASINS, FRAMES AND COVERS, ETC. TO FINISHED GRADE.
- 2. CONTRACTOR SHALL ADJUST ALL EXISTING AND/OR NEW FLEXIBLE UTILITIES (WATER, TV, TELEPHONE, ELEC., ETC.) TO CLEAR ANY EXISTING OR NEW GRAVITY DRAIN UTILITIES (STORM DRAIN, SANITARY SEWER, ETC.) IF CONFLICT OCCURS.
- 3. CONTRACTOR SHALL COORDINATE WITH PRIVATE UTILITY COMPANIES FOR THE INSTALLATION OF OR ADJUSTMENT TO GAS, ELECTRICAL, POWER AND TELEPHONE SERVICE.
- 4. BEFORE BACKFILLING ANY SUBGRADE UTILITY IMPROVEMENTS CONTRACTOR SHALL SURVEY AND RECORD MEASUREMENTS OF EXACT LOCATION AND DEPTH AND SUBMIT TO ENGINEER AND OWNER.

STORM AND SANITARY

- CONNECTIONS TO EXISTING STORM AND SANITARY SEWERS SHALL CONFORM TO THE 2015 OREGON STANDARD SPECIFICATIONS FOR CONSTRUCTION, SECTION 00490, "WORK ON EXISTING SEWERS AND
- 2. BEGIN LAYING STORM DRAIN AND SANITARY SEWER PIPE AT THE LOW POINT OF THE SYSTEM, TRUE TO GRADE AND ALIGNMENT INDICATED WITH UNBROKEN CONTINUITY OF INVERT. THE CONTRACTOR SHALL ESTABLISH LINE AND GRADE FOR THE STORM AND SANITARY SEWER PIPE

EARTHWORKS

- 1. CONTRACTOR SHALL PREVENT SEDIMENTS AND SEDIMENT LADEN WATER FROM ENTERING THE STORM DRAINAGE SYSTEM.
- 2. TRENCH BEDDING AND BACKFILL SHALL BE AS SHOWN ON THE PIPE BEDDING AND BACKFILL DETAIL, THE PROJECT SPECIFICATIONS AND AS REQUIRED IN THE SOILS REPORT. FLOODING OR JETTING THE BACKFILLED TRENCHES WITH WATER WILL NOT BE PERMITTED.

1. SEE CIVIL SPECS FOR SIDEWALK FINISHING AND C500 FOR SCORING PATTERNS

MATERIAL NOTES

- 1. GENERAL: MATERIALS SHALL BE NEW. THE USE OF MANUFACTURER'S NAMES, MODELS, AND NUMBERS IS INTENDED TO ESTABLISH STYLE, QUALITY, APPEARANCE, AND USEFULNESS. PROPOSED SUBSTITUTIONS WILL REQUIRE WRITTEN APPROVAL FROM ARCHITECT / OWNER / ENGINEER PRIOR TO INSTALLATION.
- 2. STORM AND SANITARY SEWER PIPING SHALL BE PVC PIPE CONFORMING TO THE PROJECT SPECIFICATIONS; AS INDICATED IN THE PLANS. PIPES WITH LESS THAN 2' OF COVER SHALL BE C900/C905 PVC.
- 3. CONCRETE FOR CURBS, SIDEWALK AND DRIVEWAYS SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH OF 3,300 PSI AT 28 DAYS.

ABBREVIATIONS

APPROXIMATE BOLLARD BACK OF WALK BLDG BUILDING CATCH BASIN CENTERLINE CLEANOUT CONCRETE CONTROL POINT DRIVEWAY **EASTING EXISTING** EXIST. /EX FINISH FLOOR ELEVATION

FINISH GRADE HANDICAP PARKING SPACE INVERT ELEVATION LENGTH LIGHT POLE

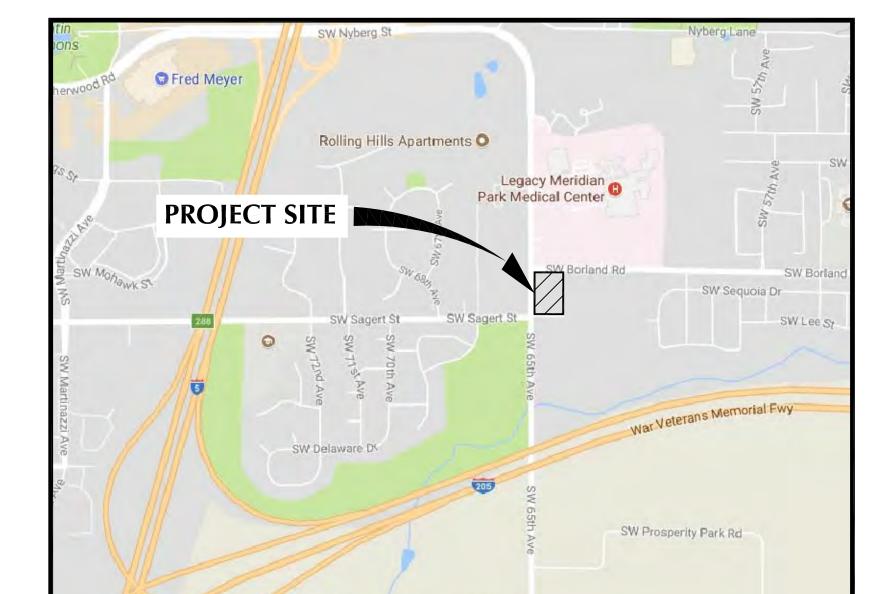
MANHOLE MINIMUM NORTHING OVERHEAD PROPERTY LINE

PUBLIC UTILITY EASEMENT POINT OF CURVATURE POINT OF REVERSE CURVATURE POINT OF TANGENCY POLYVINYL CHLORIDE PRIVATE RADIUS

ROOF DRAIN RIGHT-OF-WAY R.O.W SLOPE (FT/FT) STORM DRAIN STORM DRAIN MANHOLE SHEET

STREET STATION STD STANDARD SIDEWALK TOP OF CURB TRENCH DRAIN TOP OF PAVEMENT TOP OF WALK

TYPICAL UNDERGROUND UNDERGROUND ELECTRIC



SW Robbins Rd

MAP FROM: GOOGLE

LANDSCAPE ARCHITECT:

PORTLAND, OREGON 97209

CONTACT: COLLEEN WOLF

735 NW 18TH AVE.

TEL: 503-224-2084

PLACE

SCALE: NTS

VICINITY MAP

PROIECT CONTACTS

ATTENTION: OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR COPIES OF THE RULES BY CALLING THE

(NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503)-232-1987).

952-001-0010 THROUGH OAR

952-001-0090. YOU MAY OBTAIN

NOTICE TO EXCAVATORS:

CENTER.

POTENTIAL UNDERGROUND FACILITY OWNERS

Call the Oregon One-Call Center 1-800-332-2344

EMERGENCY TELEPHONE NUMBERS

NW NATURAL GAS M-F 7am-6pm 503-226-4211 Ext.4313 AFTER HOURS 503-226-4211 PGE 503-464-7777 1-800-573-1311 QWEST CITY BUREAU OF MAINTENANCE 503-823-1700 CITY WATER 503-823-4874 VERIZON 1-800-483-1000

SW Robbins Rd

TUALATIN PROFESSIONAL CENTER, LLC

6464 SW BORLAND ROAD TUALATIN, OREGON 97062 TEL: 503-858-1899 CONTACT: DR. JAMES WALKER, DDS

CIVIL PROJECT MANAGER:

KPFF CONSULTING ENGINEERS 111 SW FIFTH AVENUE, SUITE 2500 PORTLAND, OREGON 97204 TEL: 503-227-3251 CONTACT: MATT JOHNSON

SHEET INDEX

SHEET NO.	SHEET TITLE	SHEET DESCRIPTION
1	C000	COVER SHEET
2	C100	SURVEY
3	C200	DEMOLITION AND EROSION CONTROL PLAN
4	C300	SITE AND HORIZONTAL CONTROL PLAN
5	C400	GRADING AND UTILITY PLAN
6	C500	DETAILS
7	C501	DETAILS
8	L100	SITE IRRIGATION PLAN & SCHEDULE
9	L101	IRRIGATION DETAILS
10	L200	SITE PLANTING PLAN & SCHEDULE
11	L201	PLANTING DETAILS

REVISION DATE DESCRIPTION

111 SW Fifth Ave., Suite 2500 Portland, OR 97204 O: 503.227.3251 503.224.4681 www.kpff.com

1700026 JOB No.: DESIGNED BY: AC DRAWN BY: MB CHECKED BY: MJ PLOT DATE: 5/2/18 10:43am PLOTTED BY: mattj DWG NAME: C000-CV.dwg TAB NAME: C000

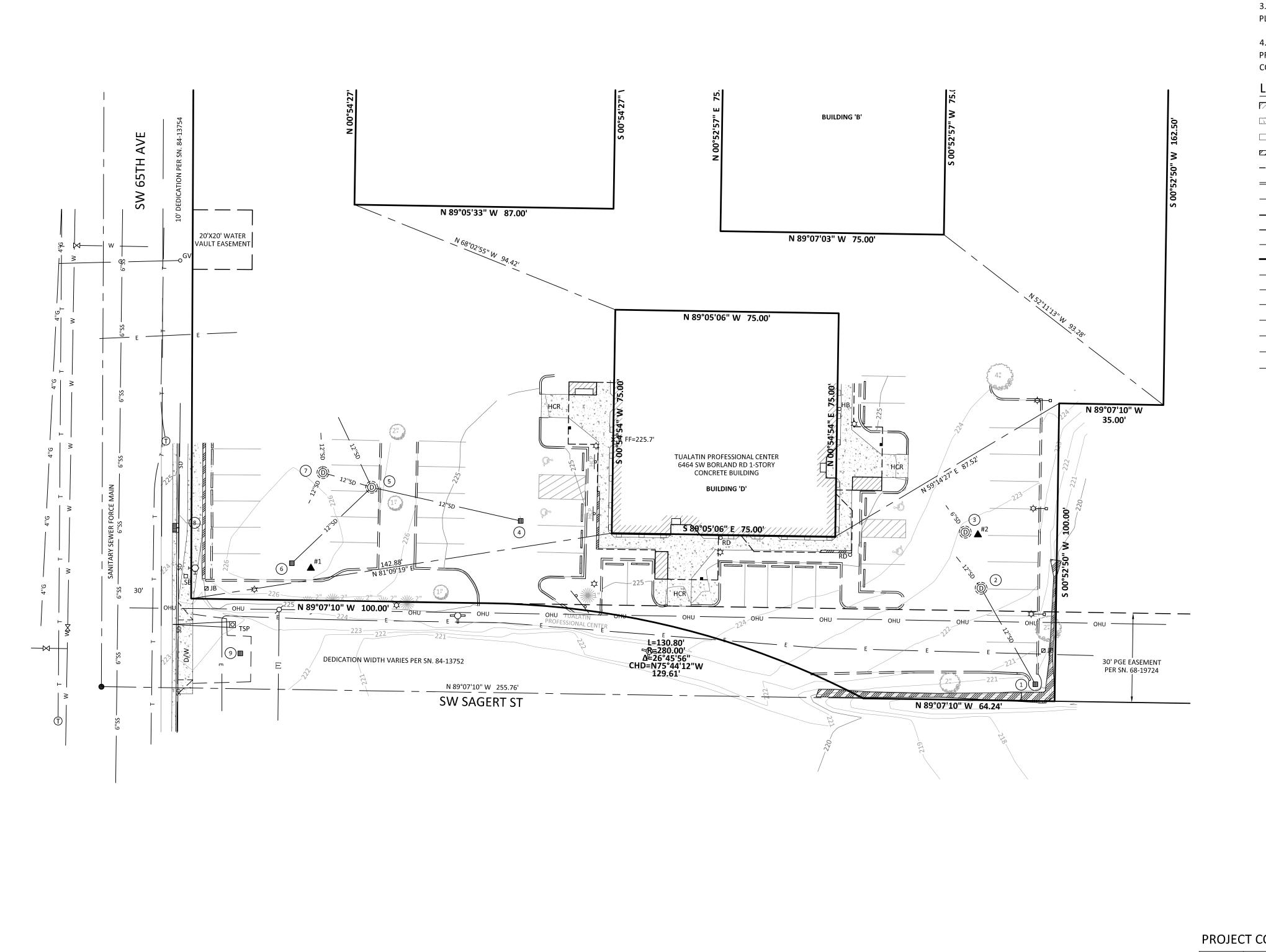
SAGERT ROAD ENTRANCES **ACCESS RESTORATION**

6464 SW Borland Road

COVER SHEET

SHEET NO

RECORD NO.



DATE

REVISION

DESCRIPTION

NOTES:

1.) VERTICAL DATUM: NAVD 88 (GEOID 12A)

ELEVATION WAS ESTABLISHED THROUGH A 3 MINUTE GPS OBSERVATION ON CONTROL POINT NO. 1 USING THE OREGON REAL-TIME GPS NETWORK (ORGN).

2.) BASIS OF BEARINGS FOR THIS SURVEY IS THE OREGON COORDINATE REFERENCE SYSTEM (OCRS), PORTLAND ZONE. THE RESULTANT BEARING OF THE CENTERLINE OF SW 65TH AVENUE IS NORTH 00°14'40" EAST.

3.) BOUNDARY AND EASEMENTS WERE CREATED USING FOUND MONUMENTS AND THE "TUALATIN PROFESSIONAL CENTER CONDOMINIUM - STAGE I" PLAT (2646-P1). A TITLE REPORT WAS NOT PROVIDED FOR THE PURPOSE OF THIS SURVEY. EASEMENTS AFFECTING THE SUBJECT PROPERTY MAY EXIST.

4.) UTILITY LOCATIONS SHOWN ARE PER FIELD LOCATED UTILITY PAINT MARKS & REFERENCE MAPS MADE AVAILABLE BY THE VARIOUS UTILITY PROVIDERS. UNLESS INDICATED, DEPTHS OF UTILITY LINES ARE NOT AVAILABLE. ALL UTILITY LOCATIONS SHOULD BE FIELD VERIFIED (POTHOLED) PRIOR TO CONSTRUCTION.

LEGEND:

LEGEND:	
\/////\ -, //////\	BUILDING OUTLINE WITH DOOR
	CONCRETE SURFACE
	ASPHALT SURFACE
	WALL
	BUILDING OVERHANG
	CURB LINE
	EDGE OF ASPHALT
	RIGHT-OF-WAY LINE
	EASEMENT LINE
	LOT LINE
	PROPERTY LINE
E	ELECTRICAL LINE
т	TELECOMMUNICATIONS LINE
SD	STORM LINE
SS	SANITARY SEWER LINE
——— w ———	WATER LINE
G	GAS LINE
——— они ———	OVERHEAD UTILITY LINES
[]	UNDERGROUND LINE PER AS-BUILTS
-0-	SIGN
- 0 - 0 -	DOUBLE POST SIGN
D/W	DRIVEWAY ENTRY
HCR	HANDICAP RAMP
o RD	ROOF DRAIN

ELECTRICAL JUNCTION BOX Βا⊠ **GUY ANCHOR** LUMINAIRE POWER POLE ф⊸□ OVERHEAD LIGHT POWER POLE/OVERHEAD LIGHT GAS VALVE SANITARY MANHOLE WITH STRUCTURE STORM MANHOLE WITH STRUCTURE CATCH BASIN CURB INLET SANITARY/STORM CLEAN OUT

SANITARY/STORM STRUCTURE #

T TELECOMMUNICATIONS MANHOLE TRAFFIC SIGNAL BOX □ SB PEDESTRIAN CONTROL SIGNAL ARM 0 TRAFFIC CONTROL SIGNAL ARM TSP TRAFFIC SIGNAL POLE WATER VALVE FIRE HYDRANT

HOSE BIB o UV UNKNOWN UTILITY VALVE **DECIDUOUS TREE** -PERIMETER REPRESENTS DRIPLINE

CONIFEROUS TREE -PERIMETER REPRESENTS DRIPLINE MONUMENT

PROJECT CONTROL POINT FINISHED FLOOR ELEVATION X FF=100.00'

PROJECT CONTROL:

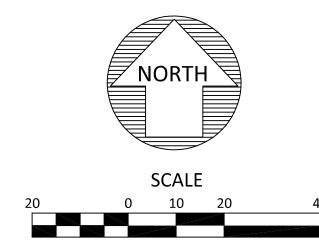
STATION	DESCRIPTION	NORTHING	EASTING	ELEVATION
1	MAG NAIL W/ WASHER "KPFF CONTROL"	118691.45	329714.01	225.87'
2	MAG NAIL W/ WASHER "KPFF CONTROL"	118702.68	329937.92	222.82'

STORM TABLE:

- 1 CATCH BASIN (SUMP TYPE) RIM = 220.44' WATER LEVEL = 219.39'
- 2 STORM MANHOLE RIM = 222.48'IE 12" IN (SE) = 215.08' IE 12" OUT (NW) = 215.08'
- 3 STORM MANHOLE (DRYWELL) RIM = 222.84' IE 6" IN (NW) = 215.24'
- CATCH BASIN (SUMP TYPE)
 RIM = 224.00' WATER LEVEL = 223.04'
- 5 STORM MANHOLE RIM = 226.55' IE 12" IN (E) = 220.05' IE 12" IN (SW) = 220.05' IE 12" IN (N) = 220.05' IE 12" OUT (W) = 219.80'
- 6 CATCH BASIN (SUMP TYPE) RIM = 225.56' WATER LEVEL = 224.49'
- (7) STORM MANHOLE (DRYWELL) RIM = 226.09'IE 12" IN (E) = 219.64' IE 12" IN (N) = CAPPED IE 12" IN (SW) = CAPPED
- 8 CURB INLET FLOW LINE = 224.30' LOCKED
- 9 CATCH BASIN (SUMP TYPE) RIM = 222.56' WATER LEVEL = 220.94'

SANITARY TABLE:

SANITARY MANHOLE RIM = 227.38' IE 10" IN (N) = 213.38' IE 10" IN (E) = 213.33' IE 10" IN (S) = 213.33' IE 10" OUT (W) = 213.18'





Portland, OR 97204 F: 503 224 4681 www.kpff.com

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JOB No.:	1700026	
DESIGNED BY:	AC	
DRAWN BY:	MB	
CHECKED BY:	MJ	
PLOT DATE:	5/2/18 10:46am	
PLOTTED BY:	mattj	
DWG NAME:	C100-EX.dwg	
TAB NAME:	C100	

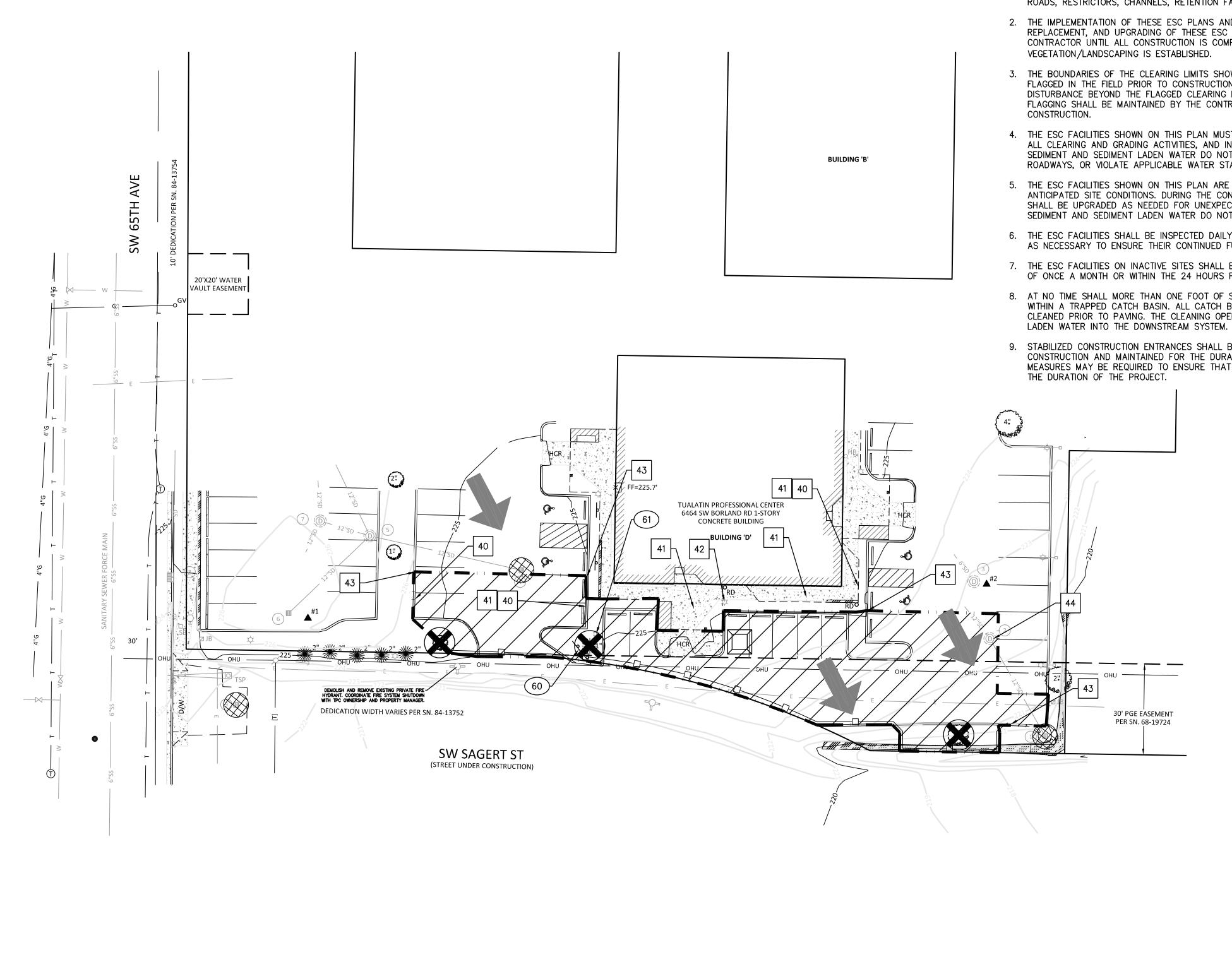
SAGERT ROAD ENTRANCES ACCESS RESTORATION

6464 SW Borland Road

SURVEY

SHEET NO

RECORD NO.



EROSION CONTROL PLAN NOTES

- 1. APPROVAL OF THIS EROSION/SEDIMENTATION CONTROL (ESC) PLAN DOES NOT CONSTITUTE AN APPROVAL OF PERMANENT ROAD OR DRAINAGE DESIGN (E.G., SIZE AND LOCATION OF ROADS, RESTRICTORS, CHANNELS, RETENTION FACILITIES, UTILITIES, ETC.).
- 2. THE IMPLEMENTATION OF THESE ESC PLANS AND THE CONSTRUCTION, MAINTENANCE, REPLACEMENT, AND UPGRADING OF THESE ESC FACILITIES IS THE RESPONSIBILITY OF THE CONTRACTOR UNTIL ALL CONSTRUCTION IS COMPLETED AND APPROVED AND PERMANENT
- 3. THE BOUNDARIES OF THE CLEARING LIMITS SHOWN ON THIS PLAN SHALL BE CLEARLY FLAGGED IN THE FIELD PRIOR TO CONSTRUCTION. DURING THE CONSTRUCTION PERIOD, NO DISTURBANCE BEYOND THE FLAGGED CLEARING LIMITS SHALL BE PERMITTED. THE FLAGGING SHALL BE MAINTAINED BY THE CONTRACTOR FOR THE DURATION OF
- 4. THE ESC FACILITIES SHOWN ON THIS PLAN MUST BE CONSTRUCTED IN CONJUNCTION WITH ALL CLEARING AND GRADING ACTIVITIES, AND IN SUCH A MANNER AS TO ENSURE THAT SEDIMENT AND SEDIMENT LADEN WATER DO NOT ENTER THE DRAINAGE SYSTEM, ROADWAYS, OR VIOLATE APPLICABLE WATER STANDARDS.
- 5. THE ESC FACILITIES SHOWN ON THIS PLAN ARE THE MINIMUM REQUIREMENTS FOR ANTICIPATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD, THESE ESC FACILITIES SHALL BE UPGRADED AS NEEDED FOR UNEXPECTED STORM EVENTS AND TO ENSURE THAT SEDIMENT AND SEDIMENT LADEN WATER DO NOT LEAVE THE SITE.
- 6. THE ESC FACILITIES SHALL BE INSPECTED DAILY BY THE CONTRACTOR AND MAINTAINED AS NECESSARY TO ENSURE THEIR CONTINUED FUNCTIONING.
- 7. THE ESC FACILITIES ON INACTIVE SITES SHALL BE INSPECTED AND MAINTAINED A MINIMUM OF ONCE A MONTH OR WITHIN THE 24 HOURS FOLLOWING A STORM EVENT.
- 8. AT NO TIME SHALL MORE THAN ONE FOOT OF SEDIMENT BE ALLOWED TO ACCUMULATE WITHIN A TRAPPED CATCH BASIN. ALL CATCH BASINS AND CONVEYANCE LINES SHALL BE CLEANED PRIOR TO PAVING. THE CLEANING OPERATION SHALL NOT FLUSH SEDIMENT
- 9. STABILIZED CONSTRUCTION ENTRANCES SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION AND MAINTAINED FOR THE DURATION OF THE PROJECT. ADDITIONAL MEASURES MAY BE REQUIRED TO ENSURE THAT ALL PAVED AREAS ARE KEPT CLEAN FOR

SURFACES OUTSIDE THE CONSTRUCTION ZONE MUST BE KEPT PROTECTION KEY NOTES

SHEET NOTES

THE PROPERTY.

CONTRACTOR.

DEMOLITION.

OR REMOVED MONUMENTS.

TO ORIGINAL CONDITION.

AS REQUIRED IN THE SPECIFICATIONS.

CONTRACTOR MAY STAGE WITHIN LIMITS OF DEMOLITION.

2. REMOVE ALL SITE COMPONENTS AND RECYCLE COMPONENTS

GENERAL DEMOLITION PERMIT SHALL BE SECURED BY THE

PROCUREMENT AND COMPLETION OF THE WORK SHALL BE

SECURED BY THE CONTRACTOR PRIOR TO COMMENCING

THE CONTRACTOR SHALL PRESERVE AND PROTECT FROM

MONUMENTATION DURING DEMOLITION. THE CONTRACTOR IS RESPONSIBLE FOR COORDINATING AND PAYING FOR THE

REPLACEMENT BY A LICENSED SURVEYOR OF ANY DAMAGED

PROTECT ALL ITEMS ON ADJACENT PROPERTIES AND IN THE RIGHT OF WAY INCLUDING BUT NOT LIMITED TO SIGNAL

STREET LIGHTS, CURBS, PAVEMENT AND SIGNS. CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING ANY DAMAGED ITEMS

EQUIPMENT, PARKING METERS, SIDEWALKS, STREET TREES,

PROTECT STRUCTURES, UTILITIES, SIDEWALKS, AND OTHER

FACILITIES IMMEDIATELY ADJACENT TO EXCAVATIONS FROM

DAMAGES CAUSED BY SETTLEMENT, LATERAL MOVEMENT,

UNDERMINING, WASHOUT AND OTHER HAZARDS.

9. SAWCUT STRAIGHT LINES IN SIDEWALK, AS NECESSARY.

DURING THE DEMOLITION PERIOD, AND DURING

10. CONTRACTOR IS RESPONSIBLE TO CONTROL DUST AND MUD

TRANSPORTATION OF DEMOLITION DEBRIS. ALL STREET

DAMAGE ALL EXISTING RIGHT-OF-WAY SURVEY

5. ALL TRADE LICENSES AND PERMITS NECESSARY FOR THE

CONTRACTOR TO PROTECT AND MAINTAIN ALL UTILITIES WITHIN

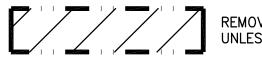
- 40 PROTECT CURB
- 41 PROTECT SIDEWALK
- 42 PROTECT LIGHTPOLE
- 43 SAWCUT CURB AT EDGE OF ADA STALL TO CONNECT TO NEW CURB. SEE SHT C300 FOR NEW CURB LAYOUT.
- 44 PROTECT EXISTING STORM MANHOLE

- 60 SALVAGE SIGN AND STORE IN LOCATION AS DIRECTED BY
- 61 REMOVE AND SALVAGE LIGHTPOLE AND STORE IN LOCATION AS DIRECTED BY OWNER.

SHEET LEGEND

- PROPERTY LINE DEMOLITION/WORK LIMITS

SEDIMENT FENCE (SHOWN OFFSET OF 1 C500)



REMOVE ALL SURFACE FEATURES UNLESS OTHERWISE NOTED.

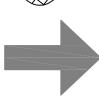


REMOVE TREE

FLOW DIRECTION



INLET PROTECTION -

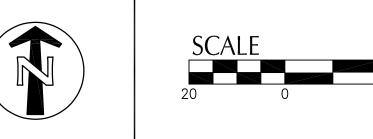






CONCRETE WASHOUT

DESCRIPTION





JOB No.:	1700026	
DESIGNED BY:	AC	
DRAWN BY:	MB	
CHECKED BY:	MJ	
PLOT DATE:	5/2/18 10:46am	
PLOTTED BY:	mattj	
DWG NAME:	C200-DM.dwg	
TAB NAME:	C200	

SAGERT ROAD ENTRANCES ACCESS RESTORATION

6464 SW Borland Road

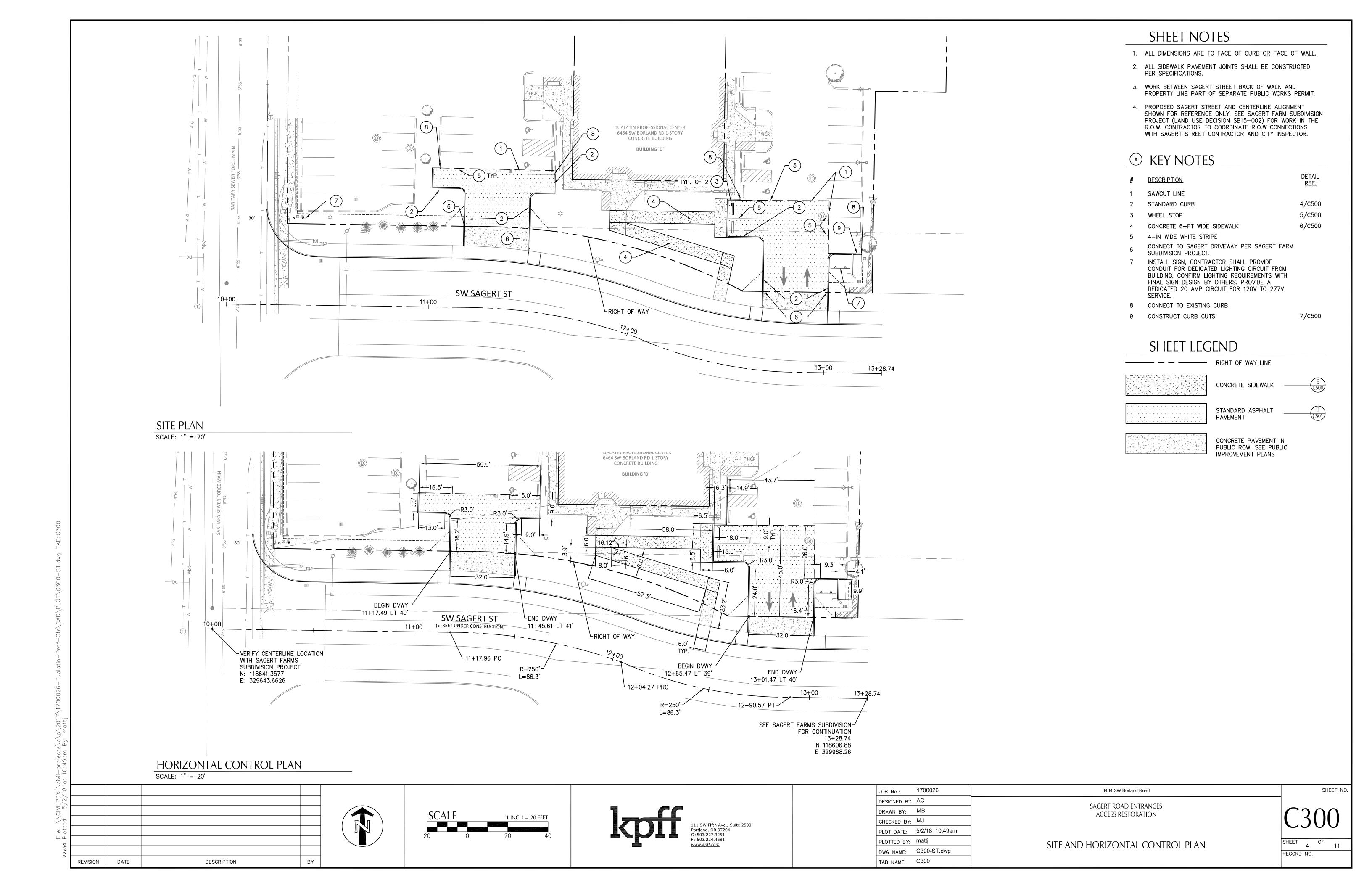
SHEET NO

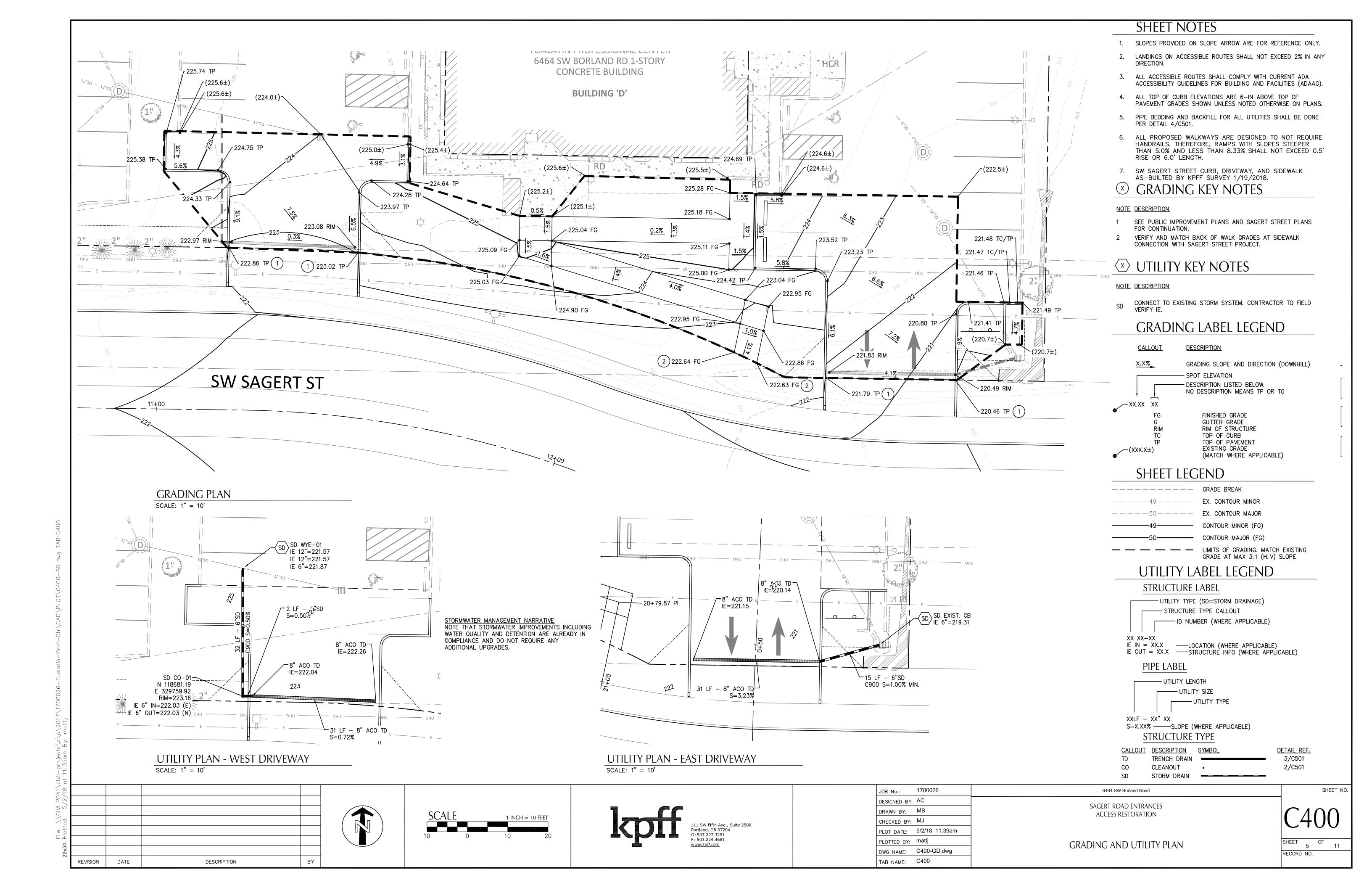
RECORD NO.

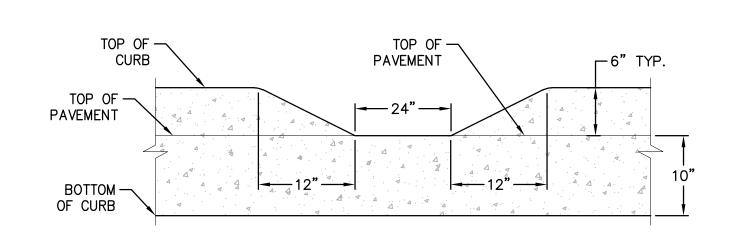
REVISION

DATE

1 INCH = 20 FEET







7 CURB CUTS

SCALE: NTS

PAVEMENT

R=3/4"

BACKFILL TO TOP OF CURB

16"

4" OF SUBBASE COURSE

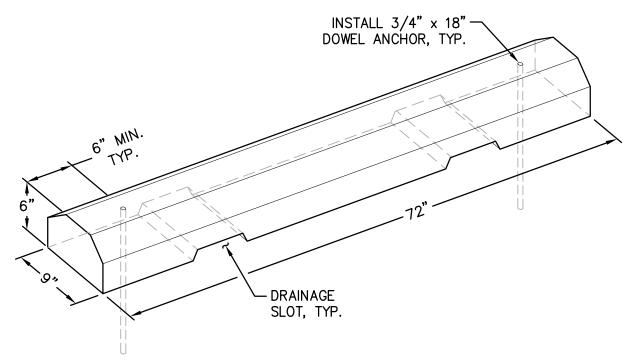
NOTES:

1. CURB EXPOSURE 'E' = 6", TYP. VARY AS SHOWN ON PLANS OR AS DIRECTED.

- 2. CONSTRUCT CONTRACTION JOINTS AT 15' MAX. SPACING AND AT RAMPS. CONSTRUCT EXPANSION JOINTS AT 200' MAX SPACING AT POINTS OF TANGENCY AND AT ENDS OF EACH DRIVEWAY.
- 3. TOPS OF ALL CURBS SHALL SLOPE TOWARD THE ROADWAY AT 2% UNLESS OTHERWISE SHOWN OR AS DIRECTED.
- 4. DIMENSIONS ARE NOMINAL AND MAY VARY TO CONFORM WITH CURB MACHINE AS APPROVED BY THE ENGINEER.

CONCRETE CURB - STANDARD

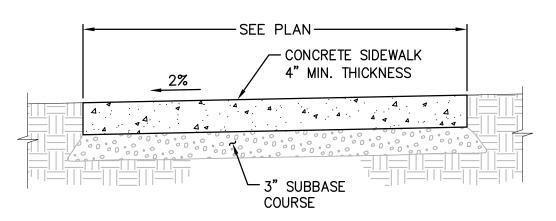
SCALE: NTS



<u>OTES:</u>
DIMENSIONS ARE NOMINAL AND MAY VARY TO CONFORM TO MANUFACTURER'S PRODUCTS APPROVED BY ENGINEER.

PRECAST CONCRETE WHEEL STOP

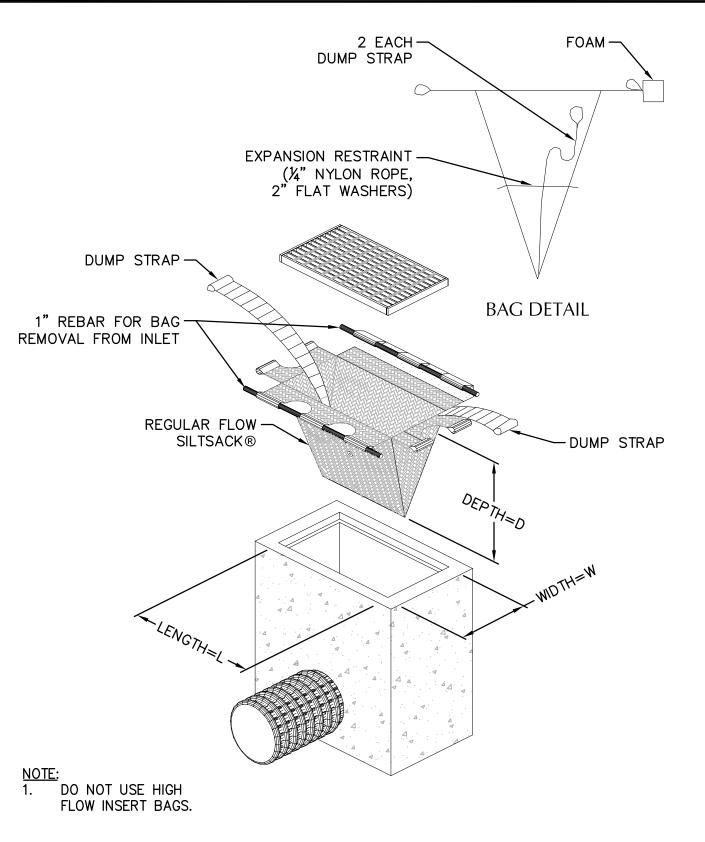
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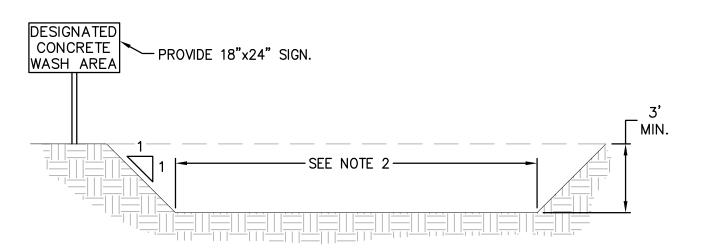
NOTES:

1. CONSTRUCT CONTRACTION JOINTS AT 15' MAX. SPACING AND AT RAMPS. CONSTRUCT EXPANSION JOINTS AT 200' MAX SPACING, AT POINTS OF TANGENCY AND AT ENDS OF EACH DRIVEWAY, UNLESS NOTED OTHERWISE.

6 CONCRETE SIDEWALK



2 INLET SEDIMENT PROTECTION
SCALE: NTS



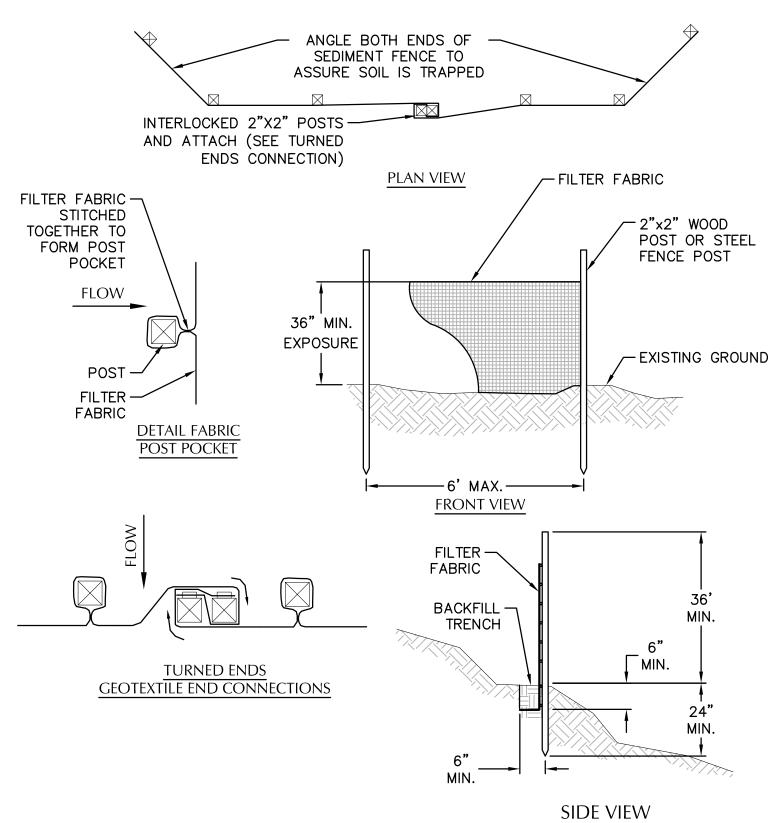
NOTES:

1. INSTALL A CONCRETE WASH OUT PIT AND A VISIBLE SIGN STATING, "DESIGNATED CONCRETE WASH AREA." LOCATE THE WASH OUT IN A PLACE THAT WILL BE ACCESSIBLE TO CONCRETE TRUCKS SIZE TO THE PROJECT.

- 2. PROVIDE 3' X 3' MINIMUM WASHOUT AREA. INCREASES SIZE OR PROVIDE ADDITIONAL WASHOUTS AS REQUIRED TO ACCOMMODATE PROJECT CONDITIONS.
- 3. LOCATE WASHOUTS IN AREAS THAT WILL BE ACCESSIBLE TO CONCRETE TRUCKS.
- 4. FOR WASHOUTS LOCATED IN AREAS DESIGNATED TO RECEIVE HARDSCAPE, SOLIDS MAY BE BURIED IN PLACE. FOR OTHER APPLICATIONS, REMOVE AND DISPOSE OF SOLIDS.

CONCRETE WASHOUT

SCALE: NTS



NOTES:

1. THE FILTER FABRIC SHALL BE (36" MIN. WIDTH) PURCHASED IN A CONTINUOUS ROLL CUT TO THE LENGTH OF THE BARRIER TO AVOID USE OF JOINTS. WHEN JOINTS ARE NECESSARY, FILTER CLOTH SHALL BE SPLICED TOGETHER ONLY AT A SUPPORT POST, WITH A MINIMUM 6—INCH OVERLAP, AND BOTH ENDS SECURELY FASTENED TO THE POST, OR OVERLAP 2"x2" POSTS AND ATTACH AS SHOWN ON DETAIL SHEET.

- 2. THE FILTER FABRIC FENCE SHALL BE INSTALLED TO FOLLOW THE CONTOURS WHERE FEASIBLE. THE FENCE POSTS SHALL BE SPACED A MAXIMUM OF 6-FEET APART AND DRIVEN SECURELY INTO THE GROUND A MINIMUM OF 24-INCHES.
- 3. THE FILTER FABRIC SHALL HAVE A MINIMUM VERTICAL BURIAL OF 6—INCHES. ALL EXCAVATED MATERIAL FROM FILTER FABRIC FENCE INSTALLATION, SHALL BE BACKFILLED AND COMPACTED, ALONG THE ENTIRE DISTURBED AREA.
- 4. STANDARD OR HEAVY DUTY FILTER FABRIC SHALL HAVE MANUFACTURED STITCHED LOOPS FOR 2"x2" POST INSTALLATION. STITCHED LOOPS WITH STAKES SHALL BE INSTALLED ON THE DOWN—HILL SIDE OF THE SLOPED AREA.
- 5. FILTER FABRIC FENCES SHALL BE REMOVED WHEN THEY HAVE SERVED THEIR USEFUL PURPOSE, BUT NOT BEFORE THE UP—SLOPE AREA HAS BEEN PERMANENTLY PROTECTED AND STABILIZED.
- 6. FILTER FABRIC FENCES SHALL BE INSPECTED BY CONTRACTOR IMMEDIATELY AFTER EACH RAINFALL AND AT LEAST DAILY DURING PROLONGED RAINFALL. ANY REQUIRED REPAIRS SHALL BE MADE IMMEDIATELY.

SEDIMENT FENCE

SCALE: NTS

REVISION DATE DESCRIPTION

JOB No.: 1700026

DESIGNED BY: AC

DRAWN BY: MB

CHECKED BY: MJ

PLOT DATE: 5/2/18 10:50am

PLOTTED BY: mattj

DWG NAME: C500-DT.dwg

TAB NAME: C500

SAGERT ROAD ENTRANCES ACCESS RESTORATION

6464 SW Borland Road

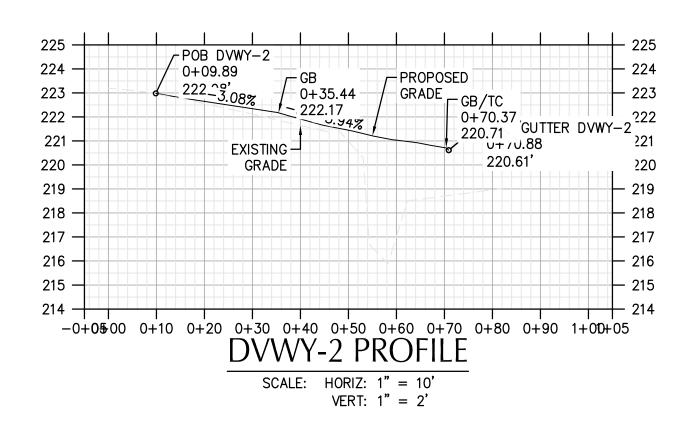
DETAILS

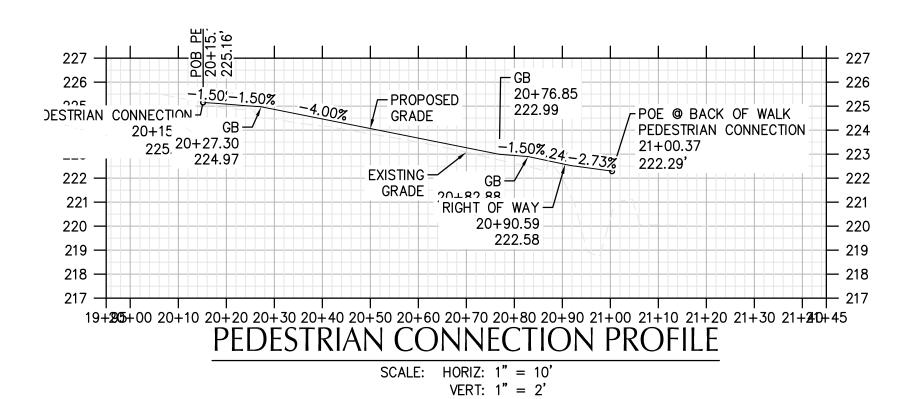
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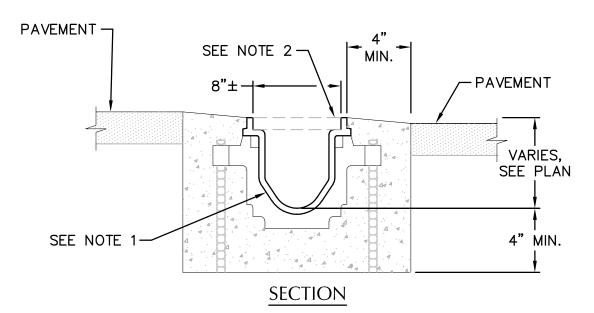
RECORD NO.

SHEET NO

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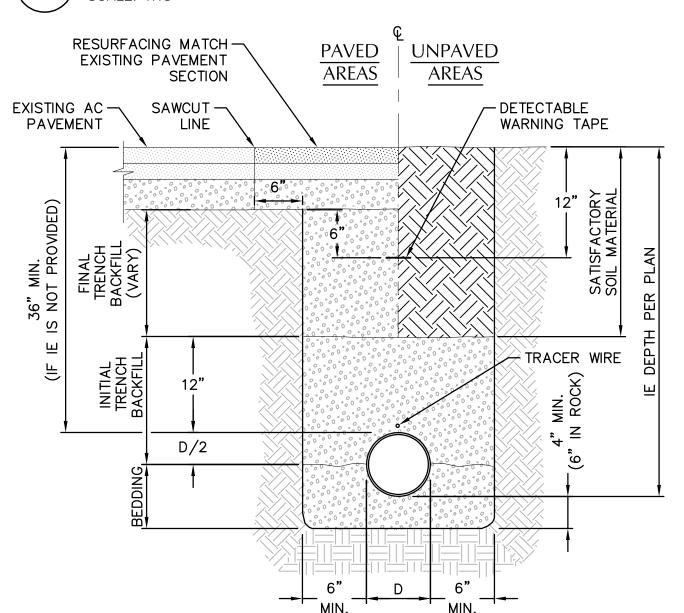


NOTES:

- 1. TRENCH DRAIN SHALL BE NEUTRAL 8" WIDE ZURN OR ACO TRENCH DRAIN OR APPROVED EQUAL.
- 2. TRENCH DRAINS GRATE SHALL BE LOCKABLE HEAVY DUTY TRENCH GRATE CLASS C.
- 3. TRENCH SYSTEM SHALL BE INSTALLED PER MANUFACTURER'S INSTRUCTIONS.

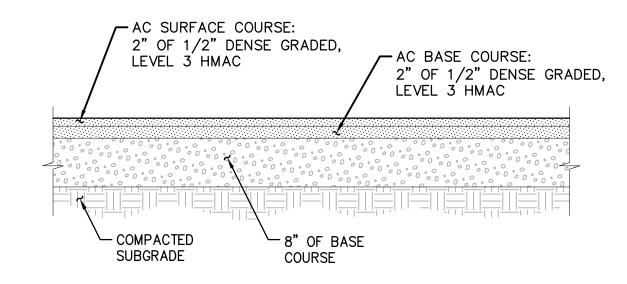
TRENCH DRAIN - 8 INCH WIDE

SCALE: NTS



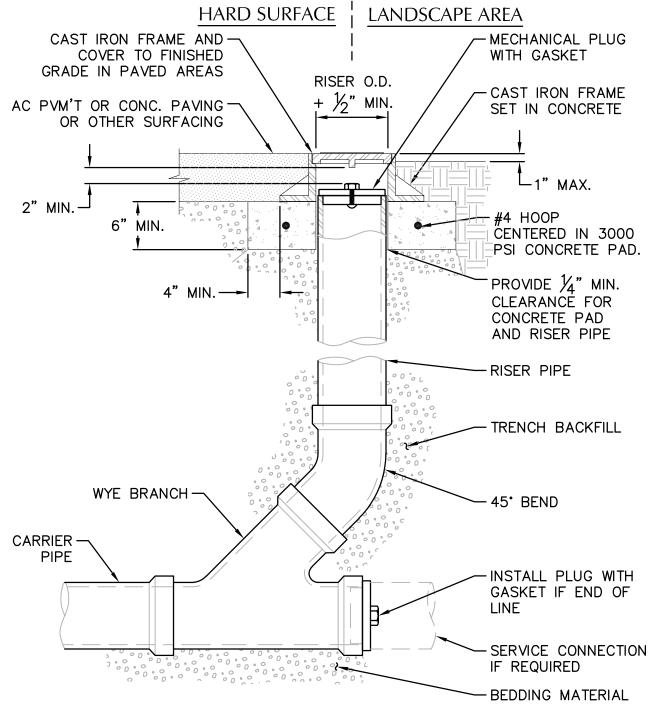
4 TYPICAL PIPE BEDDING AND BACKFILL

SCALE: NTS



1 ASPHALT PAVEMENT SECTION



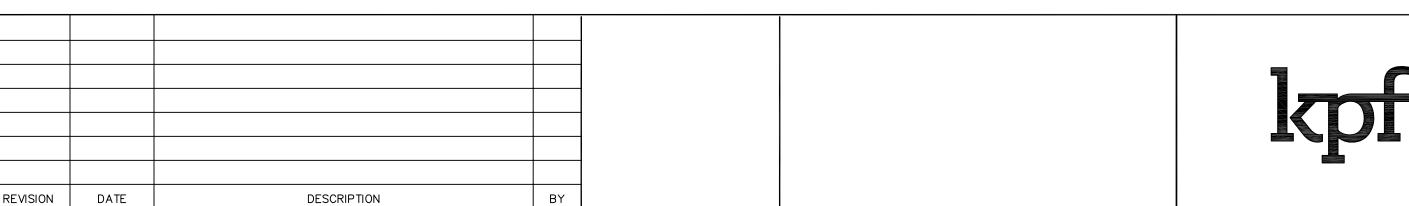


NOTES:
1. CAST IRON FRAME AND COVER SHALL MEET H—20 LOAD REQUIREMENT.

- 2. FOR CARRIER PIPE SIZE 6"Ø AND LESS, PROVIDE RISER PIPE SIZE TO MATCH CARRIER PIPE.
- 3. FOR CARRIER PIPE SIZE 8"Ø AND LARGER, RISER PIPE SHALL BE 6"Ø.
- 4. RISER PIPE MATERIAL TO MATCH CARRIER PIPE MATERIAL.

STANDARD CLEANOUT (COTG)

SCALE: NTS



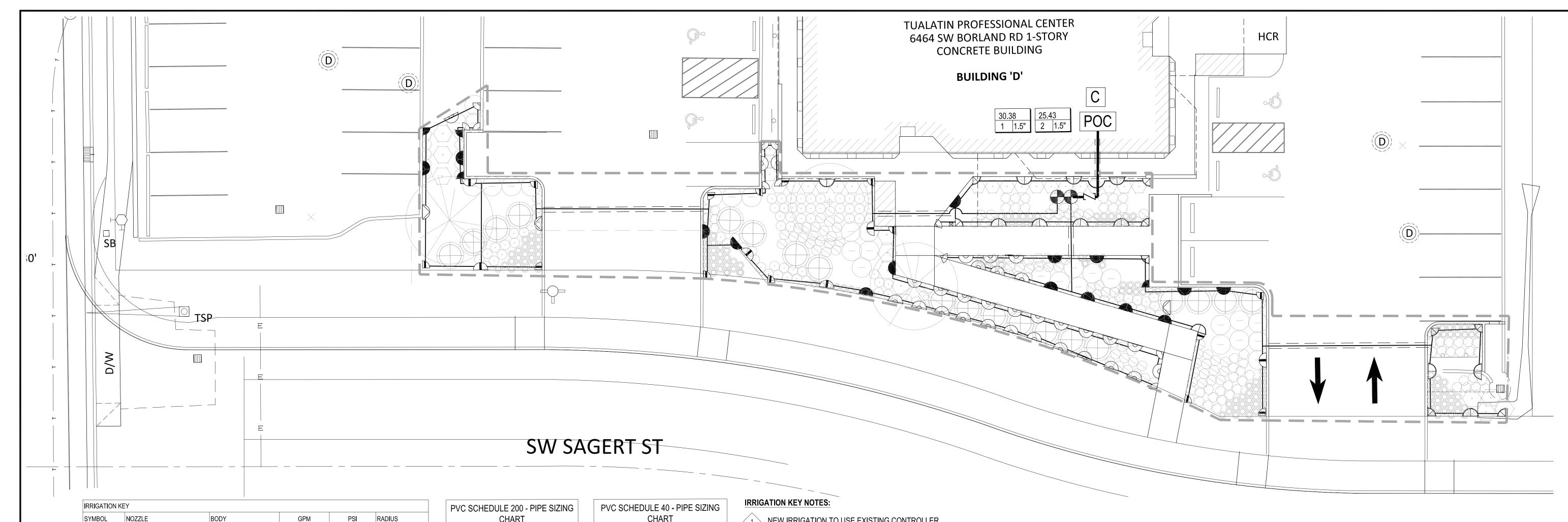


JOB No.: 1700026	6464 SW Borland Road
DESIGNED BY: AC	CACEDT DOAD ENITRANICES
DRAWN BY: MB	SAGERT ROAD ENTRANCES ACCESS RESTORATION
CHECKED BY: MJ	ACCESS RESTORMENT
PLOT DATE: 5/2/18 11:38am	
PLOTTED BY: mattj	DETAILS
DWG NAME: C500-DT.dwg	DETAILS
TAB NAME: C501	

C501

SHEET 7 OF 11

SHEET NO



SYMBOL	NOZZLE	BODY	GPM	PSI	RADIUS
	SPRAY HEADS				
	RAINBIRD 5-H	RAINBIRD 1804	.20	30	5'
\Box	RAINBIRD 5-Q	RAINBIRD 1804	.10	30	5'
	RAINBIRD 8-H	RAINBIRD 1804	.52	30	8'
	RAINBIRD 8-Q	RAINBIRD 1804	.26	30	8'
	RAINBIRD 10-H	RAINBIRD 1804	.79	30	10'
\triangleright	RAINBIRD 10-Q	RAINBIRD 1804	.39	30	10'
	RAINBIRD 12-H	RAINBIRD 1804	1.30	30	12'
	RAINBIRD 12-Q	RAINBIRD 1804	0.65	30	12'
	RAINBIRD 15-H	RAINBIRD 1804	1.82	30	15'
	RAINBIRD 15-Q	RAINBIRD 1804	0.92	30	15'

DESCRIPTION

PVC SCHEDULE 200 - PIPE SIZING CHART		
GPM	PIPE SIZE	
0-10	3/4"	
11-16	1"	
17-35	1.5"	
36-55	2"	
56-80	2.5"	
81-120	3"	

E SIZING		PVC SCHEDULE 40 - PIPE SIZING CHART		
IZE	GPM	PIPE SIZE		
	0-12	1"		
	13-30	1.5"		
	31-50	2"		
	51-70	2.5"		
	71-110	3"		

SYMBOL	DESCRIPTION	MODEL
С	CONTROLLER	SEE KEY NOTE #1
7	BACKFLOW PREVENTER	SEE KEY NOTE #3
	REMOTE CONTROL VALVE - SIZE AS SHOWN	
	PVC CLASS 200 LATERAL LINE PER CHART	
	2" SCHEDULE 40 PVC MAINLINE, UNLESS OTHERWISE NOTED	
====	= 4" SCHEDULE 40 PVC SLEEVE, UNLESS OTHERWISE NOTED	
XX.XX 1 X"	VOLUME IN GAL/MIN ZONE NUMBER VALVE SIZE	

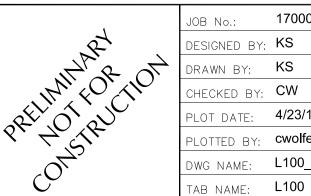
- 1 NEW IRRIGATION TO USE EXISTING CONTROLLER
- LOCATE POINT OF CONNECTION ON SITE WITH CLIENT VERIFICATION
- (3) INSTALL BACKFLOW AS NECESSARY

IRRIGATION NOTES:

- 1. VERIFY AND COORDINATE WORK AROUND ALL UNDERGROUND UTILITIES BEFORE EXCAVATION. NOTIFY ALL UTILITY PROVIDERS AT LEAST THREE (3) WORKING DAYS PRIOR TO BEGINNING WORK.
- 2. VERIFY THAT CONDITIONS ARE SUITABLE TO PROVIDE A COMPLETE WORKING SYSTEM. DO NOT PROCEED IF CONDITIONS ARE PRESENT THAT ARE DETRIMENTAL TO THE EQUIPMENT OR WILL NOT SUPPORT A HEALTHY GROWING ENVIRONMENT FOR PLANTS.
- 3. COORDINATE WITH OTHER SUBCONTRACTORS AND TRADES TO ENSURE PROTECTION OF THE SYSTEM INCLUDING BUT NOT LIMITED TO, WATER SERVICE, WATER METER, BACKFLOW DEVICES, CONTROLLER LOCATION, CONTROLLER ELECTRICAL SERVICE, AND WIRE CONDUITS FOR CONTROLLER.
- 4. ANY NUMERICAL QUANTITIES SHOWN ARE FOR CONTRACTOR CONVENIENCE; QUANTITIES SHALL BE BASED ON THE GRAPHIC REPRESENTATION ON THE PLANS.
- 5. INSTALL IRRIGATION SYSTEM IN COMPLIANCE WITH ALL STATE AND LOCAL CODES.
- 6. IRRIGATION HEADS, EMITTERS, AND OTHER WATERING DEVICES ARE GRAPHICALLY SHOWN IN THE DESIRED LOCATIONS; PIPE AND OTHER SUPPORT EQUIPMENT MAY BE SHOWN IN PAVED AREAS FOR GRAPHIC CLARITY. INSTALL ALL IRRIGATION EQUIPMENT IN LANDSCAPE AREAS UNLESS OTHERWISE INDICATED. PLACE PIPE AND CONTROL WIRE IN COMMON TRENCHES WHERE POSSIBLE.
- 7. PLACE ALL VALVE BOXES IN PLANTING BEDS WHERE POSSIBLE, AND LOCATE TO ALLOW EASE OF ACCESS FOR MAINTENANCE, CONSIDERING PLANT MATERIAL AND OBSTRUCTIONS. SIZE BOXES TO ACCOMMODATE COMPLETE VALVE ASSEMBLY INCLUDING WIRE, ISOLATION VALVES, AND UNIONS. SET VALVE BOXES IN A UNIFORM MANNER, SQUARE TO ADJACENT PAVING. ALIGN AND EVENLY SPACE GROUPS OF BOXES IN A UNIFORM AND ORDERLY FASHION. ONLY ONE VALVE PER BOX. BOX LOCATIONS SHALL BE STAKED IN FIELD AND APPROVED BY LANDSCAPE ARCHITECT PRIOR TO INSTALLATION.
- 8. ADJUST THE ENTIRE SYSTEM TO PROVIDE UNIFORM EVEN COVERAGE. ELIMINATE ALL FOGGING, AND OVERSPRAY ON TO PAVING, STRUCTURES, OR NON-PLANTED AREAS. PROVIDE A COMPLETE WORKING SYSTEM.
- 9. THE SYSTEM IS DESIGNED TO OPERATE AT A MINIMUM STATIC PRESSURE OF 50 P.S.I. AT A MINIMUM FLOW OF 40 GPM AT POINTS-OF-CONNECTION. NOTIFY THE OWNERS REPRESENTATIVE PRIOR TO COMMENCING WORK IF ACTUAL FIELD DATA DIFFERS FROM DESIGN PRESSURE AND FLOWS.
- 10. INSTALL ALL IRRIGATION PIPE AND WIRE IN CLASS-200 PVC SLEEVES BELOW ALL PAVED SURFACES OR STRUCTURES SUCH AS WALLS, STAIRS, AND OTHER IMPROVEMENTS. SIZE OF SLEEVES SHALL BE MINIMUM TWICE (2X) THE COMBINED DIAMETER OF PIPE TO BE PLACED IN SLEEVE. MINIMUM SIZE 4" WITH 24" COVER, MINIMUM. COORDINATE PLACEMENT OF SLEEVES WITH OTHER TRADES.
- 11. SIZE PIPE TO ENSURE THAT MAXIMUM WATER VELOCITY DOES NOT EXCEED 5 FT./SEC.
- 12. EXISTING IRRIGATION TO REMAIN AND IN USE DURING AND AFTER CONSTRUCTION.



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OB No.:	1700026	
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RAWN BY:	KS	
HECKED BY:	CW	
LOT DATE:	4/23/18 3:40pm	
LOTTED BY:	cwolfe	
WG NAME:	L100_IRR.dwg	

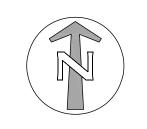
SAGERT ROAD ENTRANCES ACCESS RESTORATION

6464 SW Borland Road

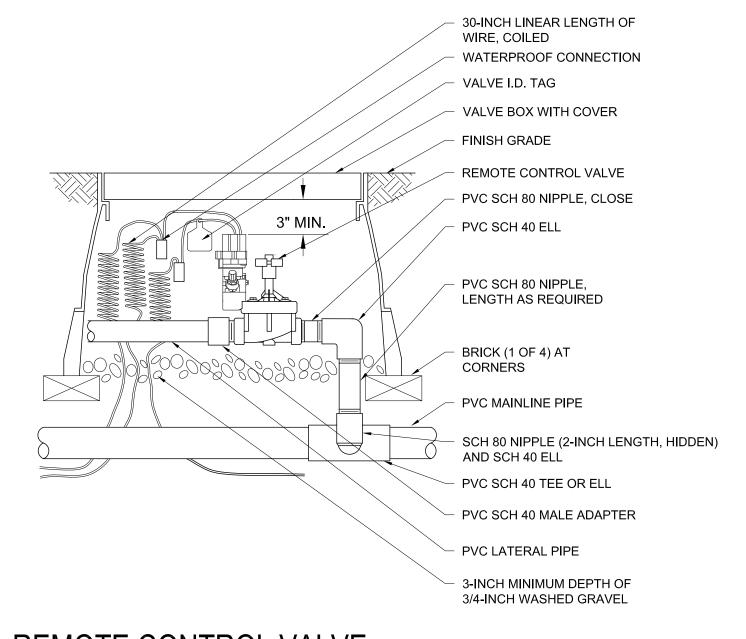
TUALATIN PROFESSIONAL PLAZA DESIGN-BUILD IRRIGATION PLAN SHEET NO

HEET 8 OF 11 ECORD NO.

REVISION DATE

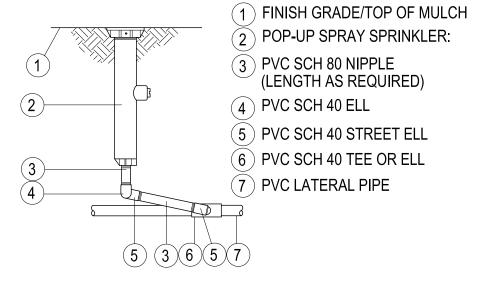






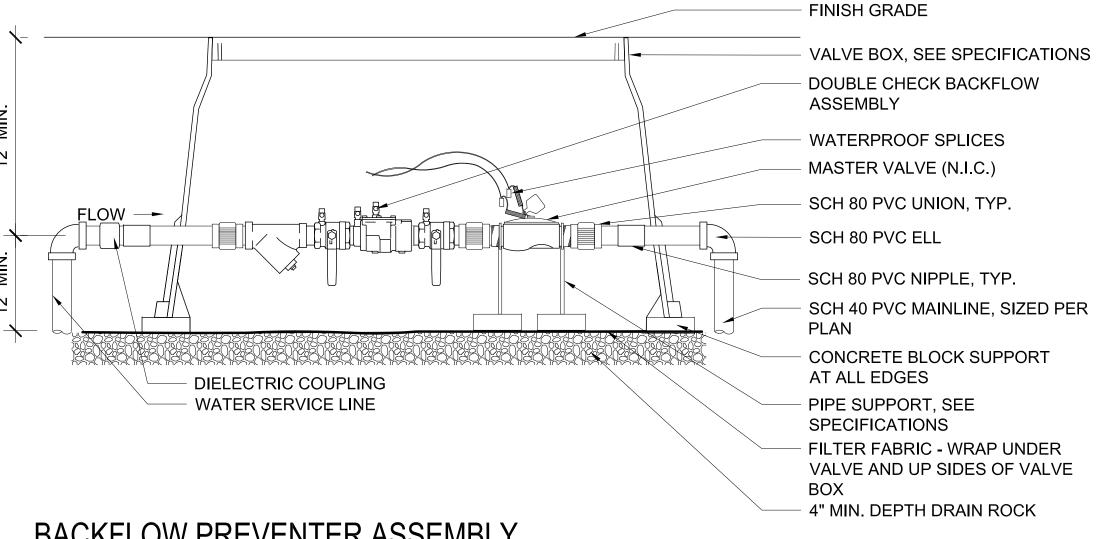
REMOTE CONTROL VALVE

Not to Scale



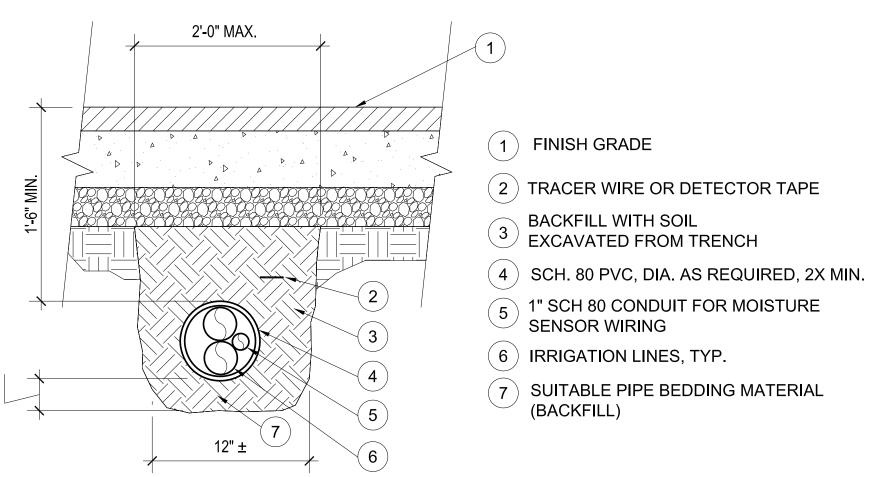
POP-UP SPRAY HEAD

Not to Scale



BACKFLOW PREVENTER ASSEMBLY

Not to Scale

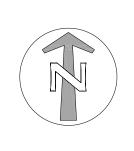


IRRIGATION SLEEVING

FINISH GRADE 2' **-** 0" MAX. TOP 6" OF BACKFILL TO BE TOPSOIL 'CAUTION' WARNING TAPE TRACER WIRE OR DETECTOR TAPE MAINLINE OR LATERAL CONTROL WIRE IN CONDUIT PIPE BEDDING SAND 6" MIN. CLEARANCE **IRRIGATION TRENCH**

Not to Scale

DESCRIPTION



SCALE AS INDICATED



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735 NW 18th Avenue Portland, OR 97209 503.334.2080

24
IMITARY OF TOP
PRELICITUDE.

JOB No.:	1700026	
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SAGERT ROAD ENTRANCES ACCESS RESTORATION

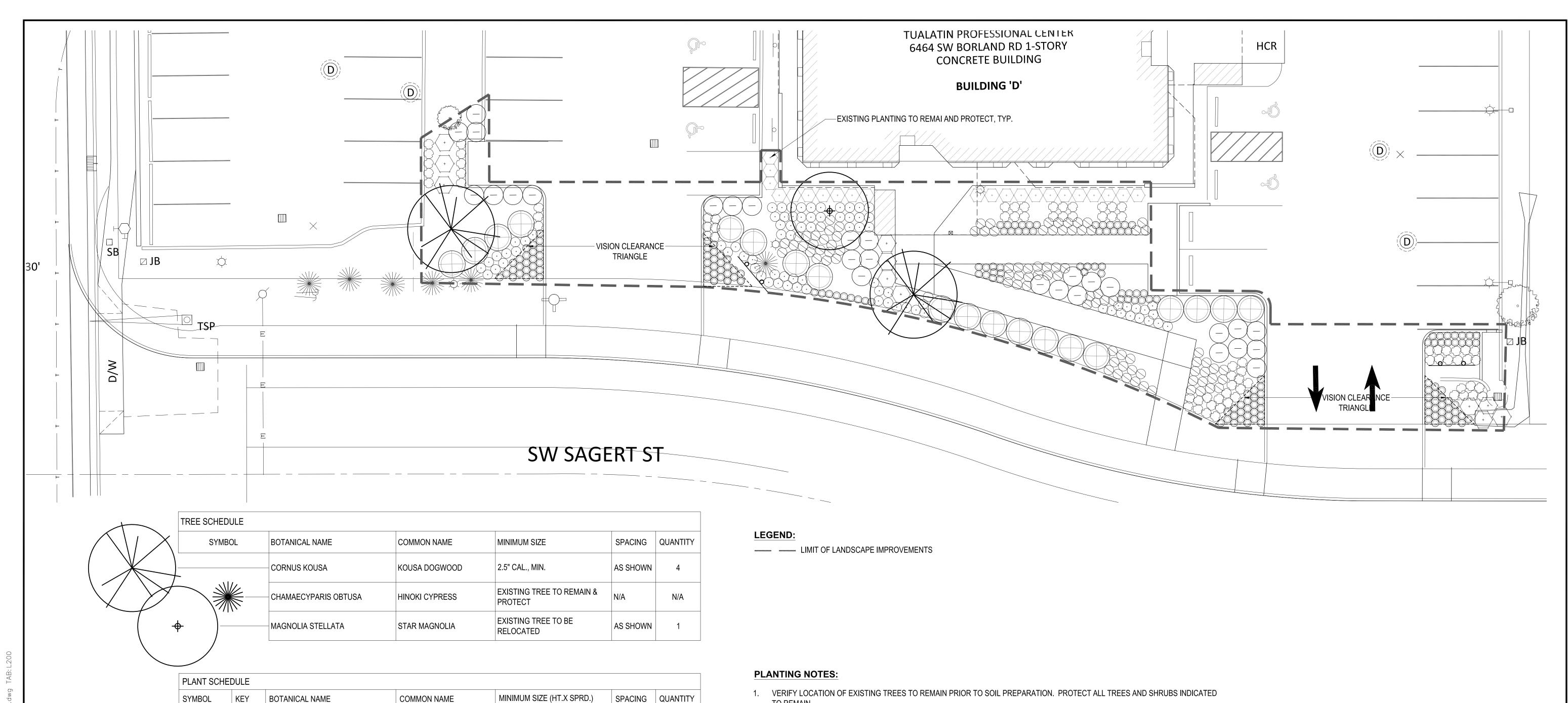
6464 SW Borland Road

SHEET NO SHEET 9 OF 11

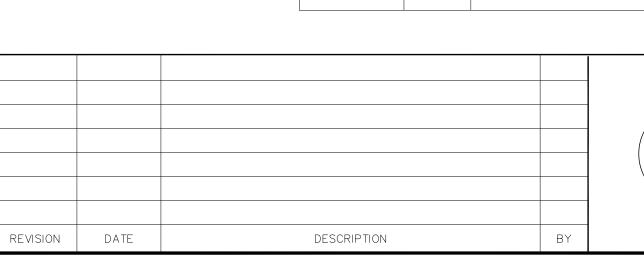
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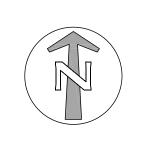
DATE

TUALATIN PROFESSIONAL PLAZA IRRIGATION DETAILS



- TO REMAIN.
- 2. VERIFY AND COORDINATE WORK AROUND ALL UNDERGROUND UTILITIES BEFORE EXCAVATION. NOTIFY ALL UTILITY PROVIDERS AT LEAST TWO (2) WORKING DAYS PRIOR TO BEGINNING WORK.
- 3. VERIFY THAT THE CONDITIONS ARE SUITABLE TO PROMOTE HEALTHY PLANT GROWTH. DO NOT PROCEED IF CONDITIONS DETRIMENTAL TO HEALTHY GROWING ENVIRONMENT ARE PRESENT, INCLUDING OVER-COMPACTED SOILS, ADVERSE DRAINAGE CONDITIONS, DEBRIS, OR OTHER HARMFUL CIRCUMSTANCES. PROCEEDING WITHOUT NOTIFICATION DENOTES ACCEPTANCE.
- 4. COORDINATE WITH OTHER SUBCONTRACTORS AND TRADES TO ENSURE PROTECTION OF GROWING CONDITIONS AND PLANT MATERIALS.
- 5. REFER TO SPECIFICATIONS FOR ADDITIONAL PLANTING REQUIREMENTS, METHODS, AND MATERIALS.
- 6. VERIFY PLANT QUANTITIES SHOWN ON THE PLANS BASED ON GRAPHIC REPRESENTATION. QUANTITIES SHOWN ARE FOR CONTRACTOR CONVENIENCE ONLY.
- 7. PROVIDE POSITIVE DRAINAGE FOR ALL PLANTING AREAS.
- 8. UNLESS OTHERWISE INDICATED, ALL PLANTINGS SHALL BE TRIANGULARLY SPACED.
- 9. LABELLING REFERS TO ALL ADJACENT IDENTICAL SYMBOLS WHERE PLANTS ARE MASSED. LABEL FOR MASS INDICATES TOTAL NUMBER OF PLANTS IN GROUP, EVEN IF THE GROUP IS SPREAD OVER MORE THAN ONE SHEET.





CAMELIA SASANQUA 'YULETIDE'

CISTUS X AGUILARII ' MACULATUS'

CORNUS SERICEA 'KELSEYII'

DAPHNE ODORA

'LITTLE BUNNY'

'PINK BEAUTY'

'AUREOMARGINATA'

ILEX CRENATA 'HELLERI'

POTENILLA FRUTICOSA

NANDINA DOMESTICA 'GULF

PENNISETUM ALOPECUROIDES

SPIRAEA JAPONICA 'GOLDMOUND'

CHTE CHOISYA TERNATA

COKE

DAOD

YULETIDE CAMELIA

MEXICAN ORANGE

KELSEY DOGWOOD

DAPHNE

BAMBOO

HELLER HOLLY

VARIEGATED WINTER

GULF STREAM HEAVENLY

PINK BEAUTY POTENILLA

LITTLE BUNNY DWARF

FOUNTAIN GRASS

GOLDMOUND SPIREA

SPOTTED WHITE ROCK



18" HT, MIN. 4 CANES, #5 CONT. | 4' O.C.

18" HT, MIN. 4 CANES, #5 CONT. | 4' O.C.

12" HT, MIN. 4 CANES, #3 CONT. | 3' O.C.

12" HT., MIN 4 CANES, #3 CONT. | 2' O.C.

12" SPREAD, #1 CONT.

12" SPREAD, #1 CONT.

12" SPREAD, #1 CONT.

12" HT, MIN. 4 CANES, #3 CONT.

12" HT, MIN. 4 CANES, #2 CONT.

12" HT, MIN. 4 CANES, #3 CONT. | 2' O.C.



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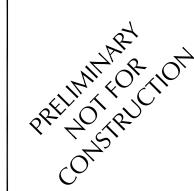
3' O.C.

3' O.C.

18" O.C.

3' O.C.

735 NW 18th Avenue Portland, OR 97209 503.334.2080



	JOB No.:	1700026	
	DESIGNED BY:	KS	
•	DRAWN BY:	KS	
	CHECKED BY:	CW	
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	PLOTTED BY:	cwolfe	
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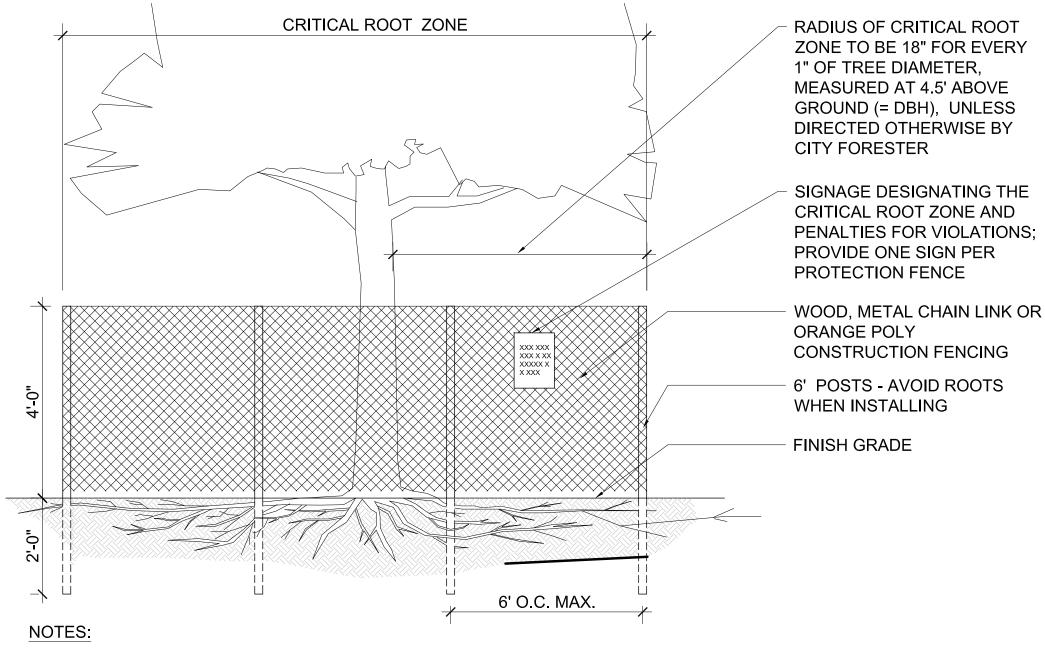
SAGERT ROAD ENTRANCES ACCESS RESTORATION

6464 SW Borland Road

TUALATIN PROFESSIONAL PLAZA PLANTING PLAN

SHEET NO

HEET 10 OF 11 ECORD NO.



1) NO SOIL GRADE CHANGES, COMPACTION OR STORAGE OF MATERIALS SHALL BE ALLOWED WITHIN THE CRITICAL ROOT ZONE (CRZ). THE FOLLOWING CONSTRUCTION ACTIVITIES SHALL NOT BE ALLOWED WITHIN THE CRITICAL ROOT ZONE: STORAGE OR STAGING OF MATERIALS OR EQUIPMENT DUMPING OF REFUSE

2) THE CRZ FOR TREES 4" DIAMETER OR SMALLER SHALL BE AN AREA WITH A RADIUS AT LEAST 5' FROM THE TRUNK. THE CRZ FOR TREES OVER 4" DIAMETER SHALL BE AN AREA WITH A RADIUS AT LEAST 1'-6" FROM THE TRUNK FOR EVERY 1" OF DIAMETER SIAE.

3) PROTECTIVE FENCING IS REQUIRED WHEN THE WORK AREA IS WITHIN THE CRZ OF TREES, EXCEPT WHERE PORTIONS OF THE CRZ ARE COVERED WITH PAVEMENT SUCH AS STREETS OR WALKS.

4) WORK DONE WITHIN THE CRZ MUST MINIMIZE ROOT DISTURBANCE. SPECIAL CARE SHALL BE TAKEN DURING EXCAVATION AND REMOVAL OF EXISTING CURB, GUTTER, AND SIDEWALKS TO AVOID DAMAGE TO TREE ROOTS. LOCATE EXISTING TREE ROOTS USING HAND TOOLS OR OTHER APPROVED METHODS SUCH AS AIRSPADE.

5) NO ROOT OVER 2" SHALL BE CUT WITHOUT APPROVAL OF THE URBAN FORESTER (OR AN APPROVED ARBORIST). ROOTS SHALL BE CUT WITH APPROVED SAWS. NO ROOTS OVER 2" SHALL BE CUT OR TORN DURING TRENCHING WITH POWER EQUIPMENT SUCH AS BACKHOES AND TRENCHERS. UTILITY LINES AND IRRIGATION OR OTHER PIPES SHALL BE INSTALLED BY HAND DIGGING OR TUNNELLING UNDER ROOTS AS NECESSARY TO AVOID CUTTING ROOTS 2" AND LARGER.

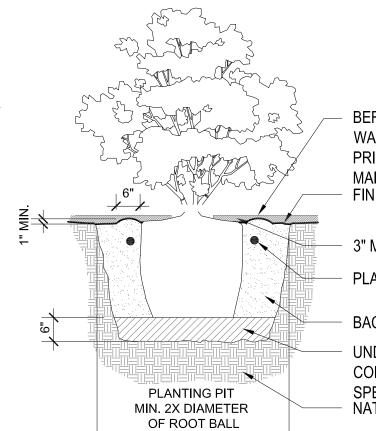
TREE PROTECTION

Not to Scale

VEHICLE PARKING

NOTE:

- 1. PLANTING PITS SHALL BE 2X DIAMETER AND 1 1/2X DEPTH OF ROOTBALL
- 2. ROOTBALL CROWN TO BE SLIGHTLY ABOVE FINISH GRADE BEFORE MULCH IS APPLIED.
- 3. CUT AND REMOVE ALL BINDING FROM THE TOP AND SIDES OF THE ROOTBALL BEFORE BACKFILLING. ROUGH UP EXTERIOR SURFACE OF ROOT BALL AND EXTEND CIRCLING ROOTS OUTWARDS INTO PLANTING
- 4. KEEP MULCH AWAY FROM WOODY STEMS.



BERM TO FORM DEPRESSED WATERING BASIN (TO BE REMOVED PRIOR TO THE END OF MAINTENANCE) FINISH GRADE 3" MULCH LAYER SEE SPECIFICATIONS.

503.334.2080

PLANT TABS SEE SPECS.

BACKFILL MIX SEE SPECS.

UNDISTURBED NATIVE SOIL OR COMPACTED BACKFILL MIX SEE SPECS. NATIVE SOIL



SHRUB PLANTING

Not to Scale

Portland, OR 97204 O: 503.227.3251 F: 503.274.4681

735 NW 18th Avenue Portland, OR 97209

TAB NAME: L201

1700026 JOB No.: DESIGNED BY: KS RAWN BY: KS HECKED BY: CW PLOT DATE: 4/23/18 3:52pm PLOTTED BY: cwolfe DWG NAME: L201_PLNT_DET.dw

6464 SW Borland Road

PLANTING AREAS

1. ALL SOIL AREAS DISTURBED OR COMPACTED DURING CONSTRUCTION,

WITH COMPOST AS DESCRIBED BELOW.

PROCTOR TO ENSURE A FIRM SURFACE.

(Byny)

PLANTING BED SOIL

PLANTING PIT

MIN. 2X DIAMETER

TREE PLANTING

Not to Scale

OF ROOT BALL

Not to Scale

DETERMINED BY THE LANDSCAPE ARCHITECT.

AND NOT COVERED BY BUILDINGS OR PAVEMENT, SHALL BE AMENDED

2. SUBSOIL SHOULD BE SCARIFIED (LOOSENED) 4 INCHES BELOW AMENDED LAYER, TO PRODUCE 12-INCH DEPTH OF UN-COMPACTED SOIL, EXCEPT

3. COMPOST SHALL BE TILLED IN TO 8 INCH DEPTH INTO EXISTING SOIL, OR

PLACE 8 INCHES OF COMPOST-AMENDED SOIL, PER SOIL SPECIFICATION.

CONTAINING 35-40% COMPOST BY VOLUME. MULCH AFTER PLANTING

SETBACKS: TO PREVENT UNEVEN SETTLING, DO NOT COMPOST-AMEND SOILS WITHIN 3 FEET OF UTILITY INFRASTRUCTURES (POLES, VAULTS,

METERS ETC.). WITHIN ONE FOOT OF PAVEMENT EDGE, CURBS AND

TREE TIE- SEE SPECS., LOOP AROUND TRUNK IN

FIGURE-8 PATTERN; DO NOT TIE TO TRUNK

(2) STAKES - SEE SPECS., DO NOT PENETRATE

ROOT BALL: REMOVE STAKES & TIES 1- FULL

TRUNK FLARE MUST BE VISIBLE, DO NOT COVER TOP OF ROOT

6' MIN. DIA. SOIL BERM WATERING BASIN (REMOVED PRIOR TO T

REMOVE ALL TWINE, ROPE, WIRE, AND BURLAP FROM TOP OF

ROOT BALL. CUT WIRE BASKET (IF USED) IN FOUR PLACES

SET ROOTBALL ON NATIVE SOIL OR 90% DRY DENSITY

BALL WITH SOIL. TREES WITHOUT VISIBLE TRUNK FLARE

MULCH LAYER SEE SPECS., KEEP MULCH CLEAR OF

MAIN TRUNK

YEAR AFTER PLANTING

VISIBLE: REJECTED

OF MAINT. PERIOD)

PLANT TABS, SEE SPECS.

COMPACTED BACKFILL MIX

BACKFILL MIX SEE SPECIFICATIONS

AND FOLD DOWN 8" INTO PLANTING PIT

FINISH GRADE

NATIVE SOIL

SIDEWALKS SOIL SHOULD BE COMPACTED TO APPROXIMATELY 90%

WHERE SCARIFICATION WOULD DAMAGE TREE ROOTS OR AS

4. PLANTING AREAS SHALL RECEIVE 3 INCHES OF COMPOST TILLED IN

TO 8-INCH DEPTH, OR MAY SUBSTITUTE 8" OF IMPORTED SOIL

WITH 2-4 INCHES OF BARK MULCH OR APPROVED EQUAL.

FINISH GRADE-

2"-4" BARK MULCH

3" OF COMPOST

SUBSOIL SCARIFIED TO 4" DEPTH

(12" BELOW FINISH GRADE)

UNDISTURBED SUBSOIL

BELOW COMPOST AMENDED LAYER

NOTES:

INCORPORATED INTO

SOIL TO 8" DEPTH

SAGERT ROAD ENTRANCES ACCESS RESTORATION

TUALATIN PROFESSIONAL PLAZA

ECORD NO.

REVISION

DATE

SCALE AS INDICATED

DESCRIPTION

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PLANTING DETAILS

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SHEET N



STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Aguilla Hurd-Ravich, Community Development Director

DATE: 05/14/2018

SUBJECT: Continued Hearing for the Request for Review (Appeal) of a Planning

Commission Decision Approving a Variance (VAR17-0001) to the Separation

Requirements of Wireless Communication Facilities

ISSUE BEFORE THE COUNCIL:

Spectrasite Communications (subsidiary of American Tower Corporation) filed an appeal of the Planning Commission's decision to approve a Variance request. The public hearing began on April 9, 2018 at which time the appellant requested that the record be left open for an additional seven days. The public record closed on April 16, 2018. Tonight's meeting is for Council deliberations and a decision.

Acom consulting submitted an application for a Variance to the Wireless Communication Facility separation requirements (VAR17-0001) and was approved by the Planning Commission on January 18, 2018. The Tualatin Development Code requires a minimum separation of 1,500 feet between wireless communication facilities, however the City may grant a variance to this provision if an applicant can demonstrate compliance with certain criteria. The Planning Commission considered a Variance request for a Wireless Communication Facility, POR Durham, to locate at 10290 SW Tualatin Road which is within 1,500 feet of an existing Facility. The existing facility is located at 10699 SW Herman Road which is the location of the City's Public Works site and it is approximately 750 feet southwest of the proposed WCF location.

RECOMMENDATION:

Staff recommends the City Council consider this staff report, analysis and findings, the applicant's and apellant's materials, and all materials from the previous Council hearing and three Planning Commission hearings including November 16, 2017, December 7, 2017, January 18, 2018, and April 9, 2018. Based on the applicant's narrative and photo simulations (included as exhibits to the analysis and findings) staff finds the application meets the variance criterion 33.025(1)(b).

EXECUTIVE SUMMARY:

Acom Consulting, Inc. proposed to construct a new unmanned wireless communication facility (WCF) on behalf of Lendlease (US) Telecom Holdings LLC - c/p PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. on the southwest corner of 10290 SW Tualatin Road. The proposed WCF would include a new 100-foot monopole support tower with antennas mounted at the top and opportunities for ancillary ground equipment including equipment cabinets, natural gas generator, cabling and an ice bridge, which will be located below in a new 25 foot by 48 foot secure fenced lease area surrounding the tower. It is anticipated that the proposed WCF will generate approximately one to two visits per month from a site technician.

The proposed WCF would be located within 1,500 feet of an existing WCF at 10699 SW Herman Road. Tualatin Development Code 73.470(9) requires that WCFs are separated by 1,500 feet:

"The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied."

The applicant, Acom Consulting, seeks a variance from this code requirement. As stated in TDC Section 33.025(1) "The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1,500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b)." The original application provided findings for 33.025(1)(a)(i) through (iii). The applicant has provided a revised narrative to demonstrate findings for 33.025(1)(b).

TDC 33.025(1)(b) Site Characteristics

The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

The applicant stated that the proposed location includes tall, dense, evergreen trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. The applicant submitted photo simulations to demonstrate this assertion.

Staff found, based on the materials submitted by the applicant, that the application meets this criteria. Staff's full analysis and findings are included with Attachment C and the applicant's narrative and photo simulations are Exhibits A and B to staff's analysis and findings.

Materials submitted by the appellant prior to the record closing and the applicants rebuttal are included in Attachments and B. All materials from the previous City Council hearing on April 9, 2018 are included in Attachment C. The full staff reports from January 18, 2018, December 7, 2017 and November 16, 2017 are included as Attachment D.

OUTCOMES OF DECISION:

Approval of VAR17-0001 would result in the following:

- Allows the applicant to locate a Wireless Communication Facility (WCF) at 10290 SW Tualatin Road: and
- Allows staff to review an Architectural Review (AR) for the proposed WCF project.

Denial of VAR17-0001 would result in the following:

- Prohibits the applicant from locating a WCF at 10290 SW Tualatin Road.
- An Architectural Review decision must be denied as it could not meet the separation standard.

ALTERNATIVES TO RECOMMENDATION:

The City Council has two options:

- 1. Approve the proposed variance with appropriate findings that state the application meets the criteria of TDC 33.025(1)(b); or
- 2. Deny the proposed variance with appropriate findings that the application fails to meet the criteria of TDC 33.025(1)(b)

FINANCIAL IMPLICATIONS:

The Fiscal Year 2017/18 budget allocated revenue to process current planning applications, and the appellant and applicant have submitted payment per the City of Tualatin Fee Schedule to process the application.

Attachments: Attachment A - Materials from Appellant April 9 and 16 2018

Attachment B - Materials from Applicant Final Argument and Tree Survey

Attachment C - Materials from Appeal Hearing April 9, 2018

Attachment D - Previous Staff Reports and Attachments

<u>Attachment E - Presentation</u>

Saalfeld Griggs

VIA ELECTRONIC DELIVERY TO: ahurd-ravich@tualatin.gov

City of Tualatin City Council c/o: Aquilla Hurd-Ravich, Planning Manager Community Development Dept – Planning Division 18880 SW Martinazzi Ave Tualatin, OR 97062-7092

> RE: Rebuttal Letter - Appeal of Pl Tower Development Project OR-Tualatin-Durham/10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001) Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable City Council Members:

Thank you for the opportunity to present to you last week. As you know, I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation (collectively, "ATC"), which is the appellant in the above referenced variance case. ATC is also a tenant of the City. ATC's wireless communications facility (the "ATC Tower") is located within a dense evergreen stand in the rear yard of the City of Tualatin's Public Works Department Building, located at 10699-10813 SW Herman Road, Tualatin, Oregon 67062 (the "ATC Tower Location"). ATC submits these comments to respond to questions from the City Council and comments from the attorney representing Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "Applicant").

- I. Applicant failed to meet its burden of proof under TDC 33.025(1)(a)(ii) and misapplies the code. TDC 33.025(1)(a)(ii) requires the Applicant to prove (not ATC) that the ATC Tower "cannot be modified to accommodate another provider." Applicant has made misstatements of law and fact in furtherance of its variance request.
 - ATC does not need to "rebuild" its tower to accommodate another provider. ATC previously submitted a letter in the record from Bryan Lanier, a professional engineer and structural engineer licensed in Oregon (License No. 88547PE) dated November 7, 2017. He reviewed multiple scenarios for extending the existing pole and adding new colocation equipment including: "Scenario 1: The existing 130 ft monopole to have a 20 ft proposed extension with Verizon obtaining a new rad height of 150 ft and T-Mobile of 140 ft. Both carriers will have the following loading scenario: (12) 8ft panels and (12) RRU's on a platform w/ handrails." He ultimately concluded: "After review, the tower and foundation would be able to accommodate, structurally, both scenarios per ANSI/TIA-222-G specifications. No structural upgrades to the tower or foundation, aside from the extension, would be needed for either scenario." Mr.

Park Place, Suite 200 250 Church Street SE Salem, Oregon 97301

Post Office Box 470 Salem, Oregon 97308 _____

Lanier's letter proves that a "rebuilding" of the ATC Tower as characterized by opposing counsel is not necessary.

- An extension of the monopole is permitted under federal law without a variance. The extension of the monopole from 130 feet to 150 feet as described by Mr. Lanier would accommodate two additional rad centers housing necessary panels and equipment. Such an extension of the pole is permitted under federal law without the need of a variance. ATC has conferred with the City Attorney who agrees ATC may proceed with an extension of the existing pole 20 feet without a variance. ATC will still need to submit the normal building permit and MAR applications and fees; however, the City's review is nondiscretionary and will be completed on an expedited basis (60 days). Opposing counsel argues that such an extension is impermissible because "[i]t would defeat the concealment elements of the eligible support structure." His argument is plainly wrong. This section is intended to limit the extension that would eliminate pre-existing mono-firs, artificial tree branches or specialized paint materials. See 2014 FCC Infrastructure Order ¶ 200 (p. 85-86). In this case, the "eligible support structure" has no concealment elements; thus, the cited legal standard is not applicable. applicable, scenario 1 does not contemplate tree removal. Rather, it is the necessary consequence of approximately 20 years of tree growth from the surrounding stand of dense Douglas Firs. Such a limited extension will not defeat the concealment of the existing tower in any way, and the City should completely disregard Applicant's assertions to the contrary.
- Applicant asks the City to misapply the code and shift the burden of proof to ATC unlawfully. Applicant has proven nothing regarding TDC 33.025(1)(a)(ii). Rather, Applicant argues ATC must prove that it can obtain a variance to accommodate a minimum of two new providers within an undefined yet immediate time frame. Applicant also argues the fact that ATC has not already applied for such a variance request precludes ATC from arguing its tower can accommodate another provider. Nothing in the code supports such a position. The text of the code states that if the ATC Tower can be "modified to accommodate another provider," the variance request must be denied. The code does not create an exemption for towers that cannot be modified to provide two, three or four additional providers nor does it create an exemption for towers that need additional land use approval. ATC has submitted uncontroverted evidence its tower can be modified to accommodate another carrier. Moreover, while an extension in lieu of cutting or topping trees is ATC's strong preference (i.e., Scenario 1), Applicant must prove as a matter of law that no tree removal or pruning can accommodate an additional provider.
- T-Mobile has signed an Letter of Intent. On April 9, 2018, T-Mobile and ATC signed a letter of intent (LOI) to enter into a license agreement for the ATC Tower, a copy of which is attached hereto and submitted into the record. This LOI expressly references the ATC Tower located on the City's property at 10318 SW Herman Road. Upon completion of the final License Agreement, ATC intents to submit the necessary permit requests and commence with construction of the tower extension. ATC has removed any doubt as to its intentions to expand the current tower as soon as possible. TMO's desire to colocate with ATC is further evidence it can accommodate another provider.
- II. Applicant failed to meet its burden of proof under TDC 33.025(1)(b). TDC 33.025(1)(b), which is titled, site characteristics, requires Applicant to prove that the "proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the

RL District or from a small lot subdivision in the RML District (emphasis added)." Applicant has failed to meet this burden regarding TDC 33.025(1)(b).

- Applicant attempts to divorce the application of TDC 33.025(1)(b) from the Applicant's site. The word "location" does mean something different than "site", but it plainly refers to the "location" within the site. In evaluating the "site characteristics", TDC 33.025(1)(b) requires the Applicant to prove that the "proposed monopole location includes tall, dense evergreen trees." Trees located offsite and within the adjoining neighborhood cannot be the basis for demonstrating the requirement for necessary screening. Applicant has misinterpreted the meaning of "location" and "site characteristics" within the variance criteria.
- ATC has demonstrated that the Applicant' site lacks "tall, dense evergreen trees" where a
 tower can be located. Aerial photos clearly demonstrate this lack of evidence. Rather,
 Applicant argues that the criteria can be satisfied because at least 50 percent of the tower can
 be screened by buildings and offsite trees.
- ATC's tower is a prime example of what kind of site and location TDC 33.025(1)(b) can serve as a basis for a variance approval. The City's site at 10318 SW Herman is of similar size as the Applicant's site. The City's site consists of approximately 8.73 acres. In the northern portion of tax lot 300, there is a large stand of tall, dense evergreen trees that completely screen the ATC tower when standing on the nearby ground. Because the stand of trees is so dense, the screening applies in 360 degrees. Conversely, the few tall evergreen trees on the Applicant's site (approximately 9.36 acres) are located nowhere close to the proposed tower location and provide no screening to properties that are not directly north of the subject site. The evidence cannot support a finding of approval.

Applicant cannot meet its burden of proof under TDC 33.025(1)(a) or (b). Applicant asks the City to distort the plain meaning of the text inviting the City to commit errors of law that would provide a terrible precedent for the City's future application of the TDC. For these reasons, ATC requests the City deny VAR-17-0001.

Sincerely,

ALAN M. SOREMasorem@sglaw.com Voice Message #303

Exhibit: TMO LOI



April 9, 2018

RE: Letter of Intent to Enter Tenant License Agreement Site No.: 308345 / Site Name:

T-Mobile West LLC has determined that Spectrasite Communications, LLC's (a wholly owned subsidiary of American Tower Corporation, hereafter "American Tower") existing monopole located at 10318 SW Herman Road in the City of Tualatin, Oregon will address a significant coverage gap in network coverage if the monopole is extended. T-Mobile West LLC intends to enter into a lease agreement with American Tower whereby American Tower will extend the monopole and T-Mobile West LLC will collocate onto the extension.

Authorized Representative of T-Mobile West LLC

Name: Michelle Ploof

Title: Portland T-Mobile Development Manager

From: Alan M. Sorem
To: Jennifer S. Marshall

 Subject:
 FW: ATC# 308345 King City OR 1

 Date:
 Monday, April 16, 2018 1:51:48 PM

Attachments: <u>image002.png</u>

Alan M. Sorem

Lawyer – Real Estate & Land Use Practice Group



Park Place, Suite 200 | 250 Church Street SE | Salem, Oregon 97301 Direct: 503.485.4260 | Office: 503.399.1070 | fax: 503.485.5603

Email | Web | Bio | LinkedIn

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From: Alan M. Sorem

Sent: Monday, April 09, 2018 6:34 PMTo: AHURD-RAVICH@tualatin.govCc: Sean Brady <sbrady@tualatin.gov>Subject: Fwd: ATC# 308345 King City OR 1

Please include this in the record.

Alan M. Sorem



Park Place, Suite 300 | 250 Church Street SE | Salem, Oregon 97301

tel: <u>503.399.1070</u> | fax: <u>503.371.2927</u>

Email | Web | Bio | LinkedIn

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attachments & notify sender by email.

Begin forwarded message:

From: Nicholas Caezza < Nicholas. Caezza@americantower.com >

Date: April 9, 2018 at 12:50:46 PM PDT

To: Mike Clarke < <u>Michael.Clarke@americantower.com</u>>, "Alan M. Sorem"

<asorem@sglaw.com>

Subject: RE: ATC# 308345 King City OR 1

----- Original message -----

From: Amanda Hoffman amanda.hoffman@smartlinkllc.com

Date: 4/9/18 12:21 PM (GMT-08:00)

To: Mike Clarke < Michael. Clarke@americantower.com >

Subject: ATC# 308345 King City OR 1

Mike,

This is a site T-Mobile corporate has talked to ATC about extending for them, and they want to move forward ASAP. It's a 130' tower, what is the RAD center of the extension that can be done here?

Also, if we want to walk this site with our A&E this coming Wednesday, is that a problem? We aren't doing any testing, just A&E walk.

Thanks,



Amanda Hoffman | Senior Project Manager Smartlink

(m) 503.476.4883 smartlinkllc.com

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entirety. Thank you.



April 6, 2018

RE: PI Tower Development Project OR—Tualatin Durham / 10290 SW Tualatin Rd

To Whom It May Concern:

My name is Micah Hawthorne, and I am a Principal Sales Engineer at American Tower with an RF Engineering background. My resume has been previously submitted into the record in support of this statement.

It is my understanding there are two issues before the City on appeal. I am submitting these comments in regard to the City of Tualatin's application of TDC 33.025(1)(a)(ii):

The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,

American Tower Corporation (ATC) has an existing tower structure that is less than 750 ft. from the proposed tower site, locate at 10318 SW Herman Road (Exhibit A). It is my opinion that ATC can modify its existing tower to accommodate another provider.

I previously submitted written testimony describing certain coverage scenarios. These comments are intended to supplement my prior testimony based on the attached exhibits that evidence the current height of the surrounding trees (Exhibit B) via an aerial drone surface model (DSM) and confirmation that the existing ATC Tower can be extended a minimum of 20 feet from 130 feet to 150 feet under federal law.

If an extension were approved to 150 feet, the attached slides demonstrate that Verizon, and thereby T-Mobile with operations in similar frequency bands, may be able to achieve generally acceptable coverage levels from the proposed ATC Tower in the 700 MHz and the 2,100 MHz (AWD) frequency bands (Exhibits C and D respectively) upon the proposed modification. In both scenarios, predictions suggest it is possible to achieve signal strength (RSRP) levels of -95 or greater within the desired coverage area as outlined by Verizon.

Additionally, I have reviewed the testimony of Mr. Andrew H. Thatcher, dated July 13, 2017. I disagree with his estimations regarding signal attenuation. Based on the updated information regarding the existing tree height and the proposed expansion of the existing ATC Tower, I do not believe there will be any signal attenuation caused by tree height. Similarly, his conclusions regarding the predicated propagation to the residential locations is based on the incorrect



assumption that no expansion of the ATC Tower would be allowed. Therefore, his proposed propagation maps in figures 2 and 3 are inaccurate.

Micah T Hawthorne,

Principal Sales Engineer

Med Halt



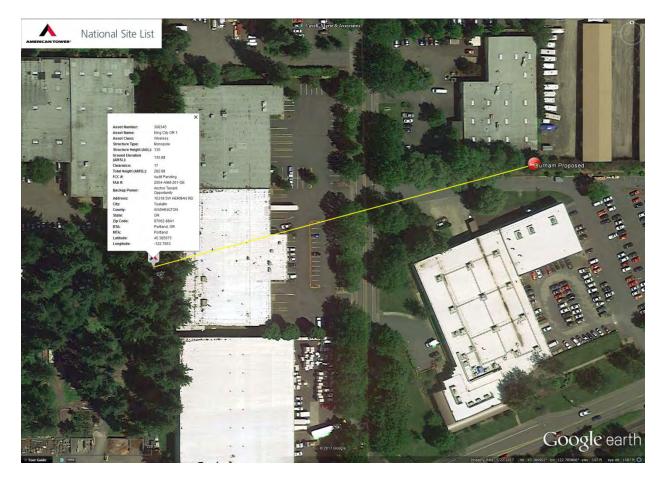


Exhibit A. ATC 308345 is approximately 750 ft. from the 10290 SW Tualatin Road location.



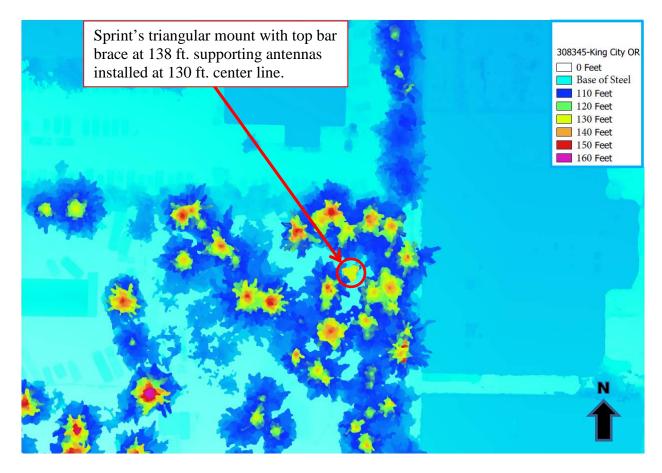


Exhibit B. Tree height and density evaluation by aerial drone surface model (DSM) analysis



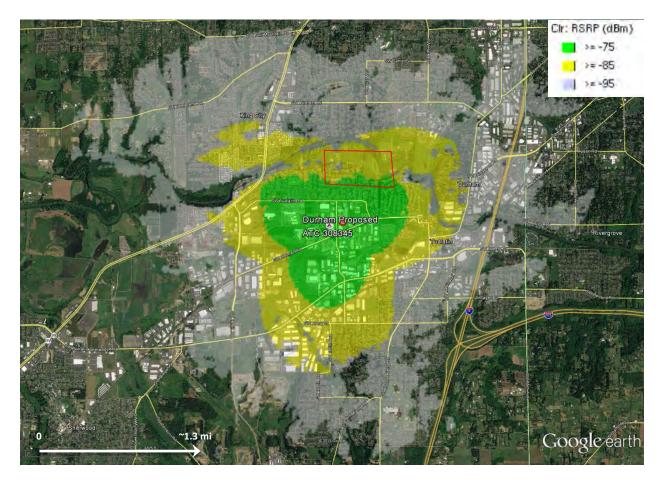


Exhibit C. ATC 308345 700 MHz LTE signal level from 150 ft.



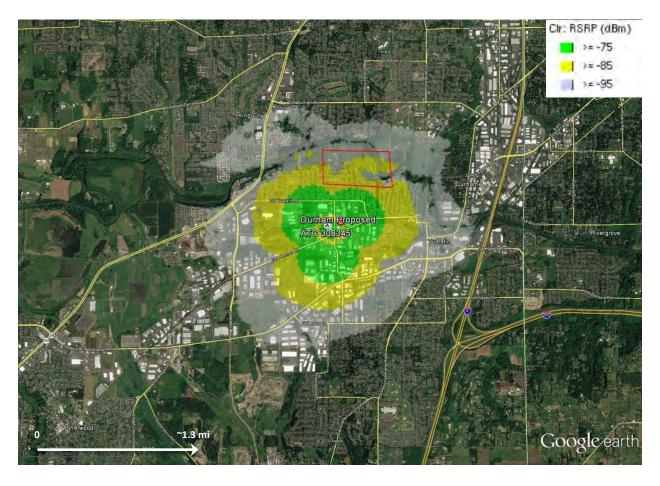


Exhibit D. ATC 308345 2,100 MHz (AWS) LTE signal level from 150 ft.



Koback · Connors - Heth

April 23, 2018

VIA EMAIL

City Council
City of Tualatin
Attn: Aquilla Hurd-Ravich
18880 SW Martinazzi Avenue
Tualatin, OR 97062
ahurd-ravich@tualatin.gov

Re: Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.

Application No. VAR-17-0001 Applicant's Final Written Argument

Dear Mayor Ogden & Councilors:

As you know, this firm represents the applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). We are submitting this final written argument pursuant to ORS 197.763(6)(e) in response to American Tower Corporation's ("ATC") appeal (the "Appeal") of the Planning Commission's Resolution No. TDC-609-17 unanimously approving the Applicant's variance application for a Wireless Communications Facility to be placed within 1,500 feet of an existing wireless communications facility (the "Application"). The final written argument responds to the new arguments and evidence ATC submitted since it filed the Appeal. For the reasons set forth in this letter and our previous submissions, the City Council should deny the Appeal and affirm the Planning Commission's unanimous decision.

A. The Planning Commission correctly determined that the Application satisfied TDC 33.025(1)(a) based on the applicable code provisions and substantial evidence in the record.

TDC 33.025(1)(a)(i) requires an applicant to demonstrate that it is "technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied." TDC 33.025(1)(a)(ii) requires the applicant to provide evidence that the existing towers or towers for which an application has been filed and not denied within 1,500

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Page 2 April 23, 2018

feet of the proposed tower "cannot be modified to accommodate another provider." The Applicant submitted substantial evidence of compliance with these criteria.

ATC, a direct competitor of the Applicant, is the only party that objected to the Application and challenged the Applicant's compliance with TDC 33.025(1)(a). ATC does not dispute the fact that its existing tower located at 10699 SW Herman Rd. (the "ATC Tower") cannot provide the needed coverage and capacity for the two carriers (Verizon Wireless and T-Mobile) that agreed to site their wireless facilities on the Applicant's proposed tower. Although ATC claims that it can modify the ATC Tower to accommodate these additional carriers, there is no way for ATC to do so unless it files for, and obtains, its own variance to increase the height of the ATC Tower. TDC 33.025(1)(a) does not require the Applicant to rule out an existing tower that must obtain its own variance and related City approval in order to accommodate the carriers, and certainly not if the required variance application has not been filed yet. That is why ATC has repeatedly changed its modification proposal – ATC is desperately looking for a proposal that does not trigger a variance requirement because it understands that is the only way to prove that TDC 33.025(1)(a)(ii) is not satisfied. The Applicant has already demonstrated that ATC's previous modification proposals are flawed and we explained below why ATC's latest proposal is similarly flawed.

After evaluating all of the arguments and evidence, the Planning Commission unanimously concluded that the Applicant demonstrated compliance with TDC 33.025(1)(a). The City Council should affirm the Planning Commission's interpretation and conclusion.

1. ATC has not provided credible evidence that it can modify the ATC Tower in order to accommodate two additional carriers because it keeps changing its plan for doing so.

In order to demonstrate that the ATC Tower can be modified to accommodate two additional carriers, ATC must at a minimum provide a credible plan for doing so. As we previously explained, ATC has not presented a credible plan because it has repeatedly changed its position regarding the modifications necessary to accommodate the two additional carriers. These constant changes reveal that ATC does not have a concrete or credible plan for accommodating two additional carriers on the ATC Tower.

Originally, ATC argued that the ATC Tower could accommodate two additional carriers by removing the screening trees located within a 155-foot radius of the ATC Tower and seeking a variance to increase the height of the ATC Tower by 20 feet. Letter from Alan Sorem, dated November 16, 2017, pp.1-2. After it became apparent that removing the screening trees was neither desirable nor feasible, ATC changed its position at the last Planning Commission hearing and argued that it could accommodate two additional carriers without removing the screening trees. The Planning Commission was not persuaded by this last minute change and rejected ATC's claim.

In its written appeal, ATC changed its position again. The Appeal claimed that ATC can accommodate two additional carriers by increasing the height of the ATC Tower to 166 feet. Letter from Alan Sorem, dated February 7, 2018, pp.4-6. ATC also claimed that it is entitled to increase the height of the ATC Tower to 166 feet as a matter of law under Section 6409 of the Middle Class Tax Relief and Job Creation Act (the "Spectrum Act"). Letter from Alan Sorem, dated February 7, 2018, pp.4-6. As we explained at the April 9, 2018 appeal hearing, the premise of ATC's claim is

Page 3 April 23, 2018

legally flawed and ATC will clearly be required to obtain a new variance in order to increase the height of the ATC Tower to 166 feet.

Apparently recognizing the flaws with its new position, ATC changed its position once again. ATC now claims it can accommodate two additional carriers by increasing the ATC Tower to only 150 feet. Letter from Alan Sorem, dated April 16, 2018, pp.1-2. ATC does not explain why it originally thought 166 feet was necessary or why it now believes that 150 feet is sufficient.

It is obvious from the constant evolution of ATC's position that ATC does not have an actual plan nor does it know for sure what modifications are necessary to accommodate two additional carriers. That is why ATC has not submitted an application to modify the ATC Tower even though it has known about the Application and proposed new tower for over 5 months. ATC's real plan is to say and do whatever is necessary to convince the City to deny the Application, and then it will figure out what modifications are necessary to accommodate these carriers after-the-fact. This approach is wholly inconsistent with TDC 33.025(1)(a). TDC 33.025(1)(a) requires ATC to demonstrate that its tower can be modified to accommodate these carriers *before* the City can deny the Application. ATC's failure to provide a credible plan for modifying the ATC Tower in a way that can accommodate these two carriers is a fatal flaw to its position.

2. ATC failed to demonstrate that a 150-foot tower can accommodate Verizon's coverage/capacity objectives.

Since the proposed tower is intended to accommodate both Verizon and T-Mobile, ATC must establish that the ATC Tower can be modified to accommodate both carriers in order to provide a basis for denying the Application. It appears that ATC was able to pressure T-Mobile to change its position on the eve of the April 9 appeal hearing. Although ATC used similar pressure tactics with Verizon, Verizon did not agree to change tower proposals. Verizon continues to support the Application and intends to site its antenna and equipment on the Applicant's proposed tower. ATC cannot demonstrate that the ATC Tower can be modified to accommodate Verizon's coverage/capacity objectives because Verizon already rejected a 150-foot tower based on its own RF engineering analysis.

The Applicant already demonstrated that even if the ATC Tower was increased to 150 feet, it still would not satisfy Verizon's coverage and capacity objectives for this site. The Applicant submitted a RF Usage and Facility Justification analysis, dated November 20, 2017, prepared by a Verizon RF engineer. The Verizon RF engineer's analysis concluded that, even if the height of the ATC Tower was increased, it still would not satisfy Verizon's coverage and capacity objectives, in particular the residential area north of SW Tualatin Rd which is the primary area of concern for this new facility. Although ATC submitted its own analysis, that analysis is self-serving and is not reliable. ATC's analysis was prepared by a "Principal Sales Engineer" as opposed to an RF engineer, ATC has not spoken with Verizon about the coverage and capacity objectives for this site, does not have access to all of the same network data and other proprietary information as Verizon's RF engineers do, and

¹ Note that T-Mobile's two sentence "Letter of Intent to Enter Tenant License Agreement," dated April 9, 2018 (same date as the appeal hearing), is not a true letter of intent, is missing all of the material terms, and does not even state the required height of the ATC Tower necessary to achieve T-Mobile's coverage and capacity objectives.

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it cannot speak for Verizon. Verizon's RF Usage and Facility Justification analysis represents Verizon's position on this matter and it clearly states that the ATC Tower, even if increased in height, will not work. Verizon's RF analysis is the evidence the Planning Commission relied upon and should be the evidence the City Council relies upon as well since it is the most relevant and reliable evidence on this issue.

Since ATC failed to demonstrate that it can accommodate Verizon even if the ATC Tower is increased to 150 feet, there is no legitimate basis for denying the Application. Even if T-Mobile does in fact switch to the ATC Tower, ATC cannot demonstrate that the ATC Tower can be modified to accommodate Verizon as well. Therefore, the Application should be approved to ensure that Verizon's coverage/capacity objectives are satisfied.

3. Federal law does not allow ATC to extend the height of the ATC Tower up to 150 feet without a variance or other discretionary approval criteria.

After initially arguing that the Spectrum Act allowed ATC to extend the ATC Tower to 166 feet without a variance or other discretionary approval from the City, ATC now claims that it allows up to 150 feet. ATC clearly adjusted its Spectrum Act argument in light of the Applicant's response. Nonetheless, ATC's new argument under the Spectrum Act is still legally flawed.

ATC no longer disputes the fact that the City Council's 2000 approval limited the ATC Tower to 130 feet.² Based on the approved 130-foot height, ATC claims that the Spectrum Act automatically allows it to increase the height of the tower by 20 feet without a variance or other discretionary approval from the City. Noticeably, ATC does not actually quote or cite to the Spectrum Act to support its claim. ATC's new argument suffers from the same flaws as its previous argument.

The Spectrum Act does not entitle ATC to increase the ATC Tower by 20 feet without going through the required City application process. Rather, the Spectrum Act permits a carrier to increase the height of an existing tower by "10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater." 14 C.F.R. 1.40001(b)(7)(i). (Emphasis added). Ten percent (10%) of 130 feet is 13 feet, not 20 feet. More importantly, ATC is only allowed to increase the height of the tower necessary to accommodate "one additional antenna array." ATC claims it needs an additional 20 feet to accommodate two carriers, not one, and it admits that it only needs 10 additional feet to accommodate T-Mobile. Based on the plain language of the Spectrum Act, ATC is only allowed to increase the ATC Tower by 13 feet or a height sufficient to accommodate one additional carrier. In order to accommodate both carriers, ATC will clearly be required to obtain a new variance and go

² The Appeal claimed that the ATC Tower had been approved up to 146 feet. Letter from Alan Sorem, dated February 7, 2018, pp.4-6. ATC appears to have abandoned that position in light of the clear language in the findings supporting the City Council's Resolution No. 3672-50, dated January 24, 2000.

Page 5 April 23, 2018

through the other required City discretionary processes.3

The Spectrum Act also does not force the City to agree to a taller ATC Tower because the City is the owner of the property where it is located. The Spectrum Act only affects the regulation of these towers and does not compel a property owner to accept these modifications. As the property owner, the City is entitled to deny or condition any ATC request to increase the height of the ATC Tower in its complete discretion.

4. TDC 33.025(1)(a) does not require the Applicant to rule out an existing tower that would require a variance approval to modify and certainly not if the variance application has not even been filed.

There is a reason why ATC is trying so strenuously to convince the City that it can increase the height of the ATC without requiring a variance or other discretionary approval. ATC understands that TDC 33.025(1)(a) does not require the Applicant to rule out an existing tower that must obtain its own variance approval to modify it, and certainly not if the required variance application has not been filed yet. That is precisely why ATC is now arguing that a 150-foot tower is sufficient – it realized that its prior claim that it could increase the ATC Tower to 166-feet without a variance or other discretionary approval is inconsistent with the plain language of the City's 2000 variance approval for the ATC Tower. Since ATC would still be required to obtain a variance approval to increase the ATC Tower to 150 feet, and it has not even filed such an application, the Applicant clearly satisfied TDC 33.025(1)(a).

TDC 33.025(1)(a)(ii) requires the Applicant to demonstrate that an existing tower within 1,500 feet "cannot be modified to accommodate another provider," but neither the tower separation nor the variance criteria require the Applicant to a tower that must obtain new land use permits and approvals to do so. To the extent an applicant is required to consider a tower that needs additional permits or approvals, it is expressly limited to those towers for which the required application has already been filed. TDC 73.470(9) defines the types of "wireless communication facility monopoles" that must be considered for purposes of satisfying the tower separation requirement as follows: "For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied." (Emphasis added). Similarly, TDC 33.025(1)(a)(i) requires an applicant to demonstrate that it is technically not practicable to collocate from "an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied." (Emphasis added). This language demonstrates that the City Council intended to limit the types of towers that must be considered to those that either have the necessary permits or have already filed for the necessary

³ ATC's April 16, 2018 filing inaccurately claims that the City attorney agrees with ATC that the Spectrum Act allows it to increase the height of the ATC Tower by 20 feet to accommodate two additional antenna arrays without a variance or other standard City permits. Letter from Alan Sorem, dated April 16, 2018, pp.1-2. I have personally spoken with the City attorney and confirmed that he did not agree to this particular ATC's interpretation. We believe the City attorney agrees with the Applicant's interpretation of the Spectrum Act set forth in this letter. The City attorney intends to clarify his opinion on this issue prior to the City Council's final vote on the appeal.

Page 6 April 23, 2018

permits. Since ATC has not filed a variance application, the Applicant was not required to rule out the ATC Tower.

The Planning Commission concluded that since ATC would at a minimum be required to obtain a variance and related approvals in order to increase the height of the ATC Tower, had not yet filed for such approvals, and provided no evidence that such approvals were feasible or likely, the Applicant satisfied the requirements of TDC 33.025(1)(a). The City Council should adopt this interpretation and conclusion as well.

B. The Planning Commission correctly determined that the Application satisfied TDC 33.025(1)(b) based on the applicable code provisions and substantial evidence in the record.

TDC 33.025(1)(b) allows for a variance to the 1,500-foot separation requirements if: "The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District." This criteria is an independent basis for approving the variance and does not require the Applicant to demonstrate that the ATC Tower is not a viable option. Based on the photosims and related information regarding the property and surrounding area, the Planning Commission unanimously concluded that the proposed location has tall, dense evergreen trees that will screen at least 50% of the proposed tower from the residential districts and therefore complies with TDC 33.025(1)(b). The City Council should affirm the Planning Commission's interpretation and conclusion.

1. The Applicant demonstrated that there are multiple tall, dense evergreen trees located on the subject property.

At the appeal hearing, ATC claimed that the Applicant cannot satisfy TDC 33.025(10(b) because allegedly there are <u>no</u> tall, dense evergreen trees located on the subject property where the tower will be located. Dan Zike, Manager of the Tote-N-Stow property where the Applicant's tower is proposed, disputed that claim at the appeal hearing. As the property manager, Mr. Zike obviously knows the subject property better than ATC.

In order to conclusively resolve this issue, the Applicant prepared a detailed tree inventory (the "Durham Tree Inventory") that shows numerous tall, dense evergreen trees located on the subject property, particularly on the north end of the property where the vast majority of the RL District is located. The Durham Tree Inventory shows that there are tall, dense evergreen trees along the entire northern boundary of the property and a second set of tall, dense evergreen trees toward the middle of the property between the proposed tower and RL District. Additionally, there are tall, dense evergreen trees along portions of the eastern boundary of the property that will screen the tower from the RL District to the north-east of the property. The Durham Tree Inventory demonstrates that there clearly are numerous tall, dense evergreen trees located on the subject property notwithstanding ATC's claim to the contrary.

2. TDC 33.025(1)(b) should be interpreted more broadly based on its intended purpose.

There was a great deal of discussion at the April 9 appeal hearing regarding the term "location" in TDC 33.025(1)(b) and how it should be applied in this context. All of the parties seem to recognize that TDC 33.025(1)(b) does not limit the inquiry to screening on the subject "site" or "property," and that the term "location" is somewhat ambiguous. When the plain language of a code provision is ambiguous, the City Council should interpret it based on the purpose or intent of the code provision in question. ORS 197.829(1)(b)-(c); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). The purpose and intent of TDC 33.025(1)(b) supports the broader interpretation of the term "location" adopted by the Planning Commission.

The purpose and intent of TDC 33.025(1)(b) is to allow a variance if the visual impact of the proposed tower is minimized on residential zoned properties due to screening from trees. So the key criteria or perspective for TDC 33.025(1)(b) is the residential zoned properties, not the subject site itself. If there are trees that screen at least 50% of the tower from residential zoned areas, it should not matter that some of those screening trees are not located on the same property as the proposed tower - the visual impact or mitigation on the residential properties is the same from their perspective. Conversely, if there are numerous tall, dense evergreen trees on the same property and in close proximity to the proposed tower, but none of those trees screen the tower from the direction of residential properties, it would not qualify under TDC 33.025(1)(b). So the term "location" should be interpreted from the perspective of the residential properties that are being screened by the trees.

The Planning Commission adopted an interpretation that is consistent with this purpose and intent of TDC 33.025(1)(b). The Planning Commission considered the screening effect of the trees on the subject property and the immediate surrounding area. If the primary purpose of the TDC 33.025(1)(b) is to determine if there are trees that will provide significant screening to mitigate visual impacts on residential areas, there is no reason to limit the inquiry to just the trees located on the subject site. If there are tall, dense evergreen trees on neighboring properties as well that significantly screen the tower from residential areas, why wouldn't the City consider this screening under TDC 33.025(1)(b)?

This interpretation is particularly relevant in this case given how far the residential properties are from the proposed tower. As noted on the Durham Tree Inventory, the RL District to the north is approximately 1,100 feet from the proposed tower and the RL District to the east is approximately 1,500 feet from the proposed tower. Additionally, the RL District to the east is at a lower elevation than the subject site. Given how far the residential properties are from the proposed tower, the trees immediately around the proposed tower are less significant than they would be if the tower was being proposed immediately adjacent to a RL District.

3. The Applicant's photosims demonstrate that at least 50% of the tower will be screened from the RL District.

Regardless of the specific interpretation of TDC 33.025(1)(b) that the City Council adopts, the Applicant's photosims provides the best evidence of the extent to which the proposed tower will be screened from the RL Districts. As they say, a picture is worth a thousand words. The

Page 8 April 23, 2018

photosims demonstrate that the surrounding trees will screen at least 50% of the tower from the RL District.

The Applicant's photosims were prepared by a professional consultant and are based on a balloon test. A balloon test involves floating a large balloon at the precise height and location of the proposed tower to ensure that the height and location depicted in the photosims are accurate. The photosims were taken in early January, in the dead of winter when deciduous trees do not have their leaves, in order to show a worst case scenario. The Applicant sought input from the City staff before it performed the photosims, in particular the number and vantage points for the photosims. The Applicant provided five photosims from various vantage points in these locations, some of which are closer to the site and some further away, based on its consultation with the City staff. Both the City staff and the Planning Commission concluded that the photosims were accurate and demonstrated that the surrounding trees will screen at least 50% of the tower from the RL District.

ATC claims that the photosims are insufficient, but ATC failed to explain why. TDC 33.025(1)(b) does not require a specific type or amount of photosims and the City staff signed off on the Applicant's photosims. ATC failed to provide any information about its photosims submitted for the first time at the appeal hearing. Regardless, even ATC's own photosims demonstrates that at least 50% of the proposed tower will be screened from the RL District.

Conclusion

The Planning Commission's decision is consistent with the applicable criteria in TDC 33.025 and is supported by substantial evidence in the record. There is no dispute that the ATC Tower cannot accommodate the proposed wireless facilities and TDC 73.470(9) and TDC 33.025 do not require the Applicant to delay this project simply because ATC could or may request a variance at some undefined time in the future. Moreover, the variance requirements and evidence indicate that it is unlikely that ATC will be able to obtain that approval. And even if ATC was able to increase the height of the ATC Tower, it still would not satisfy Verizon's coverage and capacity objectives for this site. Finally, the Applicant demonstrated that trees on the subject property and the immediate surrounding area will screen at least 50% of the tower from the RL District to the north and east.

ATC is the only party that is fighting this Application and it is only doing so because it is a competitor. None of the neighbors or surrounding community members are opposing the Application. The City staff recommended approval. After extensive testimony and multiple hearings, the Planning Commission unanimously approved the Application under both TDC 33.025(1)(a) and (b). As explained in this letter and the previous submissions, the Planning Commission's decision is consistent with the express language of the applicable TDC sections

Page 9 April 23, 2018

and is supported by substantial evidence in the record. Therefore, the City Council should deny the Appeal and affirm the Planning Commission's unanimous decision.

Very truly yours,

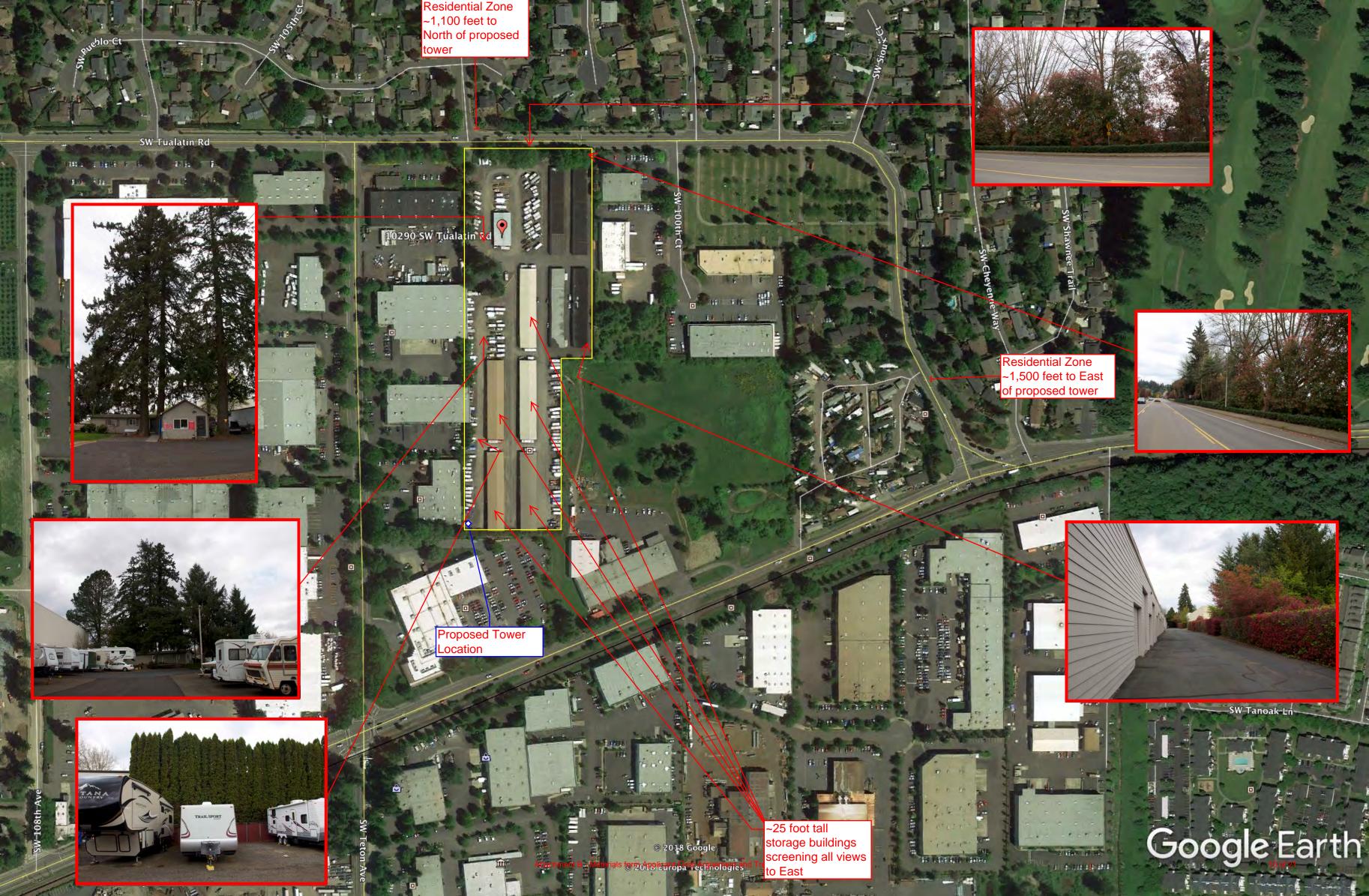
HATHAWAY LARSON LLP

E. Michael Connors

EMC/pl

cc: ACOM Consulting Inc.

Lendlease





View looking South of tall grove of Douglas Fir trees to the North of the proposed tower



















The goal of the 50% screening criteria is ultimately to minimize the visual impact of a proposed tower, not to ensure that there are trees on the subject property.

That said, the proposed tower is screened on all sides visible from RL residential districts to the North and East by multiple large evergreen trees, as well as numerous deciduous trees and approximately 25-foot tall storage buildings, that effectively screen the proposed tower by more than 50%.

Furthermore, residential areas are more than 1,000 feet away thus increasing the effectiveness of existing screening along the subject property's perimeter in addition to existing screening on other properties along SW Tualatin Road. A large part of the residential zone to the East is also at a lower elevation than the proposed site and is below grade from much of the screening elements. I have driven through the adjacent neighborhoods relevant to this proposal and it very difficult to even see out of the residential neighborhood and across SW Tualatin Road, yet alone the proposed tower location.

POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

VARIANCE APPLICATION (VAR-17-0001)

ATTACHMENT A: ANALYSIS AND FINDINGS

The issue before the Tualatin City Council is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 750 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

Specifically, the applicant is asking for a variance from one of the Community Design Standards regulating wireless communication facilities. That standard (TDC 73.470(9)) requires a 1,500 foot separation between wireless communication facility monopoles.

"The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied."

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included here as Exhibit A, and staff has reviewed this and other application materials and included pertinent excerpts below.

The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in Italic font.

Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.
 - (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has

been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

<u>Applicant Response:</u> Not applicable – Applicant has demonstrated compliance with Section 33.025(1)(b) as discussed below.

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and

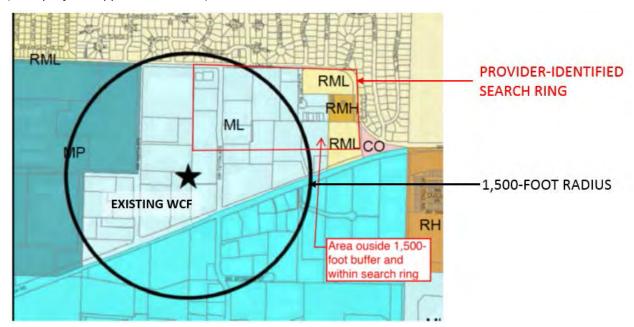
<u>Applicant Response:</u> Not applicable – Applicant has demonstrated compliance with Section 33.025 (1)(b) as discussed below.

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

<u>Applicant Response:</u> No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(Excerpts from applicant material)







½ Mile radius of proposed tower

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

<u>Applicant Response:</u> Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.

Staff Response: The subject property, located at 10699 SW Herman Road, is bound on the north by a Low Density Residential (RL) planning district, directly on the east, west and south by a Light Manufacturing (ML) Planning District. The surrounding area to the east includes Medium Low Density (RML) and Medium High Density (RMH) residential planning districts. There are no small lot subdivisions in the RML district in the surrounding area to the east of the subject property.

The applicant has submitted photo simulations included here at Exhibit B. Photos were taken in five different locations including from the RL planning district and the RML and RMH planning districts. Photos were also taken from the ML planning district. These photos demonstrate the subject project has tall evergreen trees that will screen 50% of the monopole.

View #1 shows that looking south from the RL planning district toward the site tall evergreens completely block the view of the property. View #2 is from the ML planning district and although the criterion does not require screening from ML this photo shows there are tall evergreens and other dense trees along the eastern property line. View #3 was taken from the RMH and RML area to the east. In this photo evergreens are present and other tall trees but the monopole is not as well screened as from other vantage points. View #4 is from the border of the RL and ML planning districts, and in these photos no evergreens are present and the tower is somewhat visible beyond an existing industrial building. View #5 is taken from the RL planning district looking southeast. Evergreens are present in this photo as well as other tall trees that help screen the proposed monopole.

The photo simulations of the proposed monopole in views #1, #4 and #5 are most applicable given that the criterion is specific to screening from an RL district or an RML district with a small lot subdivision. There is not a small lot subdivision in the surrounding area to the east where RML is located. Views 1, 4 and 5 were taken from the RL planning district or the boundary of RL and ML. View #1 shows the location completely screened by dense tall evergreens. View #4 does not show evergreens in the photo but screening from an existing building. View #5 shows the presence to tall evergreens and some screening. Staff finds that at least 50% of the proposed monopole will be screened by tall dense evergreen trees from the RL planning district.

This criterion is met.

Exhibits

Exhibit A: Applicant Narrative January 8, 2018 Exhibit B: Photo Simulations January 9, 2018

APPLICATION FOR VARIANCE

UNMANNED WIRELESS TELECOMMUNICATIONS FACILITY AT:

10290 SW Tualatin Road Tualatin, OR 97062

Prepared By



Date January 08, 2018

Project Name POR Durham



<u>Applicant:</u> Lendlease (US) Telecom Holdings LLC

c/o PI Tower Development LLC 909 Lake Carolyn Parkway

Irving, TX 75039

Co-Applicant: Verizon Wireless (VAW), LLC dba, Verizon Wireless

5430 NE 122nd Avenue Portland, OR 97230

Representative: Acom Consulting, Inc.

Reid Stewart

5200 SW Meadows Road, Suite 150

Lake Oswego, OR 97035

Property Owner: Tote 'N Stow, Inc.

10290 SW Tualatin Road Tualatin, OR 97062

Project Information:

Site Address: 10290 SW Tualatin Road, Tualatin, OR 97062

Parcel: 2S123B000800
Parcel Area: 3.63 acres

Zone Designation: ML (Light Manufacturing Planning District)

Existing Use: Storage Facility

Project Area: 1,200 square foot lease area (25' x 48' fenced equipment area)

Chapter 33: Variances

Section 33.025 - Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.

 (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not



denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,

Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

Response: No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

Response: Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.

- (2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:
 - (a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,
 - (b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.

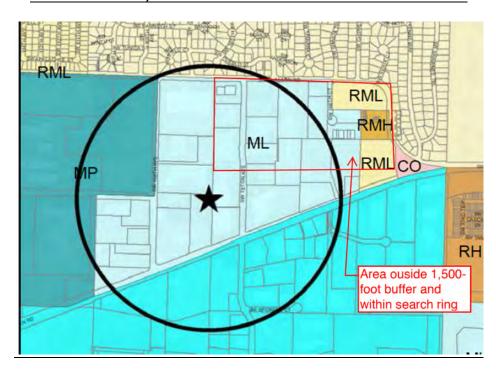
Response: Not applicable – Applicant is not requesting a variance to the maximum allowable height for the proposed WCF.



VERIZON SEARCH RING

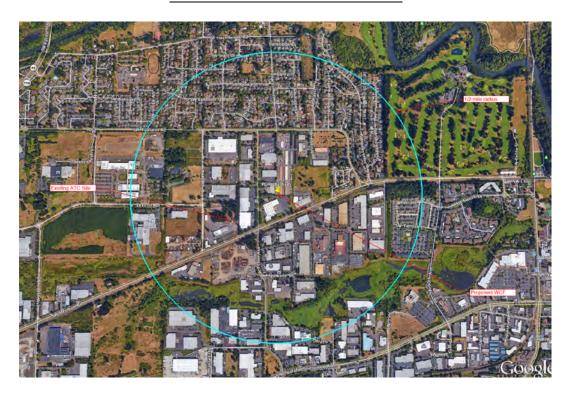


EXISTING TOWER 1,500' RADIUS WITH VERIZON SEARCH RING OVERLAP





½ MILE RADIUS OF PROPOSED TOWER





TIM BRADLEY IMAGING

PHOTO SIM LOCATION MAP



POR DURHAM



TIM BRADLEY IMAGING

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.



VIEW #1 TOWER NOT SEEN

POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR

Attachment C - Materials from Appeal Hearing





CURRENT

VIEW #2 LOOKING SOUTHWEST ON SW 100TH COURT







CURRENT

VIEW #3 LOOKING SOUTHWEST ON SW TUALATIN ROAD







CURRENT

VIEW #4 LOOKING SOUTHEAST ON SW TUALATIN RD. AT SW TETON AVE.







CURRENT

VIEW #5 LOOKING SOUTHEAST ON SW 105TH COURT & SW PUEBLO ST.





City of Tualatin

www.tualatinoregon.gov



REQUEST FOR REVIEW

A Request for Review must be received by the Community Development Department - Planning Division or Engineering Department by 5:00 p.m. of the 14th calendar day after the Notice of the Decision. Only those persons who submitted comments during the notice period may submit a request for review. You must provide all of the information requested on this form, as required by TDC 31.075. This form must be signed and submitted in writing. You will be notified of the hearing date.

Spectrasite Communications, LLC (wholly owned subsidiary of American Tower Name of Party requesting review: Corporation)
Address: 250 Church St SE, Suite 200, Salem, Oregon, 97301
Date: <u>Jan. 24, 2018</u> Telephone: <u>(503) 399 - 1070</u>
Did you submit comments on the proposal during the notification period? Yes
You represent or you are: The applicant City Councilor Government agency The applicant City Manager City Manager City Manager City-recognized neighborhood association
l request a review of Case No. VAR - 17 - 0001
This form is used in part to determine the appropriate hearing body for review. Check which portion of the decision for which you are requesting review: AR/Arch. Features Interpretations Subdivisions AR/Public Facilities Partitions Transitional Use Permit Historic Landmark Reinstatement of Use X Variances Industrial Master Plan Sign Variance
Project: PI Tower Development Project OR-Tualatin-Durham/ 10290 SWTualatin Road (Give description of subject property or proposed name of project)
Explain clearly which portions of the decision you are asking to be reviewed (attach separate sheet if needed). This should specify how you are adversely affected by the decision and how the decision is allegedly not in conformance with applicable TDC requirements: Please see attached letter outlining the request for review in detail.
Appeal of Staff Architectural Review decision to ARB: \$0. Appeal of Decision to Council: Please see current fee schedule. **Margaret Robinson** Senior Counsel Your signature
FOR OFFICE USE ONLY Received by Planning Received by Engineering Date received: 2 -7 -18 Fee received / 45 - 00 Receipt No. 47 92 Check # 46 - 00

February 7, 2018

VIA HAND DELIVERY



City of Tualatin City Council c/o: Aquilla Hurd-Ravich, Planning Manager Community Development Dept - Planning Division 18880 SW Martinazzi Ave Tualatin, OR 97062-7092

> RE: Appeal of Pl Tower Development Project OR-Tualatin-Durham/10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001)

Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable City Council Members:

I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation (collectively, "ATC"), which owns a wireless communications facility (the "ATC Tower") located within a dense evergreen stand in the rear yard of the City of Tualatin's Public Works Department Building, located at 10699 SW Herman Road, Tualatin, Oregon 67062 (the "ATC Tower Location"). ATC will be adversely impacted by the wireless communication facility proposed on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "Applicant") on the southwest corner of 10290 SW Tualatin Road, Tualatin, Oregon, more particularly described as Tax Lot 800 of Assessor Map 2S123B (herein the "Subject Property"). Accordingly, ATC submits this Request for Review of Planning Commission Resolution No. TDC-609-17 (the "Resolution").

Executive Summary

In 1999, the City granted ATC approval to construct a wireless communication facility up to 146 feet in total height (the "Existing Decision"). In 2000, the City granted ATC a lease for a portion of the City's property located in the rear of the City's Public Works Building within a dense stand of evergreen trees. A 130-foot monopole together with a 16-foot whip antenna were subsequently constructed (the antenna is no longer attached to the tower). ATC may extend or replace the existing pole to 146 feet pursuant to the existing variance approval or obtain a non-discretionary approval under federal law extending the ATC Tower to a total of 166 feet. ATC has demonstrated it can accommodate an additional carrier upon expanding the tower to 146 feet, and will offer additional evidence of its coverage capacity at 166 feet. No trees need to be removed for ATC to accommodate an additional carrier. For these reasons, Applicant cannot satisfy Applicant's burden of proof under Tualatin Development Code (TDC) 33.025(a). Additionally, Applicant has argued that it can justify a variance based on the screening of buildings, deciduous trees, and shrubs located on the Subject Property and

> Park Place, Suite 200 250 Church Street SE Salem, Oregon 97301

> Post Office Box 470 Salem, Oregon 97308

> > tel 503_399.1070

evergreen trees located thorough the neighboring residential zones. These arguments are inconsistent with the plain text of TDC 33.025(b), and Applicant's requested interpretation invites an error of law. For these reasons, as more particularly described below and in the record, the City Council must reverse the Planning Commission's decision approving Applicant's variance request.

1. Summary of Criteria

As set forth below, the Planning Commission erred as a matter of law and a matter of fact when it determined that Applicant had satisfied its burden of proof as to the criteria set forth in TDC 33.025. The applicable provisions of TDC 33.025 state as follows:

Section 33.025 Criteria for Granting a Variance for a Wire-less Communication Facility

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.
 - (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;
 - (ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,
 - (iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.
 - (b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

It is ATC's position that Applicant has failed to provide substantial evidence in the record that it has satisfied either of the criteria set forth in TDC 33.025(1)(a) and (b).

2. ATC has standing to request a review of the Planning Commission's Decision as ATC provided oral and written comments during the notice period and at the public hearing as well as submitting a Request for Review within fourteen (14) days of the mailing date of the Notice of Adoption.

Applicant's proposed tower is located approximately 750 feet from the ATC Tower, which is within the 1,500-foot buffer area for Wireless Communication Facilities ("WCF") required by TDC 73.470(9). Therefore, under TDC 33.025(1)(a), a variance is needed. On January 18, 2018, the City of Tualatin Planning Commission adopted Resolution No. TPC-609-17 granting Applicant's requested variance. ATC submitted both oral and written testimony at several points prior to the closing of the public hearing, including, but not limited to, oral testimony given on November 17, 2017; written comments submitted on November 22, 2017; and written comments submitted on January 18, 2018. Therefore, ATC has standing to submit a Request for Review under TDC 31.078 and has met the requirements set forth within that section.

3. Planning Commission's determination that Applicant satisfies the variance criteria because the ATC Tower cannot provide the necessary coverage and capacity is factually incorrect.

The Resolution states as justification for the variance to the 1,500-foot radius requirement from an existing tower an assertion that the existing ATC Tower is not suitable for co-location of additional carriers because of interference from the trees surrounding the site and has provided an RF interference letter in addition to its RF report. ATC acknowledges that under the <u>current</u> circumstances, the height of the trees would create interference for new co-location of carriers below the existing carrier heights; however, the interference from the trees can be eliminated by expanding the existing monopole. ATC has provided supplemental RF coverage analysis in the record supporting ATC's position.

4. Applicant has the burden of providing substantial evidence in the record that it satisfies the criteria set forth in TDC 33.025(1)(a).

Under Oregon law, the appropriate standard of review upon appeal of a land use decision to the Land Use Board of Appeals ("LUBA") is whether there is substantial evidence in the record that Applicant has satisfied the criteria set forth in the Tualatin Development Code (the "Code"). ORS 197.835. Meaning that upon review by LUBA, if, viewing the only the evidence in the record, a reasonable person could not make the determination that Applicant has satisfied all approval criteria, the Resolution will be deemed to be not supported by substantial evidence. S. St. Helens, LLC v. City of St. Helens, 352 P.3d 746, 271 Or. App. 680 (2015). Applicant has failed to meet this burden.

ATC does not carry a burden of proof in this matter. Arguments by Applicant and comments by the Planning Commission members suggested that there was confusion on this matter. Specifically, Applicant argued that ATC needed to prove that ATC would modify its tower within a date certain, and that it could provide the exact same coverage as Verizon's proposed coverage from the Subject Property. In addition to mischaracterizing the scope of the criteria, Applicant unlawfully urges for a shift of the burden of proof from itself to ATC.

The issue under TDC 33.025(1)(a)(ii) is whether the ATC Tower can be modified to accommodate another carrier. It is not whether it can provide the <u>exact same</u> RF coverage map as projected by Verizon from Applicant's location. Such a standard is inconsistent with the text and context of the criterion. TDC 33.025(1)(a) requires evidence that alternative coverage is "technically not practicable"

or whether an alternative can "still provide the approximate coverage the tower is intended to provide." Applicant's assertion that ATC must prove 1) it will expand the tower by a date certain; and 2) ATC can provide the exact same coverage as Verizon is inconsistent with the text and context of the criterion. Rather, the burden of proof for Applicant is best understood as requiring Applicant to prove the ATC Tower cannot be modified to accommodate another carrier's approximately similar needs.

5. Planning Commission erred in finding that ATC is unable to modify the ATC Tower to allow for co-location on the existing tower.

ATC has provided substantial evidence in the record demonstrating that it is able to modify the existing conditions to increase the capacity and coverage of the ATC Tower. TDC 33.025(1)(a)(ii) states:

The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied cannot be modified to accommodate another provider

This section of the Code specifically allows for modifications to an existing tower in order to allow for co-location on an existing tower that may not currently be possible. The Resolution states that the ATC Tower cannot be modified in a way that would allow it to provide the necessary coverage and capacity without being removed and replaced; however, as further detailed below, this is factually inaccurate.

6. Alternatively, ATC may under the Existing Decision seek an extension of the ATC Tower from the existing height of 100 feet to a permissible height of 146 feet.

In the alternative, ATC may pursue an extension of the height of the ATC Tower. The Existing Decision allowed for a "monopole tower, antenna platform and whip antennae [that] shall not exceed 146 ft. in height above grade." Therefore, under the Existing Decision, ATC is authorized to either extend the ATC Tower up to 146 feet or replace it with a larger tower.

7. The Spectrum Act Authorizes an Extension of the ATC Tower to 166 feet.

Additionally, in 2012, after ATC had received a variance via the Existing Decision, Congress enacted the Middle Class Tax Relief and Job Creation Act (the "Act"). Within the Act, Congress included Section 6409, a provision intended to expand upon the Telecommunications Act of 1996, and to expedite non-substantial modifications to existing wireless communications facilities (the "Spectrum Act") (codified at 47 U.S.C. 1455). Specifically, the Spectrum Act, and its implementing rules, requires state or local government agencies to approve any "eligible facilities request" related to the modification of existing wireless communications that does not substantially change the physical dimensions of the existing facility within sixty days of receipt of a completed application. 47 C.F.R. § 1.40001(a). With respect to the current circumstances, an eligible facilities request includes an extension of the greater of ten percent (10%) of the eligible structures or twenty (20) feet to be a non-substantial modification for purposes of allowing co-location of an additional carrier. 47 C.F.R. § 1.40001(b)(7)(i).

47 C.F.R. § 1.40001 (b)(7)(i)(A) provides a definition of "eligible structures" and how to measure their height. It provides:

Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. *Id.* (emphasis added).

The Existing Decision specifically authorizes ATC to construct a 130-foot monopole, a 16-foot whip antenna, two 6 feet in diameter microwave dishes, and twelve 5-foot panel antennae located on a platform at the top of the pole so long as all such improvements do not exceed 146 feet in total height. The permitted height extensions under the Spectrum Act allow at minimum a 20-foot increase in the applicable height standard, which includes all originally approved appurtenances. ATC provided a letter from Bryan Lanier, an Oregon licensed P.E., S.E., who is of the expert opinion that the existing site can accommodate an extension of this size. This letter was previously entered into the record.

Therefore, it is ATC's position that the City of Tualatin must ultimately approve an extension of the ATC Tower of up to twenty feet to the existing 146-foot height limit, i.e., a height limit of 166 feet for the tower and all antenna and related appurtenances which may or may not include the replacement of the ATC Tower. This extension or replacement is considered a non-substantial modification in accordance with Spectrum Act and its implementing rules. While the Spectrum Act does not entirely divest review authority from the City of the extension request, the City's review is limited to a reasonable approval process not to exceed sixty days from the date of filing a completed application, and federal law preempts the City's authority to deny such a request absent legitimate health or safety concerns.

8. The Spectrum Act Preempts the TDC in Part

Generally, the City of Tualatin (the "City") requires both a building permit and a Minor Architectural Review ("MAR") in order to grant approval of a proposed expansion of an existing wireless tower. The approval of a building permit itself is ministerial in nature because it is subject to clear and objective standards and there is no right to a hearing.¹ When viewed in the context of state and local law, the MAR qualifies as a land use decision under Oregon law. TDC 73.040 provides that existing wireless communication facilities may not be altered until the architectural review plan required by TDC 31.071 has "been approved by Community Development Director and City Engineer or their designees or by the Architectural Review Board or City Council for conformity with applicable standards or criteria" under the Code. TDC 31.071 further provides that the alteration of wireless communication facilities is processed as a Level II (Discretionary) Architectural Review, which is conducted as a limited land use decision according to the process outlined in Section 31.074. TDC 31.074(1). However, as stated above, ATC's proposed request qualifies under federal law as an "eligible facilities request ***that does not substantially change the physical dimensions of the existing facility," and therefore, the City's

¹ Under Oregon law, a land use decision specifically excludes the approval or denial by a local government of "a building permit issued under clear and objective land use standards." ORS 197.015(10)(b)(B). In *Bell v. Klamath County*, the Oregon Court of Appeals determined that a denial of a building permit is not a land use decision if it is a ministerial decision * * * * made under clear and objective standards contained in an acknowledged comprehensive plan or land use regulation and for which no right to a hearing is provided by the local government ****". *Bell v. Klamath County*, 11 Or. App. 131, 711 P.2d 209 (1985) *citing* ORS 197.015(10)(b).

discretionary review is preempted by federal law.² As a result of this preemption, the City's review and approval of federal law is not a "land use decision" under Oregon law, and the City must approve the application within 60 days of submittal.

Based on the analysis of the interplay between federal, state, and local laws, ATC's proposed expansion qualifies as an eligible facilities request, and therefore, ATC's proposed expansion would not require a variance under the Code. As such, it is ATC's position that this expansion is permitted as of right under federal law and must be approved within 60 days of submittal of a complete MAR application. Accordingly, the assertion that ATC cannot, as a matter of law, provide the requested coverage is inaccurate. Therefore, Applicant has not met its burden to satisfy the variance criteria based on a lack of coverage and capacity.

- 9. The Planning Commission erred in its determination Applicant satisfies the variance criteria under TDC 33.025(1)(b).
 - 9.1 Applicant has the burden of providing substantial evidence in the record that it satisfies the criteria set forth in TDC 33.025(1)(b).

TDC 33.025(1)(b) requires Applicant to prove that the "proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District (emphasis added)." Applicant has failed to meet this burden regarding TDC 33.025(1)(b).

9.2 Applicant misinterprets "location" to include the conjoining tax lot under common ownership.

TDC 33.025(1)(b) requires Applicant to prove that the "proposed monopole location includes tall, dense evergreen trees." Applicant has misinterpreted the meaning of "location" within the variance criteria. Applicant's evidence and arguments before the Planning Commission changed; however, they appear to include two possible definitions of the word "location." First, Applicant argued that the term "location" extended to the entirety of the tax lot as well as the conjoining tax lot under common ownership by Applicant. Such a definition of the word "location" is inconsistent with the plain language of the Resolution under review, which states "a resolution for a Variance application for a Wireless Communication Facility to locate at 10290 SW Tualatin Rd within 1,500 feet of an existing Wireless Communication Facility. (Tax Map 2S123BO00800) (emphasis added)."

Second, Applicant's arguments and the comments of the Planning Commissioners suggest a second even more broad definition. Specifically, it was suggested that screening trees located on nearby properties in the zoning district or even outside of the zoning district could support a variance application. These broad interpretations are inconsistent with the text, context and purpose of the TDC. The Planning Commission's reliance on Applicant's proposed interpretation is an error of law.

² ORS 197.015(10)(a)(A) defines a land use decision as a final decision by the City that concerns "the adoption, amendment or application of: (i) The goals; (ii) A comprehensive plan provision; A land use regulation; or (iv) A new land use regulation." "Land use regulations" are limited to local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan." ORS 197.015(11). "Land use regulations" do not include federal laws, and "land use decisions" do not include discretionary application of federal laws.

9.3 Applicant has failed to show that the Subject Property contains "tall, dense evergreen trees."

TDC 33.025(1)(b) requires Applicant to prove that the "proposed monopole location includes tall, dense evergreen trees." This is a foundational requirement. Failure to show that the Subject Property contains such "tall, dense evergreen trees" prohibits a granting of variance under the second variance criteria. This is a very specific requirement and the text is unambiguous. Staff's report and Applicant's proposal ignore the fact that the Subject Property fails to have this inherent characteristic even if the definition of the "location" is to be expanded to include the adjoining tax lot under common ownership. Simply, there are no tall, dense evergreen trees on Applicant's property that provide screening to the adjoining residential zoned lands. Applicant may have one such tree on its over eight-acre tract; however, it is impossible to find that a single evergreen tree screens fifty percent of the proposed monopole.

Applicant's evidence fails to meet the requirement for "tall, dense evergreen trees" in TDC 33.025(1)(b) on every count. Applicant does not include any photos of "tall, dense evergreen trees" on the Subject Property because no such tall, dense evergreen trees exist. The only photo of the Subject Property provided in the supplemental staff report and submitted by Applicant shows a single line of primarily deciduous trees bordering the southern boundary of the Subject Property and a portion of the western boundary of the Subject Property. See Applicant Photo Simulation 1 of 6, Exhibit B to Applicant's Analysis and Findings dated January 18, 2018. ATC previously submitted a photo from Google Maps that provides evidence that the few trees located on the Subject Property are sparsely located and deciduous in nature. ATC provided a picture of its own property in order to demonstrate the type of coverage required under TDC 33.025(1)(b) and approved by the City. See Revised Staff Report, pg. 66, 80-86. Unlike the ATC Tower property, there is nothing inherent to the Subject Property that will provide the requisite year-round natural screening from the nearby RL and RML districts. There is no ambiguity in the text and no evidence provided by Applicant suggesting otherwise. Thus, the Planning Commission erred in approving the variance request.

9.4 The photo simulations provided by Applicant fail to provide substantial evidence of that the variance criteria is satisfied.

Applicant submitted only five photo simulations. Photo Simulation No. 1 was taken north of the intersection of SW Pueblo Street and SW Jurgens Ave. Applicant points to three tall evergreen trees located along the SW Tualatin Road right-of-way as evidence of satisfactory screening. The criterion clearly requires the evidence of evergreen screening to be those trees located on the Subject Property. Taking a photo behind an off-site tree to guarantee an image of screening is gross distortion of the text, purpose, and policy behind the variance criteria. Were this to be allowed as satisfactory evidence, the Planning Commission could never deny an application where even one tree existed in the abutting residential neighborhood to hide behind. Photo Simulation No. 1 is not evidence, and Applicant and staff are incorrect to suggest it can substantiate approval.

Photo Simulation No. 2 is from the SW 100th Court turnaround. This photo was taken from the ML district. The criterion clearly requires evidence that the proposed tower is screened from the surrounding RL and RML districts. This evidence is of no value in determining whether Applicant has met its burden of proof. The inclusion by Applicant of this photo as evidence demonstrates an ignorance, willful or unintentional, of the text, purpose, and policy of the variance criteria. Moreover, the photo shows the tower not screened by any evergreen trees. Rather, it is clearly visible

notwithstanding the previously mentioned deciduous trees in the area. The low angle of the photo, which suggests that the tower is screened by the hedge (which is roughly the height of a low-profile van), suggests the simulations lack professional credibility. Photo Simulation No. 2 is not evidence, and it should be disregarded except as evidence as to the questionable credibility of the simulations themselves.

Applicant's final three photo simulations were all taken behind buildings. Even if the tower was screened by buildings, such a fact is not the type of evidence needed to satisfy the criteria. As explained above, Applicant needed to prove that onsite, tall, and dense evergreen trees screen at least fifty percent of the proposed tower, like they do for the existing ATC Tower. Applicant's simulations are irrelevant and are clearly "cherry-picked" photos. If an applicant were able to satisfy a variance criterion by taking photo simulations from behind a building, no variance request would ever be denied. Clearly, individuals who are inside those buildings, including the multi-family buildings shown in Photo Simulation No. 3 and the residence shown in Photo Simulation No. 5, would be able see the tower. If anything, these simulations are evidence that Applicant cannot satisfy the criteria. The Planning Commission must reject the invitation to "water-down" TDC 33.025(1)(b) so that it is effectively meaningless. An approval of Applicant's variance request is a misinterpretation TDC 33.025(1)(b).

9.5 Applicant's proposed interpretation is inconsistent with the text, context, purpose, and policy of the variance chapter and inconsistent with general variance laws.

As explained above in detail, the text of TDC 33.025(1)(b) is unambiguous, and it requires showing that onsite tall, dense evergreen trees screen fifty percent or more of the proposed tower. Applicant's requested interpretation is as follows: offsite trees and offsite buildings that screen the proposed tower can substantiate the variance under TDC 33.025(1)(b). In addition to being inconsistent with the unambiguous text, such an interpretation is inconsistent with the context, purpose, and policy of the variance chapter and inconsistent with general variance laws.

Variances are generally subject to the review criteria under TDC 33.020; however, variances for towers are subject to the criteria under TDC 33.025. While ATC acknowledges TDC 33.020 is not the mandatory approval criteria, it is relevant context. TDC 33.020(1) requires the applicant to prove a hardship exists and that it "is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control." These elements, while stated slightly differently and with greater specificity, are also present in TDC 33.025. The requirement for a hardship is reflected in the obligation for Applicant to prove that an existing tower cannot technically provide the needed coverage and cannot be modified to accommodate another provider under TDC 33.025(1)(a). Similarly, the requirement for "extraordinary circumstances applying to the property" is reflected in the requirement under 33.025(1)(b) that onsite "tall, dense evergreen trees" screen the proposed tower. Applicant's request essentially removes any factor that would differentiate this proposal and this property from any other future variance case or other property. Essentially, the Planning Commission's approval would be precedent that the "criteria" means nothing. Put differently, what is to stop the application for a third tower on the neighboring property? A fourth tower next to that?

Variances are supposed to be difficult. They allow a proposal that is in violation of the Code's development standards. They should not be granted with ease or based on evidence that is inconsistent with the text, context, purpose, and policy of the Code. For these reasons, ATC respectfully requests

February 7, 2018 City of Tualatin City Council Page 9

that the City Council reverse the Resolution of the City of Tualatin Planning Commission and deny the proposed variance request.

Sincerely,

ALAN M. SOREM asorem@sglaw.com Voice Message #303

AMS:myg



Koback · Connors · Heth

March 21, 2018

VIA EMAIL

City Council
City of Tualatin
Attn: Aquilla Hurd-Ravich
18880 SW Martinazzi Avenue
Tualatin, OR 97062
ahurd-ravich@tualatin.gov

Re: Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.

Application No. VAR-17-0001

Applicant's Response to American Tower Corporation's Appeal

Dear Mayor Ogden & Councilors:

This firm represents the applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). We are submitting this response to American Tower Corporation's ("ATC") written appeal, dated February 7, 2018 (the "Appeal"), of the Planning Commission's Resolution No. TDC-609-17 unanimously approving the Applicant's variance application for a Wireless Communications Facility ("WCF") to be placed within 1,500 feet of an existing wireless communications facility (the "Application"). For the reasons set forth in this letter, the City Council should deny the Appeal and affirm the Planning Commission's unanimous decision.

Background

The Applicant is proposing a 100-foot WCF tower and associated equipment on a 3.63-acre property located at 10290 SW Tualatin Rd. (the "Property"). The Property is zoned Light Manufacturing ("ML") and is currently being used as a storage facility (Tote 'N Stow). The WCF is designed to accommodate two wireless carriers – Verizon Wireless and T-Mobile.

ATC currently operates a 130-foot wireless communications tower located at 10699 SW Herman Rd. (the "ATC Tower"). The ATC Tower is within 1,500 feet of the proposed WCF. Tualatin Development Code ("TDC") 73.470(9) does not allow a new wireless communications tower within 1,500 feet of an existing tower unless a variance is granted pursuant to TDC 33.025. Given that the ATC Tower cannot accommodate the two wireless facilities and satisfy their coverage and capacity objectives for this site, the Applicant filed the Application seeking a variance for the proposed tower under TDC 33.025.

E. Michael Connors

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(503) 303-3101 main Attachment C - Materials from Appeal Hearing Page 2 March 21, 2018

TDC 33.025(1) allows for a variance under two separate and independent grounds. First, TDC 33.025(1)(a) allows for a variance if the existing WCF within 1,500 feet cannot accommodate the intended wireless carriers and provide the necessary wireless capacity or coverage the proposed tower is intended to provide. Second, TDC 33.025(1)(b) allows for a variance if the proposed WCF location includes tall, dense evergreen trees that will screen at least 50% of the proposed WCF from the RL District or from a small lot subdivision in the RML District.

After multiple public hearings and extensive testimony from the Applicant and ATC, the Planning Commission unanimously approved the Application under both TDC 33.025(1)(a) and (b). Although ATC raised many of the same arguments it is raising in the Appeal, the Planning Commission rejected those arguments and approved the Application. The Planning Commission's decision is consistent with the express language of the applicable TDC sections and is supported by substantial evidence in the record.

Response to ATC's Arguments

A. The Planning Commission correctly determined that the Application satisfied TDC 33.025(1)(a) based on the applicable code provisions and substantial evidence in the record.

ATC acknowledges that the ATC Tower cannot accommodate the two wireless facilities and provide the intended wireless capacity or coverage under the existing circumstances, but nonetheless maintains that the Application should be denied because it can modify the ATC Tower to accommodate these facilities. However, ATC's position on the legal standards and necessary requirements to modify the ATC Tower has morphed and changed throughout the Application process as ATC runs into various problems defending its position. Originally, ATC argued that the ATC Tower could be modified to accommodate the proposed wireless facilities by removing the screening trees located within a 155-foot radius of the ATC Tower and/or seeking a variance to increase the height of the ATC Tower. Letter from Alan Sorem, dated November 16, 2017, p.1-2. After it became apparent that these proposed modifications were not desirable, feasible and/or did not provide a legitimate basis for denying the Application, ATC began changing its position during the Planning Commission process and completely abandoned its initial position for purposes of the Appeal.

ATC now argues that it can accommodate the proposed wireless facilities solely by increasing the height of the ATC Tower to 166 feet, which it claims it is entitled to do as a matter of law regardless of the City's position or application requirements. ATC bases this argument on its claim that: (1) the City Council's approval of the ATC Tower authorizes it to increase the height of the tower to 146 feet without City review or approval; and (2) Section 6409 of the Middle Class Tax Relief and Job Creation Act (the "Spectrum Act") legally compels the City to allow an additional 20 feet of height for a 166-foot tower. Appeal, p.4-5. ATC raised these new arguments at the last Planning Commission hearing, but the Planning Commission rejected these arguments. For the reasons provided below, the City Council should similarly reject ATC's arguments.

¹ We have attached a copy of Mr. Sorem's November 16 letter for the City Council convenience.

1. The ATC Tower is only approved for 130 feet and will require a new variance to extend it to 146 feet or more.

A critical component of ATC's argument is that the ATC Tower has been approved up to 146 feet and it can extend the height of the current 130-foot tower an additional 16 feet without any additional land use approvals. ATC claims that under the City Council's approval of the ATC Tower "ATC is authorized to either extend the ATC Tower up to 146 feet or replace it with a larger tower." Appeal, p.4. ATC's assertion is directly contrary to the express language in the City Council's variance approval for the ATC Tower (VAR-99-02).

Since the City code requires a variance for any tower that is greater than 100 feet, ATC had to file a variance application for the proposed 130-foot tower. The City Council approved the variance for the ATC Tower pursuant to Resolution No. 3672-50, dated January 24, 2000, and attached findings. *See* Staff Report, dated December 7, 2017, Attachment A, Exhibit A, p.19-20.

Contrary to ATC's claim, the City Council Resolution and findings expressly limited the height of the tower to 130 feet. *See* Staff Report, dated December 7, 2017, Attachment A, Exhibit A, p.19-20. The title for Resolution No. 3672-50 provides: "A RESOLUTION GRANTING A VARIANCE (VAR-99-02) TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNA * * * *." Staff Report, Attachment A, Exhibit A, p.19. The Resolution further notes that the City Council was considering "the application of Nextel Communications and the City of Tualatin, for a variance from TDC 60.090(4) to allow a 130' high structure and 16' antenna * * * *." Staff Report, Attachment A, Exhibit A, p.19. The City Council findings supporting the Resolution mirror this language, specifically referring to the variance application as a request for "a 130 foot wireless communications monopole tower with up to 16 ft. of antenna * * * *." Staff Report, Attachment A, Exhibit A, p.11.

Based on this express language in the City Council's Resolution and findings for the variance approval for the ATC Tower (VAR-99-02), there is no question that the approval was limited to a 130-foot tower. That is why the ATC Tower is currently 130 feet, as opposed to a 146-foot tower. The mere fact that the City Council's decision authorized a 16-foot antenna does not mean that ATC can replace the existing tower with a 146-foot tower. Since the City has only approved a variance for a 130-foot tower, ATC will be required to obtain a new variance in order to extend the ATC Tower to 146 feet.

2. TDC 33.025(1)(a) does not require the Applicant to consider an existing tower that would require a variance approval to modify and certainly not if the variance application has not even been filed.

Since ATC will be required to obtain a variance approval in order to increase the height of the ATC Tower, it does not provide a basis for denying the Application. TDC 73.470(9) and TDC 33.025(1)(a) require the Applicant to consider existing towers within 1,500 feet that can be modified to accommodate the a wireless facility, but not if the modification would require new land use permits and approvals.

The tower separation and variance criteria do not require an applicant to consider an existing tower that must obtain additional land use permits or approvals in order to accommodate the wireless

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facility. Neither TDC 73.470(9), which contains the 1,500-foot separation requirement, nor the variance criteria for tower separation in TDC 33.025(1)(a) require an applicant to consider existing towers that require additional permits and approvals in order to accommodate the wireless communications facility. TDC 33.025(1)(a)(ii) requires documentation that existing towers within 1,500 feet "cannot be modified to accommodate another provider," but it does not require the applicant to consider possible modifications to the tower that would require additional permits and approvals from the City. Since the ATC Tower cannot accommodate the wireless facilities unless and until ATC obtains a new variance approval, the ATC Tower cannot be used as a basis for denying the Application.

To the extent an applicant is required to consider a tower that needs additional permits or approvals, it is expressly limited to those towers for which the required application has already been filed. TDC 73.470(9) defines the types of "wireless communication facility monopoles" that must be considered for purposes of satisfying the tower separation requirement as follows: "For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied." (Emphasis added). Similarly, TDC 33.025(1)(a)(i) requires an applicant to demonstrate that it is technically not practicable to collocate from "an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied." (Emphasis added). This language demonstrates that the City Council intended to limit the types of towers that must be considered to those that either have the necessary permits or have already filed for the necessary permits. Since ATC has not filed a variance application, the Applicant was not required to consider the ATC Tower.

ATC's claim that any existing tower within 1,500 feet that can theoretically be modified to accommodate the wireless communication facility, regardless of whether it would require multiple consents and land use approvals, or how likely it would be to obtain those approvals, automatically precludes a variance for a new tower is inconsistent with the express language in TDC 73.470(9) and TDC 33.025(1). It also presents practical problems as well. Even if ATC could file for a variance to increase the height of the ATC Tower, ATC has not and cannot demonstrate that such a variance approval is feasible or likely. Additionally, ATC is not obligated to pursue a variance and has absolutely no time constraints. ATC can take as much time as it wants to commence the actions necessary to modify the ATC Tower and neither the Applicant, Verizon nor T-Mobile can force the issue. Even if ATC started the process immediately, it will still take a considerable amount of time to negotiate a new lease with the City, obtain the City's consent as a property owner, obtain a new variance approval and do the construction work necessary to increase the height of the tower. Meanwhile, Verizon and T-Mobile have existing coverage and capacity gaps that need to be addressed immediately and they will be completely beholden to ATC's schedule. TDC 73.470(9) and TDC 33.025(1) were not intended to give existing tower operators such broad authority to force carriers to wait months or years until the operator can obtain the necessary approvals to modify the existing tower.

3. The Spectrum Act does not legally compel the City to allow ATC to increase the height of the ATC Tower to 166 feet.

Given that the City code does not support ATC's position, ATC now argues that federal law (the Spectrum Act) legally compels the City to allow ATC to increase the height of the ATC Tower to 166 feet. This argument is a red herring and has multiple flaws.

The Spectrum Act does not entitle ATC to unilaterally increase the existing ATC Tower by 20 feet without going through the required City application process. Rather, the Spectrum Act permits a carrier to increase the height of an existing tower by "10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater." 14 C.F.R. 1.40001(b)(7)(i). (Emphasis added). So ATC would only be entitled to increase the height necessary to accommodate one additional antenna array up to a maximum of 20 feet. In this case, the proposed tower is designed to accommodate two wireless carriers – Verizon Wireless and T-Mobile. So ATC would only be able to increase the height of the ATC Tower sufficient to accommodate one of those carriers, but not both.

Even if ATC could increase the height of the ATC Tower by 20 feet under the Spectrum Act, it would not be sufficient because it would only allow up to a height of 150 feet. As previously explained, the ATC tower is only 130 feet and is only approved up to 130 feet. Twenty more feet will only increase the height to 150 feet. Since ATC acknowledges that it must be at least 166 feet to provide the intended coverage and capacity, and in reality it would need to be even taller, the modified ATC Tower would still not be tall enough.

The Spectrum Act precludes ATC from unilaterally modifying the ATC Tower in a way that "would defeat the concealment elements of the eligible support structure." 14 C.F.R. 1.40001(b)(7)(v). If ATC were to increase the height of the ATC Tower to 166 feet, it would clearly defeat a key concealment element the City Council relied on when it originally approved the tower - the surrounding screening trees. The City Council relied heavily on the screening effect of the surrounding trees to justify the variance when it approved it in 2000. In fact, the City Council specifically relied on these screening trees as one of the primary bases for determining compliance with approval criteria 1, 3 and 4. For example, the City Council concluded that "[t]all trees such as the subject property will obscure the tower and visually mitigate the tower and antennae for persons viewing it from off site and from the residential areas to the north" and "It like location and siting of the proposed Nextel tower will minimize the visual impact of the facility by blending in with the trees and the tower's surroundings and meets Objectives 1 and 3." City Council's findings for the variance approval for the ATC Tower (VAR-99-02), p. 2 & 4. Since the variance approval specifically relied on these trees for screening and mitigating the visual impacts, ATC's proposal to increase the height of the tower so it significantly exceeds the height of the surrounding trees would defeat this concealment element of the original variance approval.

The Spectrum Act does not compel the City to accept a 166-foot ATC Tower because the City is the owner of the property where it is located. The Spectrum Act only affects the regulation of these towers and does not compel a property owner to accept these modifications. As the property owner, the City is entitled to deny or condition any ATC request to increase the height of the ATC Tower in its complete discretion.

Finally, ATC failed to demonstrate that a 166-foot tower would be sufficient to provide the necessary coverage and capacity for the carriers. The Applicant demonstrated below that even if the ATC Tower was increased in height as proposed by ATC, it still would not satisfy Verizon's coverage and capacity objectives for this site, in particular the residential area north of SW Tualatin Rd which is the primary area of concern for this new facility. The Applicant submitted a RF Usage and Facility Justification analysis, dated November 20, 2017, prepared by a Verizon RF engineer, supporting this conclusion. Although ATC submitted its own RF analysis, that analysis is not reliable because ATC has not spoken with Verizon about the coverage and capacity objectives for this site, does not have access to all of the same network data and other proprietary information as Verizon's RF engineers do and it cannot speak for Verizon. Verizon's new RF Usage and Facility Justification analysis represents Verizon's position on this matter and it clearly states that the ATC Tower, even if modified, will not work. Verizon's RF analysis is the evidence the Planning Commission relied upon and should be the evidence the City Council relies upon as well since it is the most relevant and reliable evidence on this issue.

4. The Planning Commission based its decision on substantial evidence in the record and did not shift the burden of proof to ATC.

ATC's claim that the Planning Commission was confused about the evidence and improperly shifted the burden of proof to ATC is erroneous. Indeed, there is no dispute between the parties regarding the most significant evidentiary issue – ATC acknowledged that the existing ATC Tower cannot provide the intended wireless capacity or coverage due to its height and the surrounding trees. While ATC claims that it could accommodate the carriers if it increased the height of the ATC Tower, it provided no evidence that it was pursuing the necessary variance and related approvals to increase the height or that such approvals are even feasible. Instead, ATC argued below that the Application must be denied because the ATC Tower could theoretically be increased in height regardless of whether or not it pursues such permits or is able to obtain such permits.

The Planning Commission's decision was based predominately on its interpretation of the relevant code sections and not the evidence in the record. The Planning Commission concluded that since ATC would be required to obtain a variance and related approvals in order to increase the height of the ATC Tower, had not yet filed for such approvals and provided no evidence that such approvals were feasible or likely, the Applicant satisfied the requirements of TDC 33.025(1)(a).

ATC also mischaracterizes the Applicant's position below. The Applicant did not argue that ATC must prove that it would modify the ATC Tower by a certain date. The Applicant argued that to the extent TDC 33.025(1)(a) requires an applicant to consider a tower that needs additional permits or approvals to accommodate the wireless facility, it is expressly limited to those towers for which the required application has already been filed. Nor did the Applicant argue that a taller ATC Tower must provide the "same exact coverage." The Applicant submitted a RF Usage and Facility Justification analysis from Verizon's RF engineer which concludes that Verizon's coverage and capacity objectives cannot be satisfied even if the ATC Tower is increased in height.

For all of the reasons provided in this Section A, the City Council should affirm the Planning Commission's conclusion that the Application satisfies TDC 33.025(1)(a).

B. The Planning Commission correctly determined that the Application satisfied TDC 33.025(1)(b) based on the applicable code provisions and substantial evidence in the record.

TDC 33.025(1)(b) allows for a variance to the 1,500 foot separation requirements if: "The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District." This criteria is an independent basis for approving the variance and does not require the Applicant to demonstrate that the ATC Tower is not a viable option. Based on the photosims and related information regarding the property and surrounding area, the Planning Commission concluded that the proposed location has tall, dense evergreen trees that will screen at least 50% of the proposed tower from the residential districts and therefore complies with TDC 33.025(1)(b).

Although ATC does not dispute the fact that the proposed WCF tower will be significantly screened by the trees in the area as reflected in the photosims, ATC claims that the Planning Commission did not properly apply TDC 33.025(1)(b) in this case. ATC's position is based on an erroneous interpretation of TDC 33.025(1)(b) and mischaracterization of the evidence.

1. The Planning Commission did not misinterpret the term "location" in TDC 33.025(1)(b).

ATC argues that the Planning Commission misinterpreted the term "location" in TDC 33.025(1)(b) because it did not accept ATC's argument that only trees on the same site or property that the tower is proposed can be considered for purposes of evaluating the screening. The Planning Commission rejected ATC's interpretation and concluded that the term "location" is broader than the site or property and therefore the City may consider the screening effect of other surrounding trees. The Planning Commission considered the screening effect of trees on the subject property and the immediate surrounding area, in particular the adjacent tax lot that is owned by the same property owner. The Planning Commission's interpretation is consistent with the plain language of TDC 33.025(1)(b).

The Planning Commission's interpretation is based primarily on the fact that TDC 33.025(1)(b) does not limit the inquiry to trees on the subject "site" or property. TDC 33.025 and TDC 73.450 through 73.470 consistently refer to the term "site" when they intend to describe the property in which the tower is proposed. This is consistent with the definition of the term "site," which "refers to the property upon which a development is proposed." TDC 31.060. Therefore, when the City intended to apply a standard to the subject property it uses the term "site".

TDC 33.025(1)(b) clearly does not limit the inquiry to trees on the site. It requires a finding that the "proposed monopole <u>location</u> includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole" from certain residential areas. The fact that the City choose to use the term "location" in TDC 33.025(1)(b), as opposed to the term "site," demonstrates that the City intended the standard to apply more broadly than just the subject site. See PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993); Dale v. Electrical Board, 109 Or App 613, 616, 820 P2d 868 (1991) (the use of different language in similar provisions demonstrates an intended different meaning).

The Planning Commission's interpretation also makes more practical sense. If the primary purpose of the TDC 33.025(1)(b) is to determine if there are trees that will provide significant screening to mitigate visual impacts on residential areas, there is no reason to limit the inquiry to the subject site. If there are tall, dense evergreen trees on neighboring properties that significantly screen the tower from residential areas, why wouldn't the City consider this screening under TDC 33.025(1)(b). Especially if the adjacent lot is owned by the same property owner as is the case here.

2. The Applicant did show that the proposed location has tall, dense evergreen trees.

Once again, ATC attempts to conflate the terms "location" and "site" by arguing that the Applicant failed to show that the "subject site" has tall, dense evergreen trees. As previously explained, the Planning Commission correctly determined that the location has tall, dense evergreen trees that screen more than 50% of the tower from the residential areas.

The Applicant's photosim material includes a "Photo Sim Location Map" that shows an overhead view of the property and surrounding area. This location map clearly shows tall, dense evergreen trees on the same property as the tower, the adjacent tax lot under common ownership and the immediate surrounding area. The photosims themselves, in particular photosim #1, clearly shows the row of tall, dense evergreen trees along the northern border of the property, which significantly screens the tower from the residential area to the north.

ATC's suggestion that the trees that provide screening should be disregarded because they allegedly are not evergreen is undermined by the photosims themselves. The photosims were taken in early January, in the dead of winter when deciduous trees do not have their leaves. Therefore, the photosims show a worst case scenario. The fact that the trees provide more than 50% screening even in the middle of the winter demonstrates that ATC's argument is factually incorrect.

3. The Planning Commission correctly determined that the photosims were accurate and provided substantial evidence of compliance with TDC 33.025(1)(b).

ATC raises a number of subjective arguments about the accuracy and sufficiency of the photosims the Applicant provided. While ATC accuses the Applicant of "gross distortion" and "cherry-picked" photos, it failed to mention that both the City staff and the Planning Commission concluded that the photosims were accurate and sufficient to demonstrate compliance with TDC 33.025(1)(b). In fact, the Applicant specifically sought input from the City staff before it performed the photosims. So ATC's opinion of the photosims is not shared by the Planning Commission and City staff, and is obviously self-serving.

More importantly, ATC's failed to explain what standard or criteria the photosims allegedly failed to comply. TDC 33.025(1)(b) does not require photosims or impose specific standards on how to conduct the photosims. The same is true with respect to the general WCF standards set forth in TDC 73.450 through 73.470. The mere fact that ATC does not believe the photosims are sufficient is hardly a basis for denying the Application.

TDC 33.025(1)(b) requires a finding that the trees will screen at least 50% of the proposed tower from the RL District or from a small lot subdivision in the RML District. In this case, there is a

RL District north and east of SW Tualatin Rd. The Applicant provided five photosims from various vantage points in these locations, some of which are closer to the site and some further away. As the Planning Commission and City staff concluded, these photosims are sufficient to reflect the screening effect of the trees on the properties in this RL District. ATC failed to provide its own photosims or any other evidence that contradicts the Applicant's photosims. In the absence of any standard or criteria that requires something more than these photosims, or evidence to the contrary, ATC's argument should be rejected.

4. The Planning Commission's interpretation is consistent with the text, context, purpose and policy of TDC 33.025(1)(b).

Ironically, ATC's argument that the Planning Commission's interpretation of TDC 33.025(1)(b) is inconsistent with the text and purpose of this code provision is based predominately on another code provision that is clearly not relevant to the Application. ATC argues that the Planning Commission's interpretation is contrary to TDC 33.020 because the Applicant did not demonstrate "exceptional or extraordinary circumstances" to justify the variance request as required by TDC 33.020. Not only is TDC 33.020 not an applicable approval criteria, it expressly provides that it is not applicable to WCF variance requests. The title of TDC 33.020 is "Conditions for Granting a Variance that is not For a Sign or a Wireless Communication Facility." ATC does not explain why the City should disregard the plain language of TDC 33.025(1)(b) and impose an additional requirement that is expressly excluded from this type of variance request. The fact that the City expressly excluded WCF variance requests from TDC 33.020 demonstrates that the City did not want to impose this variance criteria on WCFs.

There is another irony in ATC's assertion that variances are supposed to be difficult so the City should rigorously apply these standards in this case. ATC had to request a variance when it proposed the 130-foot ATC Tower. As previously explained, ATC would be required to obtain a new variance under TDC 33.025(2) in order to increase the height of the ATC Tower to 166 feet. To satisfy TDC 33.025(2)(b), ATC is required to demonstrate that there are no "existing WCFs, or a WCF for which an application has been filed and not denied" that could provide the intended wireless coverage and capacity without exceeding the height limit of 100 feet. The Applicant's tower satisfies the 100-foot height limit and the Applicant has obviously filed an application already. So it is not possible for ATC to satisfy TDC 33.025(2) unless the Application is denied. That is why ATC is fighting the Application so vigorously – it needs the City to deny the Application so it can file its own variance application to increase the height of the ATC Tower to 166 feet or more. So apparently, ATC is okay with variances, even one that exceeds the 100-foot height limit by 66 feet, unless one of ATC's competitors is the one requesting it.

Conclusion

The Planning Commission's decision is consistent with the applicable criteria in TDC 33.025 and is supported by substantial evidence in the record. There is no dispute that the ATC Tower cannot accommodate the proposed wireless facilities and TDC 73.470(9) and TDC 33.025 do not require the Applicant to delay this project simply because ATC could or may request a variance at some undefined time in the future. Moreover, the variance requirements and evidence indicate that it is

Page 10 March 21, 2018

unlikely that ATC will be able to obtain that approval. And even if ATC was able to increase the height of the ATC Tower, it still would not satisfy the coverage and capacity objectives for this site.

ATC is the only party that is fighting this Application and it is only doing so because it involves a competitor. None of the neighbors or surrounding community members are opposing the Application. The City staff recommended approval. After extensive testimony and multiple hearings, the Planning Commission unanimously approved the Application under both TDC 33.025(1)(a) and (b). As explained in this letter, the Planning Commission's decision is consistent with the express language of the applicable TDC sections and is supported by substantial evidence in the record. Therefore, the City Council should deny the Appeal and affirm the Planning Commission's unanimous decision.

We look forward to discussing these issues further with the City Council's appeal hearing.

Very truly yours,

HATHAWAY LARSON LLP

E. Michael Connors

EMC/mo Enclosure

cc: ACOM Consulting Inc.

Lendlease

November 16, 2017

VIA ELECTRONIC MAIL: ahurd-ravich@tualatin.gov
Original to follow via hand delivery



City of Tualatin Planning Commission Attn: Aquilla Hurd-Ravich 18880 SW Martinazzi Ave Tualatin, OR 97062-7092

RE: Pl Tower Development Project OR-Tualatin-Durham/ 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001)

Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable Planning Commissioners:

I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation ("ATC"), which owns a wireless communications facility located at 10318 SW Herman Road, Tualatin, Oregon (the "ATC Tower"). ATC is impacted by the proposed wireless communication facility on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "Applicant") on the southwest corner of 10290 SW Tualatin Road, Tualatin, Oregon (herein the "Subject Property"). Applicant's proposed tower is located within 1,500 feet of the ATC Tower; specifically, the proposed tower is approximately 750 feet from the ATC Tower. Therefore, under the Tualatin Development Code Section 33.025(1)(a) a variance is needed. Applicant's proposed findings as justification for the variance to the 1,500-foot radius requirement from an existing tower is an assertion that the existing ATC Tower is not suitable for colocation of additional carriers because of interference from the trees surrounding the site and has provided an RF interference letter in addition to its RF report. ATC acknowledges that under the current circumstances, the height of the trees would create interference for new co-location of carriers below the existing carrier heights; however, the interference from the trees can be eliminated. ATC has provided supplemental RF coverage analysis, which is attached hereto and incorporated by this reference herein, that supports ATC's position.

ATC submits these comments for the purpose of correcting the factual record and the proposed legal conclusions contained in the staff report; specifically, the decision granting ATC the variance to construct its existing tower (VAR-99-02) does not contain a condition of approval prohibiting any further clearing of trees (the "Existing Decision"). The Existing Decision did include findings of fact that contemplated some tree removal and trimming of trees in a manner as less impactful as necessary. However, in the approximately 17 years following the issuance of the Existing Decision, the circumstances have changed and the surrounding trees have grown. Therefore, upon issuance of a tree

Park Place, Store 200 250 Church Street SE Salem, Oregon 97301

Post Office Box 470 Salem, Oregon 97308

> tel 503 399.1070 fax 503 371.2927

removal permit and with the consent of the City of Tualatin as the landlord and owner of the surrounding property, it is feasible for ATC to remove the existing trees within the approximately 155-foot radius of the ATC Tower. As the supplemental RF report and map identify, if ATC were to remove the trees creating such interference, coverage would be acceptable for the service parameters provided in the record. Therefore, the staff report contains an incorrect finding of fact in finding that removal of the trees cannot occur. A copy of the VAR-99-02 decision is attached hereto and incorporated herein for your reference.

Alternatively, ATC could potentially file a new variance application requesting permission to further extend the height of the ATC Tower by approximately twenty feet in recognition of the change in circumstances created by the passage of time and the annual growth of the trees and data coverage needs existing today as compared to 1999, when ATC originally applied for the Existing Decision. Such a variance application, if requested, would likely be approved and is certainly feasible. Therefore, ATC has two options in obtaining the necessary approvals for servicing the coverage request as identified in the existing record. Accordingly, the assertion that ATC cannot, as a matter of law, provide the requested coverage is inaccurate.

ATC requests the Planning Commission to deny the proposed variance request. In the alternative, ATC requests the Planning Commission to keep the record open for a period of not less than 21 days to give ATC an opportunity to provide additional evidence and argument as it pertains to the proposed variance request.

Thank you for your time and attention.

Sincerely,

ALAN M. SOREM asorem@sglaw.com Voice Message #303

AMS:jsm Enclosures cc: Client

RESOLUTION NO. TDC-609-17

A RESOLUTION OF THE PLANNING COMMISSION THE VARIANCE APPLICATION FOR A WIRELESS COMMUNICATION FACILITY TO LOCATE AT 10290 SW TUALATIN ROAD WITHIN 1,500 FEET OF AN EXISTING WIRELESS COMMUNICATION FACILITY. (VAR-17-0001).

WHEREAS, on January 18, 2018, a quasi-judicial public hearing was held before the Planning Commission for consideration of a variance upon the application of Acom Consulting, Inc.; and

WHEREAS, notice of public hearing was given as required by the Tualatin Development Code; and

WHEREAS, the Planning Commission heard and considered the testimony and evidence presented on behalf of the applicant, City staff, and those appearing at the public hearing; and

WHEREAS, after the conclusion of the public hearing the Planning Commission. deliberated and by this resolution makes its decision;

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Variance (VAR-17-0001), considered by the Planning Commission is hereby (check one):

Approved;

□ Approved with Conditions;

□ Denied.

Section 2. The Planning Commission adopts as its findings the Analysis and Findings set forth in Exhibit 1, which includes the list of conditions, if any, and which is attached and incorporated herein.

Section 3. This resolution is effective upon adoption.

Adopted by the Planning Commission this 18th day of January, 2018.

CITY OF TUALATIN, OREGON

ATTEST

APPROVED AS TO FORM

City Attorney

submitted to the Planning Commission on January 18, 2018.

APPLICATION FOR VARIANCE

UNMANNED WIRELESS TELECOMMUNICATIONS FACILITY AT:

10290 SW Tualatin Road Tualatin, OR 97062

Prepared By



Date October 03, 2017

Project Name POR Durham



Applicant:

Lendlease (US) Telecom Holdings LLC

c/o PI Tower Development LLC 909 Lake Carolyn Parkway

Irving, TX 75039

Co-Applicant:

Verizon Wireless (VAW), LLC dba, Verizon Wireless

5430 NE 122nd Avenue Portland, OR 97230

Representative:

Acom Consulting, Inc.

Reid Stewart

5200 SW Meadows Road, Suite 150

Lake Oswego, OR 97035

Property Owner:

Tote 'N Stow, Inc.

10290 SW Tualatin Road Tualatin, OR 97062

Project Information:

Site Address:

10290 SW Tualatin Road, Tualatin, OR 97062

Parcel:

2S123B000800

Parcel Area:

3.63 acres

Zone Designation:

ML (Light Manufacturing Planning District)

Existing Use:

Storage Facility

Project Area:

1,200 square foot lease area (25' x 48' fenced equipment area)

Chapter 33: Variances

Section 33.025 - Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.

 (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not



denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

Response: Verizon Wireless, the co-applicant, has done extensive research looking at opportunities in the area to collocate on existing towers or buildings, as that is always a preferred option when available. If an existing tower or structure is not available at the specified height or not attainable because of space constraints or unreliable structural design, then Verizon Wireless will propose a new tower. In this instance, there is one existing tower, the ATC tower, which is located outside of the search area designated as usable by Verizon Wireless' RF department, but within the 1,500-foot radius of the proposed facility. This tower is not viable as a solution to meet their coverage and capacity objectives due to the existing trees that would cause interference. There are no other existing towers available to collocate on within the area of interest thus a new tower is being proposed, which will in turn be available for other providers to collocate on in the future.

In order to meet the Verizon's coverage and capacity objectives, it is necessary to site a tower within the search ring provided by Verizon's RF department as shown below. Moving outside this search ring is technically not practicable and has adverse effects on providing the needed coverage and capacity objectives the tower is intended to provide, which include nearby high-traffic residential areas to the North. Siting outside the search ring can also create interference with other nearby network sites where coverage may overlap.

The Applicant is requesting a variance to the 1,500-foot tower separation requirement. There is an existing 146-foot ATC monopole support structure outside of the search ring, approximately 750 feet to the SW of the proposed support tower, located at 10699 SW Herman Road. Per the tower owner, there is currently available space on the tower at the 100-foot level, however this is not high enough to avoid interference from multiple trees surrounding the tower and still meet coverage and capacity objectives to the North, as detailed in the attached RF Usage and Facility Justification Report and RF Engineer Interference Letter.

Locating the tower within the search ring and outside the 1,500-foot radius of the nearby existing ATC tower is also not a desirable alternative as it would mean locating in another part of the ML zone without existing screening or in the RML or RMH zone, where a conditional use permit would be required and where it would be very visible to nearby residential areas.

In addition, T-Mobile has also indicated that they intend on co-locating on the proposed WCF, if approved, as the existing ATC tower to the SW will not meet their coverage and capacity requirements either as noted in the attached Letter from T-Mobile RF.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,

Response: The only existing monopole tower located within 1,500 feet of the proposed location cannot be modified as it is not designed to be extended to the necessary height required to avoid interference from the tall trees currently surrounding the tower. The existing tower would need to be removed and replaced with a new tower at least 20-30 feet taller to avoid interference unless the trees were to be removed or reduced in height to approximately the 100-foot level or lower.



Topping the trees would create undesirable visual impacts to nearby residential areas, whereas the proposed location is well screened to nearby residential areas to the North and does not require the removal or trimming of any existing trees. The topped trees would also create a negative visual impact on their own, as over a third of the height would need to be removed to avoid interference.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

Response: No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

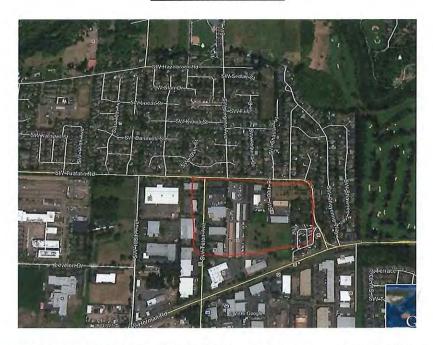
Response: Application has demonstrated compliance with Section 33.025(1)(a) above, however proposed location also meets this requirement and includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.

- (2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:
 - (a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,
 - (b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.

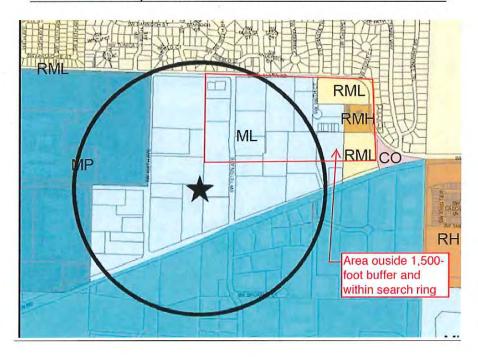
Response: Not applicable – Applicant is not requesting a variance to the maximum allowable height for the proposed WCF.



VERIZON SEARCH RING



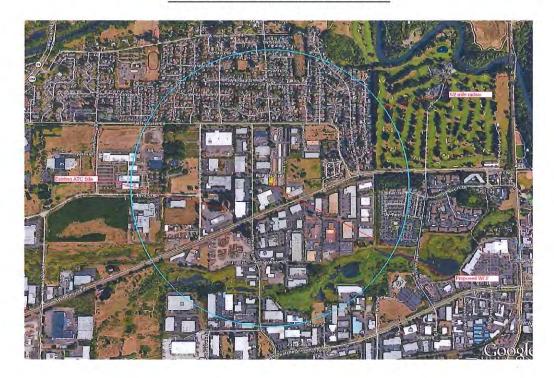
EXISTING TOWER 1,500' RADIUS WITH VERIZON SEARCH RING OVERLAP



44 of 101



½ MILE RADIUS OF PROPOSED TOWER



45 of 101

RF Usage and Facility Justification

Durham

Prepared by Verizon Wireless Walld Nasr

Jun 14, 2017

verizon^v

Introduction:

One is There are two main drivers that prompt the need for a new cell site. coverage and the other is capacity.

Coverage is the need to expand wireless service into an area that either has no service or bad service. The request for service often comes from customers or emergency personnel. Expansion of service could mean improving the signal levels in a large apartment complex or new residential community. It could also mean providing new service along a newly built highway.

Capacity is the need for more wireless resources. Cell sites have a limited amount of resources to handle voice calls, data connections, and data volume. When these limits are reached, user experience quickly degrades. This could mean customers may no longer be able to make/receive calls nor be able to browse the internet. It could also mean that webpages will be very slow to download.



process several years in advance to ensure the new cell site is in place before the existing cell site sophisticated programs that use current usage trends to forecast future capacity needs. Since it takes an average of (1-3) years to complete a cell site project, we have to start the acquisition Capacity is the amount of resources a cell site has to handle customer demand. We utilize hits capacity limits.

in a pie shape, with each slice (aka. sector) holding 33% of the resources. Optimal performance is population which ensures even traffic distribution around the cell. A typical cell site is configured Location, Location, Location. A good capacity cell site needs to be in the center of the user achieve when traffic is evenly distributed across the 3 sectors.

Coverage Area of Existing Site

The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.

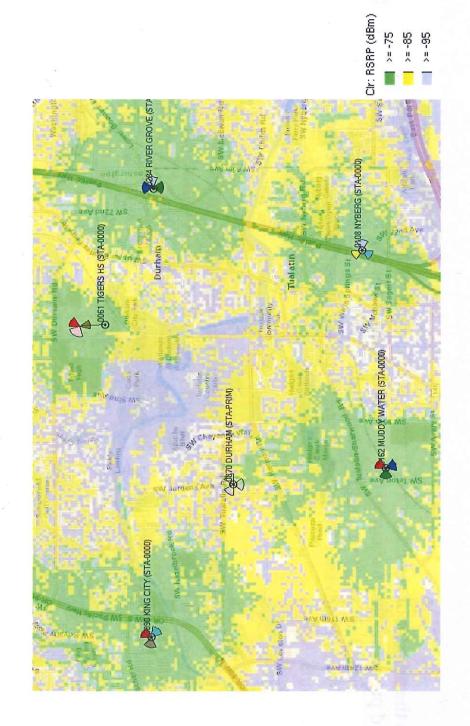




Exhibit 1 to TDC -609-17

The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.

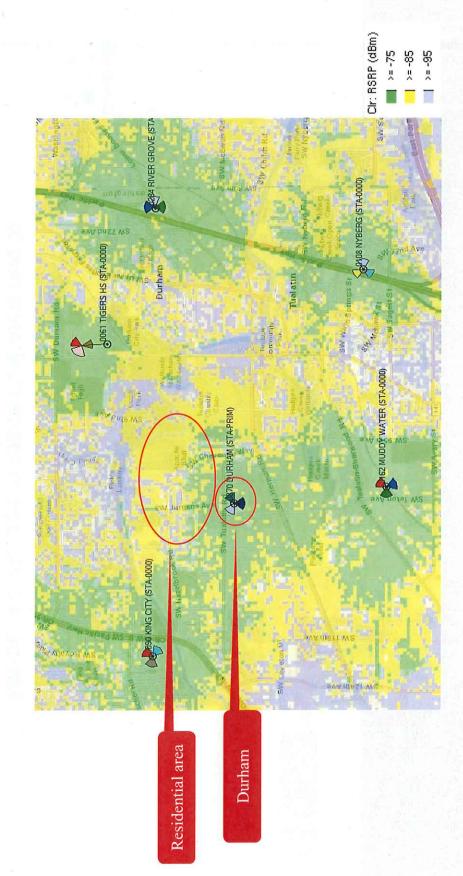
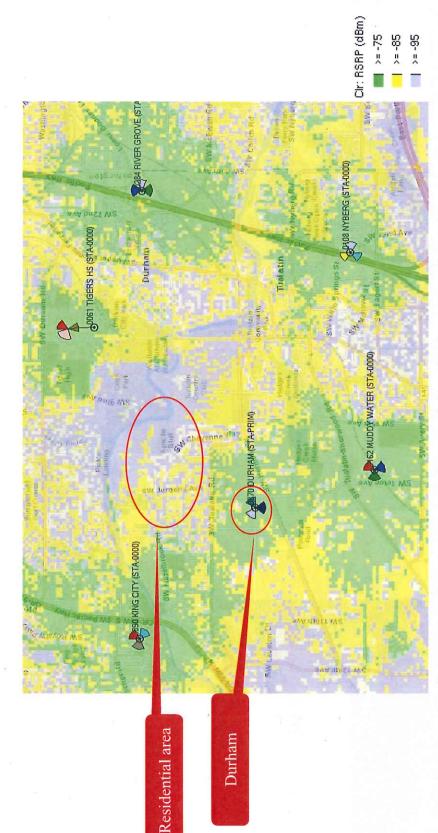




Exhibit 1 to TDC -609-17

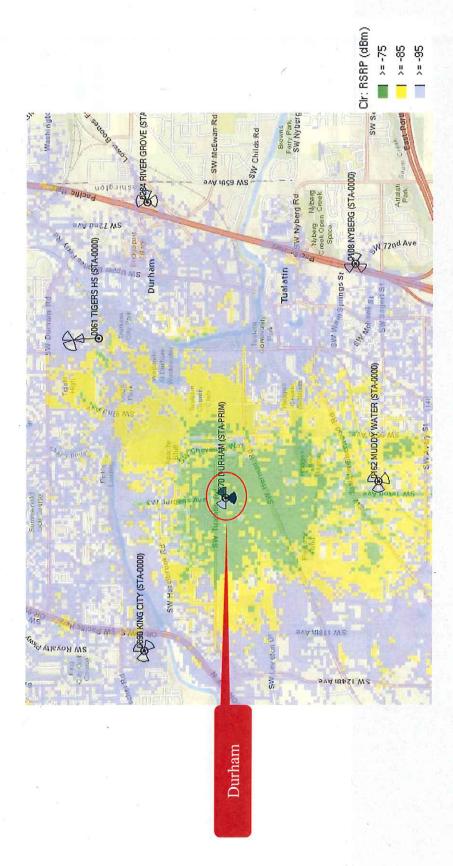
Coverage Area Offloaded by New Site at New Proposed Location

The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.



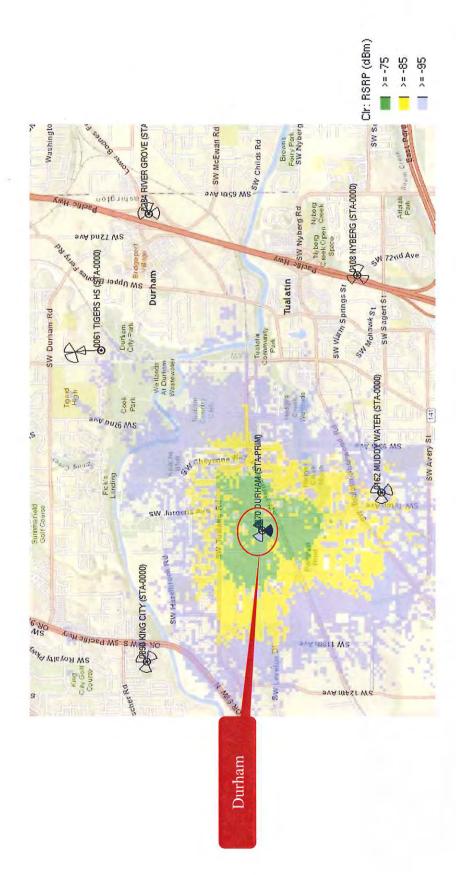
Marginal coverage in residential area due to surrounding trees at existing ATC tower





Coverage with Durham Site

Coverage with Durham Site at New Proposed Location





Need Case for: Durham

Summary: The existing sites King City, Muddy Water, TigerHS cannot carry the data traffic that exists in the area it serves.

Detail below:

- Exact data about sites is proprietary and cannot be disclosed due to competitive reasons.
- The existing cell sites King City, Muddy Water, TigerHS are forecasted to reach capacity in the near future.
- The new cell site Durham will provide additional resources to existing sites. It will take some users off of existing sites, which will alleviate the capacity constraint.
- This will improve customer experience (faster webpage downloads and fewer drop calls).
- Without the new site Durham, existing sites in area will reach capacity which will negatively impact customer's ability to make/receive calls and browse the internet.



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Andrew H. Thatcher

Environmental Health Physics

July 13, 2017

To: Acom Consulting, Inc. 5200 SW Meadows Rd Suite 150 Lake Oswego, OR 97035

Acom consulting has requested that I review the existing antenna site at 10699 SW Herman Road, Tualatin OR, and evaluate the interference potential due to the existing tree canopy as shown in Figure 1. In performing this evaluation I'll review the basics of wireless transmission, what cellular technology can compensate for and what results in a deficient site. Included in the review is Verizon's propagation models¹ for both their proposed Durham site and the existing ATC tower.

In a perfect world for wireless transmission, an un-attenuated radio signal would be sent by the antenna and received by the user without any interference. This is rarely the case as buildings, hills and trees all combine to make the signals propagate along multiple pathways. The three primary components of signal propagation paths are reflection, diffraction and scattering. Reflection occurs from large smooth surfaces such as roadways or buildings. Diffraction occurs when a large object is in the direct line of sight path, such as a hill or building. Scattering occurs when the radio waves contact objects similar or smaller than the wavelength of the frequency of interest. For wireless transmission that can be from 700 MHz (~17" wavelength) to 2100 MHz (~6" wavelength). Scattering would be the dominant interaction with trees while all sources of interference serve to attenuate the signal to some degree with each interaction.

So the presence of trees creates scattering which causes signal distortion in addition to signal attenuation. The transmitted signals received by the end user (a person's cell phone) will consist not only of the original (un-attenuated) signal but also several secondary signals traveling on different paths. These multi-path signals, since they are a result of scattering (since we're concerned with the effects of trees), travel a longer signal path and therefore arrive at an end user (cell phone) later than the original un-attenuated signal. These late signal arrivals become interference and can result in distortion of the original signal. This type of distortion is frequency dependent with greater distortion occurring at higher frequencies. Multi-path signals are a common occurrence in our environment but such multi-path signals are due to stationary objects such as homes, rooftops, and even trees at a distance. Such distortions can readily be corrected due to the use of a RAKE² receiver in the phone. However, for a tree canopy in a near field environment such as in Figure 1 the obstruction is not constant but in fact continuously

¹ Propagation modeling provided by W. Nasr, Verizon RF Engineer, 7/5/2017.

² Briefly, RAKE receivers are used in the receiver phones of Code Division Multiple Access (CDMA) systems. The receiver collects and treats each time shifted version of the original signal as an independent signal and then combines them into a single signal provided the delay is not too long.

-2- July 16, 2017

changing. The result is scattered signals that may be stronger than direct signal due to signal attenuation since the tree canopy density is not uniform and the signals going through the tree will be attenuated differently. Further, the motion of the trees with wind presents a continuously changing foliage density that results in selective signal fading with time. For the tree canopy shown in Figure 1, the near field environment could easily result in signal attenuation of 10 dB to as much as 20 dB. Combine this attenuation with the constantly changing signal fading environment and the result in a constantly changing delay (due to wind) that the RAKE receiver would have difficulty separating as noise. Reviewing Figure 1 again and one can see that the antennas are near the tops of the trees so the tree movement would include swaying of the trees in addition to individual branch movements.

Figure 2 is the predicted propagation to the residential location of interest from the existing antenna located within the trees. Figure 3 shows the same residential area with the antenna located in the proposed location. Both figures are provided to support the previous qualitative analysis. The figures show that the Reference Signal Received Power (RSRP) is at least 10 dBm lower for each location. Note that this analysis does not consider the effect of wind.

Trees at a distance from the antennas may present acceptable interference as the overall impact could be managed. For antennas placed well beneath the tree canopy in a near field environment affecting all three radiating sectors, it would be difficult to envision a wireless network that could compensate for these factors, the presence of wind, and remain effective in terms of capacity for the site and successful integration with the surrounding wireless sites. The attenuation and scattering of the signal through the trees would result in a lower transmitted power level that could not be improved by increasing the power as that would only serve to also increase the power of the multipath signals. In short, such a setup in the trees would present a problem regardless of the transmitted power level.

To summarize, the existing ATC tower is not a suitable antenna site without substantial modification based on the information provided in this report.

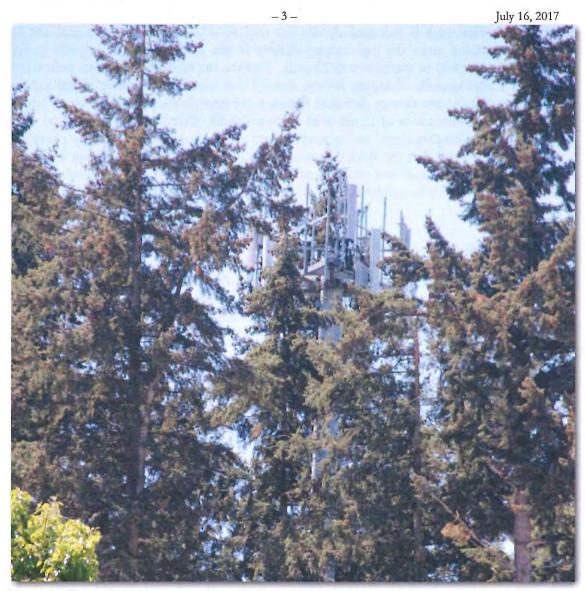


Figure 1: Photo of existing tower surrounded by a dense tree canopy in a near field environment

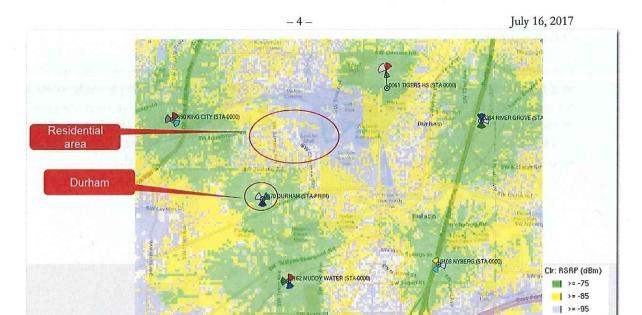


Figure 2: Predicted propagation model showing the residential area of interest from the existing antenna.

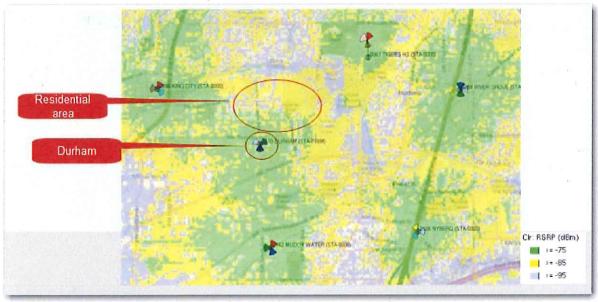


Figure 3: Predicted propagation model showing the RSRP for the residential area of interest with the proposed antenna location.

-5 - July 16, 2017

Qualifications

I am a member of the IEEE, the Institute of Electrical and Electronics Engineers as well as a member of the Health Physics Society. I am a board certified health physicist with a masters in health physics from the Georgia Institute of Technology. I have over 29 years of experience in the evaluation of both ionizing and non ionizing radiation sources. I am a consultant to the ACGIH Threshold Limit Values for Physical Agents Committee as well as a non ionizing subject matter editor for the Health Physics Journal.

Regards,

CERTIFIED HEALTH PHYSICIST

Andrew H. Thatcher, MSHP, CHP



September 12, 2017

RE: PI Tower Development Project OR-Tualatin-Durham / 10290 SW Tualatin Road

To Whom It May Concern:

T-Mobile West LLC has been seeking to address a significant gap in network coverage in and around the subject vicinity. After assessing the viability of the existing infrastructure in the area, we have identified the proposed PI Tower Development wireless telecommunications facility to be located at 10290 SW Tualatin Rd in Tualatin, Oregon, as the only candidate that will address and eliminate this network gap in coverage. As a result, once the site is completed, T-Mobile intends to proceed with entering into a lease agreement with PI Tower Development and ultimately install equipment on site.

Best regards,

Julio Brown

Sr. RF Engineer

T-Mobile West LLC

Portland, Oregon

POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

VARIANCE APPLICATION (VAR-17-0001)

ATTACHMENT A: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 800 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

Specifically, the applicant is asking for a variance from one of the Community Design Standards regulating wireless communication facilities. That standard (TDC 73.470(9)) requires a 1,500 foot separation between wireless communication facility monopoles.

"The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied."

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included here as Exhibit A, and staff has reviewed this and other application materials and included pertinent excerpts below.

The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in Italic font.

Section 33.025 - Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.
 - (a) coverage and capacity.
 - i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has

been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

<u>Applicant Response:</u> Not applicable – Applicant has demonstrated compliance with Section 33.025(1)(b) as discussed below.

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and

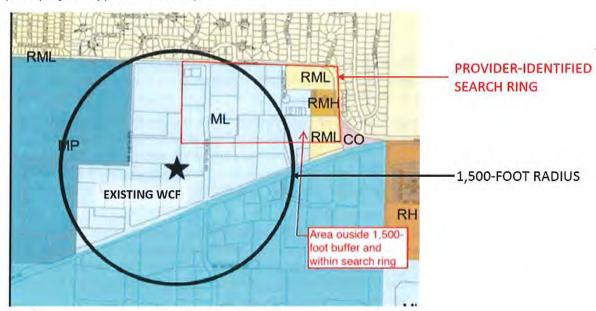
<u>Applicant Response:</u> Not applicable – Applicant has demonstrated compliance with Section 33.025 (1)(b) as discussed below.

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

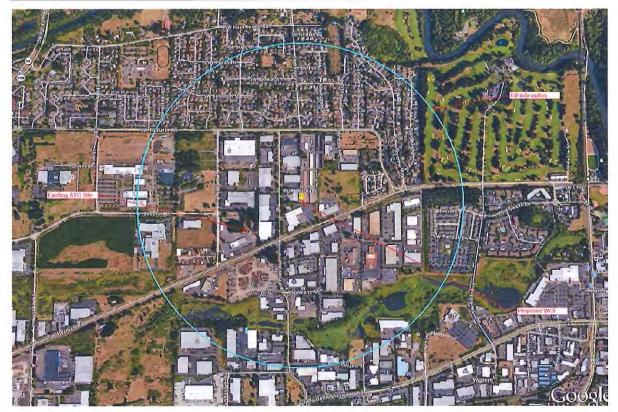
(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

<u>Applicant Response:</u> No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(Excerpts from applicant material)



Existing Tower 1,500' radius with Verizon Search Ring Overlap



½ Mile radius of proposed tower

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

<u>Applicant Response</u>: Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.

Staff Response: The subject property, located at 10699 SW Herman Road, is bound on the north by a Low Density Residential (RL) planning district, directly on the east, west and south by a Light Manufacturing (ML) Planning District. The surrounding area to the east includes Medium Low Density (RML) and Medium High Density (RMH) residential planning districts. There are no small lot subdivisions in the RML district in the surrounding area to the east of the subject property.

The applicant has submitted photo simulations included here at Exhibit B. Photos were taken in five different locations including from the RL planning district and the RML and RMH planning districts. Photos were also taken from the ML planning district. These photos demonstrate the subject project has tall evergreen trees that will screen 50% of the monopole.

View #1 shows that looking south from the RL planning district toward the site tall evergreens completely block the view of the property. View #2 is from the ML planning district and although the criterion does not require screening from ML this photo shows there are tall evergreens and other dense trees along the eastern property line. View #3 was taken from the RMH and RML area to the east. In this photo evergreens are present and other tall trees but the monopole is not as well screened as from other vantage points. View #4 is from the border of the RL and ML planning districts, and in these photos no evergreens are present and the tower is somewhat visible beyond an existing industrial building. View #5 is taken from the RL planning district looking southeast. Evergreens are present in this photo as well as other tall trees that help screen the proposed monopole.

The photo simulations of the proposed monopole in views #1, #4 and #5 are most applicable given that the criterion is specific to screening from an RL district or an RML district with a small lot subdivision. There is not a small lot subdivision in the surrounding area to the east where RML is located. Views 1, 4 and 5 were taken from the RL planning district or the boundary of RL and ML. View #1 shows the location completely screened by dense tall evergreens. View #4 does not show evergreens in the photo but screening from an existing building. View #5 shows the presence to tall evergreens and some screening. Staff finds that at least 50% of the proposed monopole will be screened by tall dense evergreen trees from the RL planning district.

This criterion is met.

Exhibits

Exhibit A: Applicant Narrative

Exhibit B: Photo Simulations

APPLICATION FOR VARIANCE

UNMANNED WIRELESS TELECOMMUNICATIONS FACILITY AT:

10290 SW Tualatin Road Tualatin, OR 97062

Prepared By



Date January 08, 2018

Project Name POR Durham



Applicant:

Lendlease (US) Telecom Holdings LLC

c/o PI Tower Development LLC 909 Lake Carolyn Parkway

Irving, TX 75039

Co-Applicant:

Verizon Wireless (VAW), LLC dba, Verizon Wireless

5430 NE 122nd Avenue Portland, OR 97230

Representative:

Acom Consulting, Inc.

Reid Stewart

5200 SW Meadows Road, Suite 150

Lake Oswego, OR 97035

Property Owner:

Tote 'N Stow, Inc.

10290 SW Tualatin Road Tualatin, OR 97062

Project Information:

Site Address:

10290 SW Tualatin Road, Tualatin, OR 97062

Parcel:

2S123B000800

Parcel Area:

3.63 acres

Zone Designation:

ML (Light Manufacturing Planning District)

Existing Use:

Storage Facility

Project Area:

1,200 square foot lease area (25' x 48' fenced equipment area)

Chapter 33: Variances

Section 33.025 - Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.

 (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not



denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,

Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

Response: No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

Response: Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.

- (2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:
 - (a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,
 - (b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.

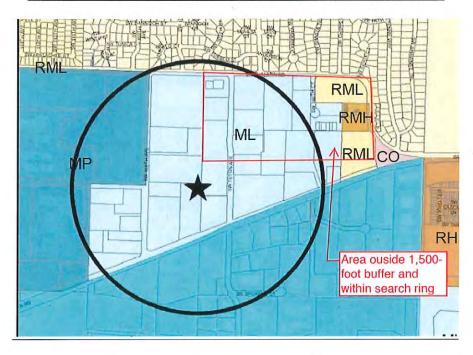
Response: Not applicable – Applicant is not requesting a variance to the maximum allowable height for the proposed WCF.



VERIZON SEARCH RING



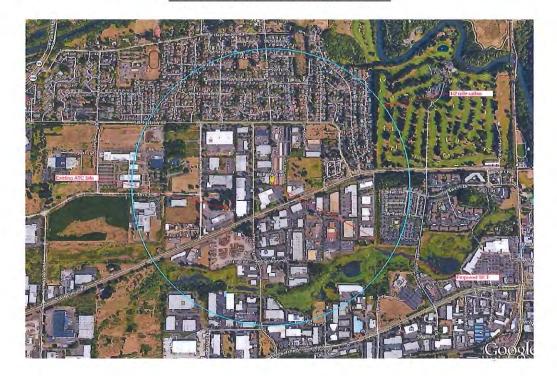
EXISTING TOWER 1,500' RADIUS WITH VERIZON SEARCH RING OVERLAP



68 of 101

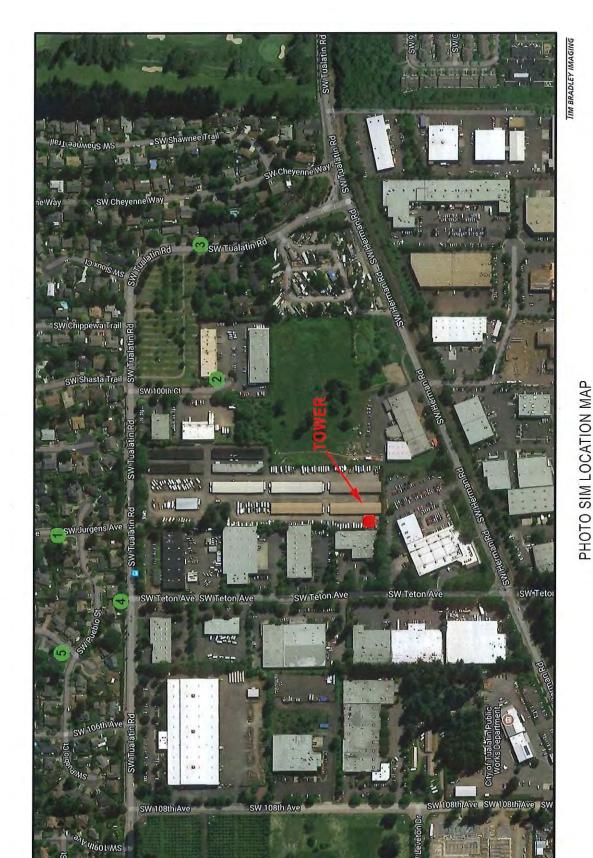


1/2 MILE RADIUS OF PROPOSED TOWER



10290 SW TUALATIN RD., TUALATIN, OR







IIM BRADLEY IMAGING

Exhibit 1 to TDC -609-17

TOWER NOT SEEN

VIEW #1



Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.



10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #2 LOOKING SOUTHWEST ON SW 100TH COURT



PROPOSED



10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #3 LOOKING SOUTHWEST ON SW TUALATIN ROAD



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.

TIM BRADLEY IMAGING

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Attachment C - Materials from Appeal Hearing



10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #4 LOOKING SOUTHEAST ON SW TUALATIN RD. AT SW TETON AVE.



PROPOSED



10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #5 LOOKING SOUTHEAST ON SW 105TH COURT & SW PUEBLO ST.



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.

TIM BRADLEY IMAGING

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TUALATIN PLANNING COMMISSION

MINUTES OF January 18, 2018

TPC MEMBERS PRESENT:

STAFF PRESENT

Alan Aplin
Janelle Thompson
Mona St. Clair
Angela DeMeo
Travis Stout

Aquilla Hurd-Ravich Sean Brady Jeff Fuchs Lynette Sanford

TPC MEMBER ABSENT: Kenneth Ball, Bill Beers

GUESTS: E. Michael Connors, Alan Sorem, Reid Stewart, Nick Caezza

1. CALL TO ORDER AND ROLL CALL:

Alan Aplin called the meeting to order at 6:30 pm and reviewed the agenda. Roll call was taken.

Motion by DeMeo, SECONDED by Thompson to appoint Mr. Aplin Pro Tempore Chair. MOTION PASSED 5-0.

2. APPROVAL OF MINUTES:

Mr. Aplin asked for review and approval of the December 7, 2017 TPC minutes. MOTION by DeMeo SECONDED by Thompson to approve the minutes as written. MOTION PASSED 5-0.

3. COMMUNICATION FROM THE PUBLIC (NOT ON THE AGENDA):

Jonathan Taylor, Economic Development Manager, introduced himself to the Planning Commission. He stated that he previously worked in Trinidad, Colorado.

4. **ACTION ITEMS:**

A. Elect a Chair and Vice Chair to Represent the Tualatin Planning Commission.

MOTION by DeMeo, SECONDED by Stout to postpone the election of a Chair and Vice Chair to our next meeting. MOTION PASSED 5-0.

B. Continued Public Hearing to consider a Variance to the Wireless

Communication Facility (WCF) Separation Requirement for the POR Durham project in the Light Manufacturing (ML) Planning District at 10290 SW Tualatin Road (Tax Map/Lot 2S1 23B 000800) (VAR-17-0001) (RESO TDC 609-17).

Mr. Aplin, Pro Tempore Chair, opened up the record and read the script for Quasijudicial hearings. Mr. Aplin asked the Commission members if they had a conflict of interest, bias, or ex parte contact with the applicant. No members expressed ex parte contact.

Ms. Hurd-Ravich, Planning Manager, entered the staff report and attachments into the record. Ms. Hurd-Ravich stated that she is here to present the revised staff report and presentation based on the revised findings from the applicant.

Ms. Hurd-Ravich stated that the applicant is requesting to construct a new unmanned wireless communication facility (WCF) to be located within 1,500 feet of an existing WCF at 10699 SW Herman Rd. Tualatin Development Code 73.470(9) requires that WCFs are separated by 1,500 feet. The applicant, Acom Consulting, seeks a variance to this code requirement. The Planning Commission must find that the applicant can demonstrate compliance with Tualatin Development Code (TDC) 33.025(1)(a) or 33.025(a)(b).

Ms.Hurd-Ravich noted that the first public hearing began on November 16, 2017. At that hearing, a request was made to leave the record open. The Planning Commission granted this request and reconvened on December 7, 2017. At that hearing the applicant requested a continuance "to enable the Applicant to provide additional information regarding compliance with TDC 33.025(1)(b).

Ms. Hurd-Ravich went through the PowerPoint slides, which detailed the proposed site located on the southwest corner of 10290 SW Tualatin Rd. as well as the existing facility, which is located on City property. The other slides detailed photo simulations that showed the proposed tower location includes tall, dense, evergreen trees that will screen at least 50% of the proposed monopole from adjacent residential areas. In addition, the proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.

Ms. Hurd-Ravich acknowledged that based on the photo simulations, the applicant has demonstrated that 50% of the monopole will be screened by tall, dense, evergreen trees from the RL (Residential Low Density) Planning District. The Planning Commission's options are to:

- Approve VAR17-0001 as drafted;
- Deny VAR17-0001 and cite which criteria applicant fails to meet; or
- Continue discussion to a later date.

E. Michael Connors, Hathaway Larson LLP, 1331 NW Lovejoy St, Suite 950, Portland, OR

Mr. Connors noted that he is representing the applicant, Acom Consulting. Mr. Connors stated that he believe the applicant complies with both of the approval criteria.

Mr. Connors noted that additional photo simulations were submitted from five different vantage points. He believes the photo simulations prove that the 50% screening requirement satisfies the criteria

Mr. Connors addressed a letter submitted by American Tower. Mr. Connors noted that the letter states that the subject property does not contain "tall, dense evergreen trees". Mr. Connor disagrees. The subject property is long and there are many trees to the north which provide screening and one very large evergreen in photo simulation 1. Mr. Connors also acknowledged that the code does not state that the trees have to be on the same site; tree screening can be adjacent to the site. Mr. Connors added that the pictures were taken in the winter and that greater screening will be provided throughout other seasons.

Reid Stewart, ACOM Consulting, 4015 SW Battaglia Ave, Gresham, OR 97080

Mr. Stewart stated that he was present when the photo simulations were conducted and acknowledged that they were taken at the correct height and location.

Ms. St. Clair inquired about the current tree ordinance and if there is a limit on how many trees can be removed without a permit. Ms. Hurd-Ravich replied that commercial properties have been through an architectural review process and a landscape plan has been identified. In order to remove trees after the architectural review process, a tree removal permit is required along with an arborist report. Ms. Hurd-Ravich noted that there is a process to save certain trees by identifying them in the review process. Furthermore, site visits are conducted before the removal of trees.

Mr. Connors noted that in order for American Tower to use the existing tower, a variance application would be required to increase the height of the tower and for the removal of trees. Mr. Connors stated that in the year 2000, the Council was clearly relying on the screening of trees for the justification of approving the existing height of 130 feet. American Tower has not demonstrated that they have filed for a variance to increase the tower height or for a tree removal permit. He added that the majority of trees subject to removal are not on City property.

Mr. Connors added that there is no evidence that American Tower will be able to extend their lease with the City by 2020 and they fail to demonstrate that the existing tower will be able to satisfy the necessary coverage and capacity.

Alan Sorem, Saalfeld Griggs, 250 Church Street SE, Salem, OR 97301 Nick Caezza, American Tower Corp. Boston, MA Mr. Sorem stated that the existing tower could provide adequate coverage if the tower was extended to 146 feet from 130 feet and if trees were removed. Mr. Sorem added that under federal law, the tower could be extended to 166 feet and a variance would not be required. Mr. Caezza added that federal law is on their side for the extension of the tower height.

Ms. DeMeo stated they she researched FCC requirements for towers and heritage trees and was curious if Mr. Sorem knew the specifics. Mr. Sorem replied that part of the process will be to review the FCC's requirements and they will be met. Ms. DeMeo asked about approximate age of trees and if they qualify as heritage trees. Mr. Sorem responded that he is uncertain.

Mr. Sorem added that does not believe the photo simulations demonstrate that there are tall, dense evergreen trees that will screen at least 50% of the proposed monopole on the subject property. Mr. Sorem added that there is a reason for the limitation of new towers being built, which benefits the community.

Mr. Connors reiterated that American Tower would not be able to remove the trees due to FCC rules. Furthermore, they have not attempted to file a variance. Mr. Connors added that the applicant has proven there is sufficient screening on the site.

Mr. Aplin closed the public hearing.

Mr. Aplin stated that the he feels the applicant meets the technical requirements of part A and B.

Ms. DeMeo agrees and is in favor of the variance. Ms. DeMeo believes that Tualatin is a tree city and is in favor of retaining older trees.

Ms. Thompson also agrees that the applicant meets the requirements of part A and B and there is no evidence that American Tower is moving forward with an application for a variance.

Mr. Stout agreed that the applicant has met the criteria of both A and B and the photo simulations confirmed that.

Ms. St. Clair agreed that the application meets the requirements of A and B.

MOTION by DeMeo, SECONDED by Thompson to approve the proposed variance on the criteria of 1A and 1B. MOTION PASSED 5-0.

C. A Resolution for the Variance Request to the Wireless Communication Facility Separation Requirements

MOTION by DeMeo, SECONDED by Thompson to approve the resolution as written. MOTION PASSED 5-0.

5. <u>COMMUNICATION FROM CITY STAFF</u>

A. Capital Improvement Plan Update

Jeff Fuchs, Public Works Director and City Engineer, presented the Capital Improvement Plan (CIP) Update, which included a PowerPoint presentation.

Mr. Fuchs stated that this is the third year of the Capital Improvement Plan, which looks ten years into the future. The project categories include:

- Facilities and Equipment
- Parks and Recreation
- Technology
- Transportation
- Utilities

Mr. Fuchs noted that priorities include Council goals, health and safety, regulatory requirements, master plans, and service delivery needs. Funding sources include system development charges, water, sewer and storm rates, gas taxes, general fund, and grants and donations.

Mr. Fuchs went through the slides, which detailed the CIP Summary and the individual projects listed for Facilities, Parks and Recreation, Technology, Transportation, Utilities (storm), and Utilities (water).

Mr. Aplin inquired about how the Basalt Creek area will affect the CIP. Mr. Fuchs responded that all of the master plans have all taken into consideration the Basalt Creek plan.

Mr. Fuchs noted that they are going to Council January 25, 2018 to present transportation analysis for \$14-\$28 million in congestion relief and safety projects.

Ms. DeMeo asked for clarification of the transportation relief presentation going to Council on January 25^{th.} If the bond measure is passed, how will the CIP be affected? Mr. Fuchs answered that the bond measure will provide a new revenue stream and projects will be funded earlier.

6. FUTURE ACTION ITEMS

Ms. Hurd-Ravich stated that at our February meeting, elections will be held for a Chair and Vice Chair. The annual report will also be presented. Ms. Hurd-Ravich added that a variance may be on the agenda in March.

7. Al	NNOUNCEMENTS/PLANNIN	G COMMISSION	COMMUNICATION
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None.

8. ADJOURNMENT

MOTION by Aplin SECONDED by DeMeo to adjourn the meeting at 8:24 pm.

Lynette Sanford, Office Coordinator





PURPOSE OF HEARING

- Appealed Planning Commission approval of a Variance application
- Council consideration of a variance to allow a new wireless communication facility (WCF) within 1,500-feet of an existing WCF
- Council must find that applicant demonstrates compliance with Tualatin Development Code (TDC) 33.025(1)(a) or 33.025(1)(b)



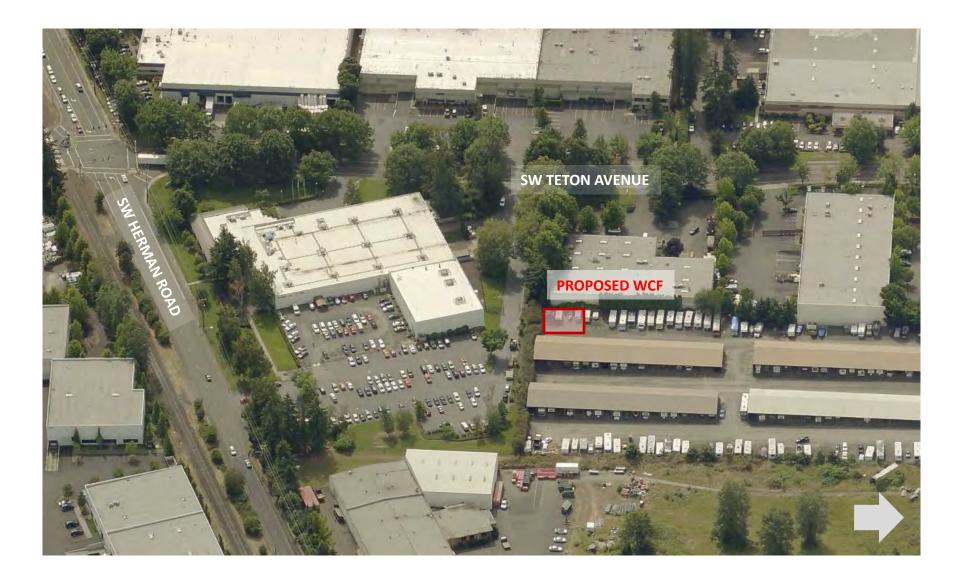
HEARING AGENDA

- Staff Presentation
- Appellant and Applicant Presentation
- Public Comment

Deliberation and Decision



VAR-17-0001 POR DURHAM WCF City Council April 9, 2018



VAR-17-0001 POR DURHAM WCF City Council
April 9, 2018



APPLICANT PROPOSAL

 Applicant proposes to locate a monopole/WCF on the Tote 'N Stow property at 10290 SW Tualatin Road within 1,500 feet of an existing WCF



VARIANCE APPROVAL CRITERIA

TDC 33.025(1)

The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1,500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below:

- (a) Coverage and capacity; OR
- (b) Site characteristics.



VARIANCE APPROVAL CRITERIA

TDC 33.025(1)(b) Site Characteristics

The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

Staff finds this criterion is met.

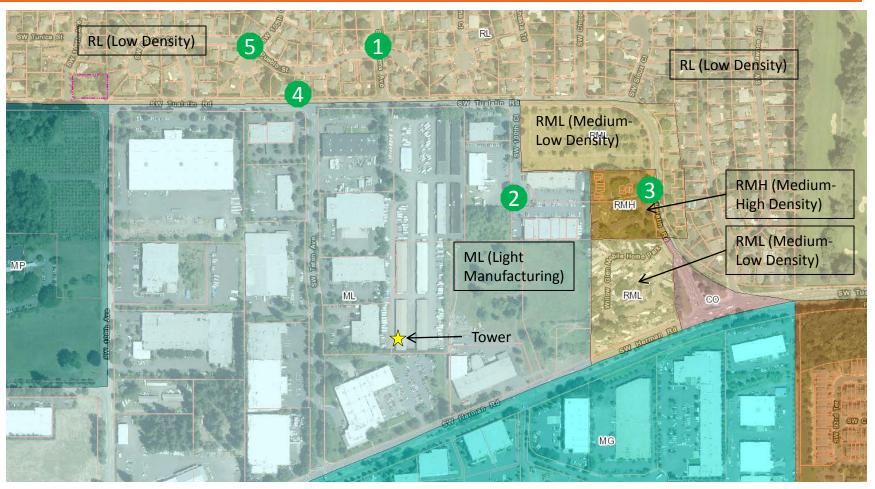


VARIANCE APPROVAL CRITERIA



VAR-17-0001 POR DURHAM WCF City Council April 9, 2018





VAR-17-0001 POR DURHAM WCF





VAR-17-0001 POR DURHAM WCF





CURRENT VIEW #2 LOOKING SOUTHWEST ON SW 100TH COURT



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

TIM BRADLEY IMAGING





CURRENT

VIEW #3 LOOKING SOUTHWEST ON SW TUALATIN ROAD



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

IM BRADLEY IMAGING

VAR-17-0001 POR DURHAM WCF





CURRENT

VIEW #4 LOOKING SOUTHEAST ON SW TUALATIN RD. AT SW TETON AVE.



Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

TIM BRADLEY IMAGING

VAR-17-0001 POR DURHAM WCF





CURRENT

VIEW #5 LOOKING SOUTHEAST ON SW 105TH COURT & SW PUEBLO ST.

PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

IIM BRADLEY IMAGING

VAR-17-0001 POR DURHAM WCF



Summary of review

Summary

Based on the photo simulations (views 1 & 5) the applicant has demonstrated that 50% of the monopole will be screened by tall dense evergreen trees from the RL (Residential Low Density) Planning District



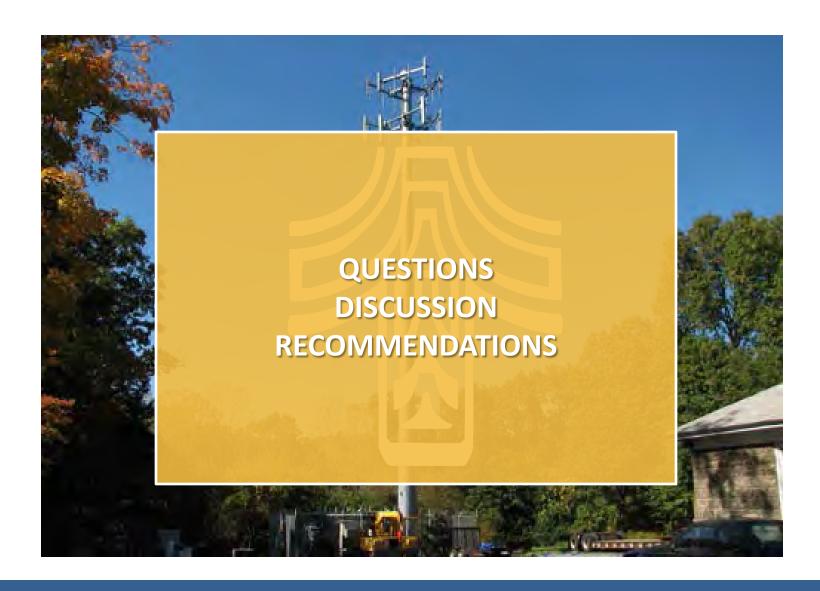
NEXT STEPS (IF APPROVED)

 Architectural Review (AR) of the physical elements of the proposed WCF



City Council OPTIONS

- 1. Approve VAR-17-0001 as drafted; or
- 2. Deny VAR-17-0001 and cite which criteria applicant fails to meet.



VAR-17-0001 POR DURHAM WCF

 From:
 Jason Rogers

 To:
 Aquilla Hurd-Ravich

 Subject:
 appeal 4/9/18

Date: Monday, March 26, 2018 10:52:52 AM

Aquilla –

I received the notice of appeal on the above referenced date. I will be unable to attend that evening so I will outline my concerns below. I'm fine with these being shared and discussed in my absence. Thank you.

As a property owner of a home in this neighborhood, my primary concern is with the location of a new 100' monopole. In attending a previous meeting, reading materials provided, I have seen nothing which outlines the exact, proposed location of the new pole and its possible visual effect on the neighboring homes. If the new pole would be located closer to Tualatin Rd (in lieu of the existing pole which is closer to Herman Rd.) I can see this having a negative impact on the surrounding neighborhoods. As you move closer to Tualatin Rd (from Herman Rd and Tote N Stow storage facility) this area is largely residential with a few office buildings and low-rise industrial structures. With a lack of large trees for shielding a pole of this size (equivalent to a 9+ story building), if the pole will be located closer to Tualatin Rd, I find it hard to visualize just how this structure could be "hidden". As a Tualatin property owner in this area I am opposed to adding a pole in this area which may have a visual and economic impact on my property. It's been explained that the new pole would be a Verizon project which means that myself and other land owners in these neighborhoods (who are not Verizon customers) could be negatively impacted by something that provides no benefit. To me this would simply be a bad business decision and negatively impact many Tualatin property owners.

Thank you,

Jason Rogers

Agency Principal - AOA West Insurance, Inc. (503) 245-1960 ph. (503) 245-2049 fax

www.aoawest.com



STAFF REPORT CITY OF TUALATIN

TO: Tualatin Planning Commissioners

FROM: Aguilla Hurd-Ravich, Planning Manager

DATE: 01/18/2018

SUBJECT: Continued Public Hearing to consider a Variance to the Wireless Communication

Facility (WCF) Separation Requirement for the POR Durham project in the Light Manufacturing (ML) Planning District at 10290 SW Tualatin Road (Tax Map/ Lot:

2S1 23B 0008000) (VAR17-0001)(RESO TDC609-17)

ISSUE BEFORE TPC:

A public hearing began on November 16, 2017 to consider a request by Acom Consulting for a variance to the separation standards of wireless communication facilities. At the hearing a request was made to leave the record open. The Planning Commission granted this request and reconvened on December 7, 2017. At that hearing the applicant requested a continuance "to enable the Applicant to provide additional information regarding compliance with TDC 33.025(1)(b)."

The applicant has submitted a new narrative and photo simulations for Planning Commission consideration regarding the request for a variance of separation standards.

RECOMMENDATION:

Staff recommends the Tualatin Planning Commission consider this staff report, analysis and findings and the applicants materials. Based on the applicant's narrative and photo simulations (included as exhibits to the analysis and findings) staff finds the application meets variance criterion 33.025(1)(b).

EXECUTIVE SUMMARY:

Acom Consulting, Inc. proposed to construct a new unmanned wireless communication facility (WCF) on behalf of Lendlease (US) Telecom Holdings LLC - c/p PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. on the southwest corner of 10290 SW Tualatin Road. The proposed WCF would include a new 100-foot monopole support tower with antennas mounted at the top and opportunities for ancillary ground equipment including equipment cabinets, natural gas generator, cabling and ice bridge will be located below in a new 25' 48' secure fenced lease area surrounding the tower. It is anticipated that the proposed WCF will generate approximately 1-2 visits per month from a site technician.

The proposed WCF would be located within 1,500 feet of an existing WCF at 10699 SW Herman Road. Tualatin Development Code 73.470(9) requires that WCFs are separated by 1,500 feet:

"The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied."

The applicant, Acom Consulting, seeks a variance from this code requirement. As stated in TDC Section 33.025(1) "The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1,500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) **or** (b)." The original application provided findings for 33.025(1)(a)(i) through (iii). The applicant has provided a revised narrative to demonstrate findings for 33.025(1)(b).

TDC 33.025(1)(b) Site Characteristics

The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

The applicant stated that the proposed location includes tall, dense, evergreen trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. The applicant submitted photo simulations to demonstrate this assertion.

Staff found, based the materials submitted by the applicant, that the application meets this criteria. Staff's full analysis and findings are included as Attachment A and the applicants narrative and photo simulations are Exhibits A and B to staff's analysis and findings.

The full staff reports from December 7, 2017 and November 16, 2017 are included as Attachment B.

OUTCOMES OF DECISION:

Approval of VAR17-0001 would result in the following:

- Allows the applicant to locate a Wireless Communication Facility (WCF) at 10290 SW Tualatin Road; and
- Allows staff to review an Architectural Review (AR) for the proposed WCF project.

Denial of VAR17-0001 would result in the following:

- Prohibits the applicant from locating a WCF at 10290 SW Tualatin Road.
- An Architectural Review decision must be denied as it could not meet the separation standard.

ALTERNATIVES TO RECOMMENDATION:

The Tualatin Planning Commission has two options

- 1. Approve the proposed variance with appropriate findings that state the application meets the criteria of TDC 33.025(1)(b); or
- 2. Deny the proposed variance with appropriate findings that the application fails to meet the criteria of TDC 33.025(1)(b)

Attachments: Attachment A - Analysis and Findings with Exhibits A and B

Attachment B - Previous Staff Reports and Attachments

Attachment C - Applicant Request for Continuance Dec 7 2017

POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

VARIANCE APPLICATION (VAR-17-0001)

ATTACHMENT A: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 800 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

Specifically, the applicant is asking for a variance from one of the Community Design Standards regulating wireless communication facilities. That standard (TDC 73.470(9)) requires a 1,500 foot separation between wireless communication facility monopoles.

"The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied."

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included here as Exhibit A, and staff has reviewed this and other application materials and included pertinent excerpts below.

The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in Italic font.

Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.
 - (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has

been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

<u>Applicant Response:</u> Not applicable – Applicant has demonstrated compliance with Section 33.025(1)(b) as discussed below.

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and

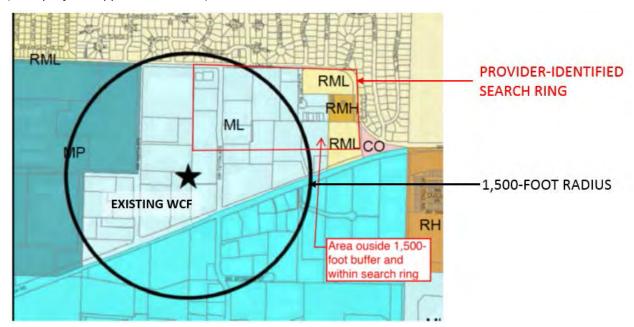
<u>Applicant Response:</u> Not applicable – Applicant has demonstrated compliance with Section 33.025 (1)(b) as discussed below.

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

<u>Applicant Response:</u> No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(Excerpts from applicant material)







½ Mile radius of proposed tower

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

<u>Applicant Response:</u> Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.

Staff Response: The subject property, located at 10699 SW Herman Road, is bound on the north by a Low Density Residential (RL) planning district, directly on the east, west and south by a Light Manufacturing (ML) Planning District. The surrounding area to the east includes Medium Low Density (RML) and Medium High Density (RMH) residential planning districts. There are no small lot subdivisions in the RML district in the surrounding area to the east of the subject property.

The applicant has submitted photo simulations included here at Exhibit B. Photos were taken in five different locations including from the RL planning district and the RML and RMH planning districts. Photos were also taken from the ML planning district. These photos demonstrate the subject project has tall evergreen trees that will screen 50% of the monopole.

View #1 shows that looking south from the RL planning district toward the site tall evergreens completely block the view of the property. View #2 is from the ML planning district and although the criterion does not require screening from ML this photo shows there are tall evergreens and other dense trees along the eastern property line. View #3 was taken from the RMH and RML area to the east. In this photo evergreens are present and other tall trees but the monopole is not as well screened as from other vantage points. View #4 is from the border of the RL and ML planning districts, and in these photos no evergreens are present and the tower is somewhat visible beyond an existing industrial building. View #5 is taken from the RL planning district looking southeast. Evergreens are present in this photo as well as other tall trees that help screen the proposed monopole.

The photo simulations of the proposed monopole in views #1, #4 and #5 are most applicable given that the criterion is specific to screening from an RL district or an RML district with a small lot subdivision. There is not a small lot subdivision in the surrounding area to the east where RML is located. Views 1, 4 and 5 were taken from the RL planning district or the boundary of RL and ML. View #1 shows the location completely screened by dense tall evergreens. View #4 does not show evergreens in the photo but screening from an existing building. View #5 shows the presence to tall evergreens and some screening. Staff finds that at least 50% of the proposed monopole will be screened by tall dense evergreen trees from the RL planning district.

This criterion is met.

Exhibits

Exhibit A: Applicant Narrative

Exhibit B: Photo Simulations

APPLICATION FOR VARIANCE

UNMANNED WIRELESS TELECOMMUNICATIONS FACILITY AT:

10290 SW Tualatin Road Tualatin, OR 97062

Prepared By



Date January 08, 2018

Project Name POR Durham



<u>Applicant:</u> Lendlease (US) Telecom Holdings LLC

c/o PI Tower Development LLC 909 Lake Carolyn Parkway

Irving, TX 75039

Co-Applicant: Verizon Wireless (VAW), LLC dba, Verizon Wireless

5430 NE 122nd Avenue Portland, OR 97230

Representative: Acom Consulting, Inc.

Reid Stewart

5200 SW Meadows Road, Suite 150

Lake Oswego, OR 97035

Property Owner: Tote 'N Stow, Inc.

10290 SW Tualatin Road Tualatin, OR 97062

Project Information:

Site Address: 10290 SW Tualatin Road, Tualatin, OR 97062

Parcel: 2S123B000800
Parcel Area: 3.63 acres

Zone Designation: ML (Light Manufacturing Planning District)

Existing Use: Storage Facility

Project Area: 1,200 square foot lease area (25' x 48' fenced equipment area)

Chapter 33: Variances

Section 33.025 - Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.

 (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not



denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,

Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

Response: No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

Response: Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.

- (2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:
 - (a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,
 - (b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.

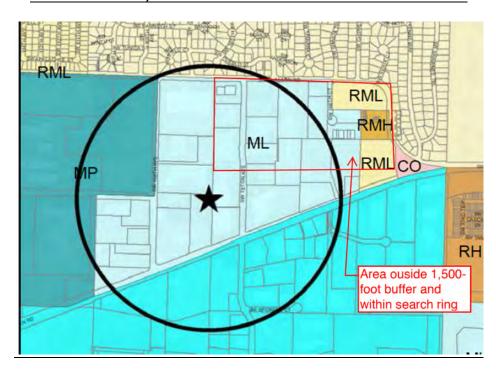
Response: Not applicable – Applicant is not requesting a variance to the maximum allowable height for the proposed WCF.



VERIZON SEARCH RING

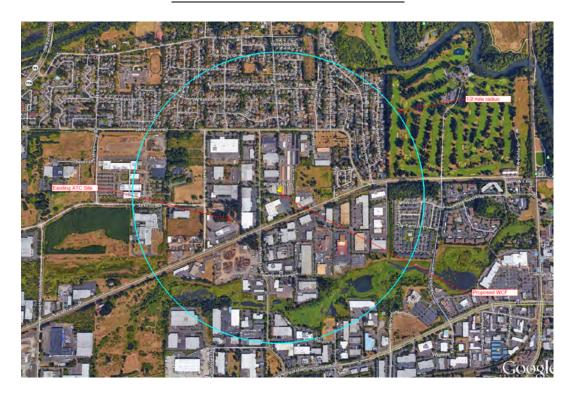


EXISTING TOWER 1,500' RADIUS WITH VERIZON SEARCH RING OVERLAP





½ MILE RADIUS OF PROPOSED TOWER





TIM BRADLEY IMAGING

PHOTO SIM LOCATION MAP



POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR

Attachment D - Previous Staff Reports and Attachments



TIM BRADLEY IMAGING

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.



VIEW #1 TOWER NOT SEEN

POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR

Attachment D - Previous Staff Reports and Attachments





CURRENT

VIEW #2 LOOKING SOUTHWEST ON SW 100TH COURT







CURRENT

VIEW #3 LOOKING SOUTHWEST ON SW TUALATIN ROAD







CURRENT

VIEW #4 LOOKING SOUTHEAST ON SW TUALATIN RD. AT SW TETON AVE.







CURRENT

VIEW #5 LOOKING SOUTHEAST ON SW 105TH COURT & SW PUEBLO ST.





STAFF REPORT CITY OF TUALATIN

TO: Tualatin Planning Commissioners

FROM: Aguilla Hurd-Ravich, Planning Manager

DATE: 12/07/2017

SUBJECT: Reconvene to consider a Variance to the Wireless Communication Facility (WCF)

Separation Requirement for the POR Durham project in the Light Manufacturing

(ML) Planning District at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B

0008000) (VAR17-0001)(RESO TDC609-17)

ISSUE BEFORE TPC:

A public hearing began on November 16, 2017 to consider a request by Acom Consulting for a variance to the separation standards of wireless communication facilities. At the hearing, an opponent to the proposal requested the record to be left open for 21 days. The Planning Commission granted this request under statutory obligation ORS 197.763. The applicant and opponent submitted new evidence on November 22, 2017. This new evidence was posted and distributed for consideration by the Planning Commission. The applicant has seven days to rebut any evidence prior to the Planning Commission reconvening on December 7, 2017.

RECOMMENDATION:

Staff recommends that the Tualatin Planning Commission consider the staff report and supporting attachments. Since the public hearing on November 16, 2017, staff was made aware of new evidence submitted by the opponent that claims the existing wireless communication facility can be modified to support another provider. Based on this new evidence staff no longer finds that the application meets the variance criteria in 33.025 (1)(a)(ii).

EXECUTIVE SUMMARY:

Acom Consulting, Inc. proposes to construct a new unmanned wireless communication facility (WCF) on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. on the southwest corner of 10290 SW Tualatin Road. The proposed WCF would include a new 100-foot monopole support tower with antennas mounted at the top and opportunities for ancillary ground equipment including equipment cabinets, natural gas generator, cabling and ice bridge will be located below in a new 25' x 48' secure fenced lease area surrounding the tower. It is anticipated the the proposed WCF will generate approximately 1-2 visits per month from a site technician.

The proposed WCF would be located within 1,500 feet of an existing WCF at 10699 SW Herman Road. Tualatin Development Code 73.470(9) requires that WCFs are separated by 1,500 feet:

The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of hteis section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied.

The applicant, Acom Consulting, seeks a variance from this code requirement. As stated in TDC Section 33.025(1) " The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1,500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) **or** (b)." The original application provided findings for 33.025(1)(a)(i) through (iii).

Staff has revised our findings since receiving evidence from American Tower Corporation stating that the existing monopole at 10699 SW Herman Road can be modified to accommodate another provider, revised Analysis and Findings are included as Attachment A. The original staff report and all attachments are included as Attachment D.

The grand the requested variance, the TPC must find the applicant has demonstrated compliance with the following:

TDC 33.025(1)(a): Coverage and Capacity

(i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report.

The applicant states that the potential sites outside of the 1,500- foot radius from the existing WCF at 10699 SW Herman Road were eliminated from consideration due to the lack of adequacy of service improvements from these locations and their close proximity to residential areas where these facilities are not permitted or where visual impacts may occur. The applicant also noted that the existing WCF at 10699 SW Herman Road was not a suitable location due to interference from trees surrounding the site (which would affect coverage) and the applicant provided a RF Engineer Interference Letter in addition to the required RF report.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which an application has been filed and not denied, cannot be modified to accommodate another provider.

The applicant states that modifications to the existing WCF at 10699 SW Herman Road required to host the proposed antennas would result in greater impacts than those of constructing an entirely new monopole structure at the proposed Tote 'N Stow site, namely increasing the height of the 146-foot tall existing WCF (which required a variance to permit its construction in 2000) or the topping or removal of trees that were preserved as a condition of that variance (VAR99-02). The maximum permitted height of the WCFs in the Light Manufacturing (ML) Planning District is 100 feet and the proposed WCF would not require a height variance.

Staff has modified the original findings for this criterion based on evidence submitted by the opponent's representatives of American Tower Corporation, Saalfeld Griggs, at the public hearing on November 16, 2017. The opponent evidence stated:

"The decision granting ATC the variance to construct its existing tower (VAR-99-02) does not contain a condition of approval prohibiting any further clearing of trees (the "*Existing Decision*"). The Existing Decision did include findings of fact that contemplated some tree removal and trimming of trees in a manner as less impactful as necessary. [...] Therefore, upon issuance of a tree removal permit and with the consent of the City of Tualatin as the landlord and owner of the surrounding property, it is feasible for ATC to remove the exiting trees within the approximately 155-foot radius of the ATC tower. As the supplemental RF report and map identify, if ATC were to remove the trees creating such interference, coverage would be acceptable for the service parameters provided in the record. Therefore, the staff report [from November 16, 2017] contains an incorrect findings of fact in finding that removal of the trees cannot occur."

Staff notes there are two alternatives to modify the existing tower pending property owner concurrence and approval. One alternative is to request a Tree Removal Permit in order to remove trees that could be causing interference. The second alternative is to extend the height of the existing tower either to the total height granted by VAR99-02 of 146- feet total inclusive of monopole and antennas or request a height variance. The modified analysis and findings and related exhibits are included as Attachment A.

Additional materials from the applicant and the opponent are included as Attachment B-Materials from applicant and Attachment C-Materials from opponent.

OUTCOMES OF DECISION:

Approval of VAR17-0001 would result in the following:

- Allows the applicant to locate a Wireless Communication Facility (WCF) at 10290 SW Tualatin Road; and
- Allows staff to review an Architectural Review (AR) for the proposed WCF project with an appropriate location.

Denial of VAR17-0001 would result in the following:

• Prohibits the applicant from locating a WCF at 10290 SW Tualatin Road.

ALTERNATIVES TO RECOMMENDATION:

The Tualatin Planning Commission has two options

- 1. Approve the proposed variance with appropriate findings that state the application meets the criteria of TDC 33.025(1); or
- 2. Deny the proposed variance with appropriate findings that the application fails to meet the criteria of TDC 33.025(1)

Attachments: Attachment A- Revised Analysis and Findings and Exhibits

Attachment B- Supplemental materials from Acom (applicant)

Attachment C- Supplemental materials from ATC (opponent)

Attachment D - Staff Report and Attachments from November 17, 2016

Attachment E - Applicant Rebuttal November 29, 2017

POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

VARIANCE APPLICATION (VAR-17-0001)

ATTACHMENT A: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 800 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included within the application materials (Attachment B), and staff has reviewed this and other application materials and included pertinent excerpts below.

The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in Italic font.

Section 33.025 - Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.
 - (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

<u>Applicant Response</u>: Verizon Wireless, the co-applicant, has done extensive research looking at opportunities in the area to collocate on existing towers or buildings, as that is always a preferred option when available. If an existing tower or structure is not available at the specified height or not attainable because of space constraints or unreliable structural design, then Verizon Wireless will propose a new tower. In this instance, there is one existing tower, the ATC tower, which is located outside of the search area designated as usable by Verizon Wireless' RF department, but within the 1,500-foot radius of the

proposed facility. This tower is not viable as a solution to meet their coverage and capacity objectives due to the existing trees that would cause interference. There are no other existing towers available to collocate on within the area of interest thus a new tower is being proposed, which will in turn be available for other providers to collocate on in the future.

In order to meet the Verizon's coverage and capacity objectives, it is necessary to site a tower within the search ring provided by Verizon's RF department as shown below. Moving outside this search ring is technically not practicable and has adverse effects on providing the needed coverage and capacity objectives the tower is intended to provide, which include nearby high-traffic residential areas to the North. Siting outside the search ring can also create interference with other nearby network sites where coverage may overlap.

The Applicant is requesting a variance to the 1,500-foot tower separation requirement. There is an existing 146-foot ATC monopole support structure outside of the search ring, approximately 750 feet to the SW of the proposed support tower, located at 10699 SW Herman Road. Per the tower owner, there is currently available space on the tower at the 100-foot level, however this is not high enough to avoid interference from multiple trees surrounding the tower and still meet coverage and capacity objectives to the North, as detailed in the attached RF Usage and Facility Justification Report and RF Engineer Interference Letter.

Locating the tower within the search ring and outside the 1,500-foot radius of the nearby existing ATC tower is also not a desirable alternative as it would mean locating in another part of the ML zone without existing screening or in the RML or RMH zone, where a conditional use permit would be required and where it would be very visible to nearby residential areas. In addition, T-Mobile has also indicated that they intend on co-locating on the proposed WCF, if approved, as the existing ATC tower to the SW will not meet their coverage and capacity requirements either as noted in the attached Letter from T-Mobile RF.

Staff notes that the search ring is defined by the service provider based on their coverage and capacity objectives. As highlighted in the "RF Usage and Facility Justification" report, the proposed WCF is intended to improve service to the residential areas immediately adjacent to and on both sides of the Tualatin River (see Figures C-1 and C-2). Areas within the search ring but outside of the 1,500-foot radius of the existing WCF at 10699 SW Herman Road are either within or closer to residential planning districts which either prohibit completely or restrict heights of WCFs (see Figure C-3).



Figure C-1: Existing Coverage

Figure C-2: Proposed Coverage

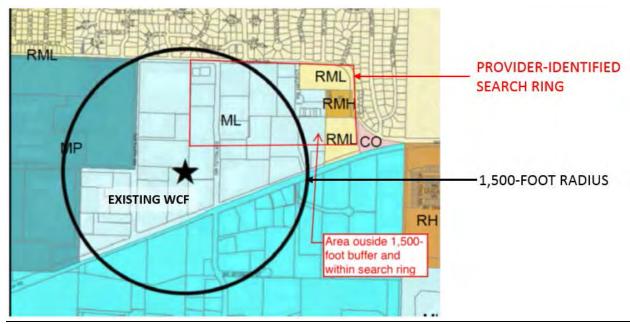


Figure C-3: Search Ring and 1,500-Foot Separate Overlap Map

Staff finds that this criteria is met.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and

<u>Applicant Response:</u> The only existing monopole tower located within 1,500 feet of the proposed location cannot be modified as it is not designed to be extended to the necessary height required to avoid interference from the tall trees currently surrounding the tower. The existing tower would need to be removed and replaced with a new tower at least 20-30 feet taller to avoid interference unless the trees were to be removed or reduced in height to approximately the 100-foot level or lower.

Topping the trees would create undesirable visual impacts to nearby residential areas, whereas the proposed location is well screened to nearby residential areas to the North and does not require the removal or trimming of any existing trees. The topped trees would also create a negative visual impact on their own, as over a third of the height would need to be removed to avoid interference.

Opponent (Saalfeld Griggs/ATC) Response: The variance (VAR-99-02) that allowed the construction of the existing ATC WCF at 10699 SW Herman Road did not contain a condition of approval prohibiting any further clearing of trees; in addition, this decision did include findings of fact that contemplated some tree removal and trimming of trees in a manner as less impactful as necessary. Therefore, upon issuance of a tree removal permit and with the consent of the City of Tualatin as the landlord and owner of the surrounding property, it is feasible for ATC to remove the existing trees within the approximately 155-foot radius of the ATC tower (see Exhibit A). As the supplemental RF report and map identify (see Exhibit B), if ATC were to remove the trees creating such interference, coverage would be acceptable for the service parameters provided in the record. Therefore, the staff report contains an incorrect finding of

fact in finding that removal of the trees cannot occur. A copy of the VAR-99-02 decision is attached hereto and incorporated herein for your reference. ATC requests the Planning Commission to deny the proposed variance request.

Based on the conditions at 10699 SW Herman Road, modifying the existing WCF to attach functioning antennas would require either an additional height variance for the existing WCF (which already received one to permit its construction in 2000) or a forced height reduction in the trees adjacent to the existing monopole. In the analysis and findings for the variance (VAR-99-02) that allowed the construction of the existing 146-foot-tall WCF, it was noted that one of the reasons for the granting of that variance was to preserve the grove of approximately 50 tall conifers at heights of 100 to 120 feet (the construction of the existing WCF resulted in the removal of 6 trees). VAR-99-02 included the following:

"The City as the landowner desires to retain the large conifer trees on the subject portion of the Operations Center property and requires that development such as the proposed communications facility disturb as few conifer trees on the site as possible. The applicant states that wireless RF signals must travel in an unobstructed path from the facility to the user. Because the tower and antennae are proposed to be located in the grove of 100'-120' tall conifers and the City as the property owner does not wish to have the obstructing trees removed, the antennae must be at a height greater than the height of the neighboring trees (with consideration of the future growth of the trees)."

As such, barring a reversal in the City's preference to not remove trees on its Operations Center site, the options for locating a new WCF in this area include either further increasing the height of the existing 146-foot-tall WCF (the maximum allowed WCF height in the Light Manufacturing [ML] Planning District is 100 feet) or constructing a new structure. The applicant is making the case that a new 100 foot tall structure would result in less impacts than extending the height of the existing WCF at 10699 SW Herman Road.

Staff notes that barring a discussion of impacts to removing more than 50 tall conifer trees within 155 feet of the existing ATC tower at 10699 SW Herman Road, the opponent assertion that the existing facility can be modified accommodate another provider—which would require at minimum a tree removal permit and some form of architectural review yet to be determined—is factually correct.

Staff finds that this criteria is not met.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

<u>Applicant Response:</u> No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps.

Staff notes that—through field visits—the applicant is correct in their assertion that there are no other structures of suitable height to attach antennas that would provide approximate coverage as the proposed WCF, also noting the maximum structure height (outside of flagpoles and WCFs) of 50 feet in the Light Manufacturing (ML) Planning District.

Staff finds that this criteria is met.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

<u>Applicant Response:</u> Application has demonstrated compliance with Section 33.025(1)(a) above, however proposed location also meets this requirement and includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.

Staff notes that the applicant has chosen to demonstrate compliance with TDC Sections 33.025(1)(a)(i) through (iii) above; therefore, a compliance determination with TDC Section 33.025(1)(b) is not required and the standards in this section do not apply.

SUMMARY OF ANALYSIS AND FINDINGS

Based on the application materials and the analysis and findings presented above, staff finds that VAR-17-0001 meets all criteria of TDC 32.025(1)(a), "Criteria for Granting a Variance for a Wireless Communication Facility." As staff finds that the VAR-17-0001 proposal does not meet TDC 32.025(1)(a)(ii), the Planning Commission should not grant a variance from the 1500-foot-separation provisions of TDC 73.470(9).

Exhibits

Exhibit A: Operations Cell Tower Site with 155-foot radius

Exhibit B: Complete Saalfeld Griggs/ATC Response Packet

November 16, 2017

Saalfeld Griggs

VIA ELECTRONIC MAIL: ahurd-ravich@tualatin.gov Original to follow via hand delivery

City of Tualatin Planning Commission Attn: Aquilla Hurd-Ravich 18880 SW Martinazzi Ave Tualatin, OR 97062-7092

RE: Pl Tower Development Project OR-Tualatin-Durham/ 10290 SW Tualatin Road

(Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001)

Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable Planning Commissioners:

I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation ("ATC"), which owns a wireless communications facility located at 10318 SW Herman Road, Tualatin, Oregon (the "ATC Tower"). ATC is impacted by the proposed wireless communication facility on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "Applicant") on the southwest corner of 10290 SW Tualatin Road, Tualatin, Oregon (herein the "Subject Property"). Applicant's proposed tower is located within 1,500 feet of the ATC Tower; specifically, the proposed tower is approximately 750 feet from the ATC Tower. Therefore, under the Tualatin Development Code Section 33.025(1)(a) a variance is needed. Applicant's proposed findings as justification for the variance to the 1,500-foot radius requirement from an existing tower is an assertion that the existing ATC Tower is not suitable for colocation of additional carriers because of interference from the trees surrounding the site and has provided an RF interference letter in addition to its RF report. ATC acknowledges that under the current circumstances, the height of the trees would create interference for new co-location of carriers below the existing carrier heights; however, the interference from the trees can be eliminated. ATC has provided supplemental RF coverage analysis, which is attached hereto and incorporated by this reference herein, that supports ATC's position.

ATC submits these comments for the purpose of correcting the factual record and the proposed legal conclusions contained in the staff report; specifically, the decision granting ATC the variance to construct its existing tower (VAR-99-02) does not contain a condition of approval prohibiting any further clearing of trees (the "Existing Decision"). The Existing Decision did include findings of fact that contemplated some tree removal and trimming of trees in a manner as less impactful as necessary. However, in the approximately 17 years following the issuance of the Existing Decision, the circumstances have changed and the surrounding trees have grown. Therefore, upon issuance of a tree

Park Place, Suite 200 250 Church Street SE Salem, Oregon 97301

Post Office Box 470 Salem, Oregon 97308

> tel 503.399.1070 fax 503.371.2927 **27 of 186** www.sglaw.com

removal permit and with the consent of the City of Tualatin as the landlord and owner of the surrounding property, it is feasible for ATC to remove the existing trees within the approximately 155-foot radius of the ATC Tower. As the supplemental RF report and map identify, if ATC were to remove the trees creating such interference, coverage would be acceptable for the service parameters provided in the record. Therefore, the staff report contains an incorrect finding of fact in finding that removal of the trees cannot occur. A copy of the VAR-99-02 decision is attached hereto and incorporated herein for your reference.

Alternatively, ATC could potentially file a new variance application requesting permission to further extend the height of the ATC Tower by approximately twenty feet in recognition of the change in circumstances created by the passage of time and the annual growth of the trees and data coverage needs existing today as compared to 1999, when ATC originally applied for the Existing Decision. Such a variance application, if requested, would likely be approved and is certainly feasible. Therefore, ATC has two options in obtaining the necessary approvals for servicing the coverage request as identified in the existing record. Accordingly, the assertion that ATC cannot, as a matter of law, provide the requested coverage is inaccurate.

ATC requests the Planning Commission to deny the proposed variance request. In the alternative, ATC requests the Planning Commission to keep the record open for a period of not less than 21 days to give ATC an opportunity to provide additional evidence and argument as it pertains to the proposed variance request.

Thank you for your time and attention.

Sincerely,

ALAN M. SOREM asorem@sglaw.com Voice Message #303

AMS:jsm Enclosures cc: Client

Micah Hawthorne

Framingham, MA linkedin.com/in/micahhawthorne

c: 617-828-3967 micah.hawthorne@yahoo.com

SUMMARY

Proven implementation and results driven professional with 10+ years of technical program management and 5+ years of pre-sales engineering/consulting experience planning, implementing, deploying, and integrating wireless mobile networks. Recognized as a strategic thinker, consistent finisher, creative problem solver, and successful team leader. Exceptional oral and written communicator with an ability to influence through collaboration, business acumen, and technical subject matter expertise.

CORE COMPETENCIES

- Program & project management
- Multi-project engagement and coordination
- Cross-functional collaboration

- Speed-to-market risk analysis and planning
- RF/BH site planning and network deployment
- Pre-sales technical analyst and support

EDUCATION & TRAINING

MBA - High Technological Focused Certificate in Applied Project Management BS in Electrical Engineering Candidate for BS in Electrical Engineering Northeastern University, Boston, MA Boston University Corporate Education, Waltham, MA University of South Alabama, Mobile, MA Massachusetts Institute of Technology, Cambridge, MA

PROFESSIONAL EXPERIENCE

AMERICAN TOWER, Woburn, MA

2012-2017

Principal Sales Engineer - Project Manager & Network Development Planning Partner; 5+ yrs.

- Proactively investigate and pursue incremental business with Sales team by driving coverage solutions in challenging areas. Additionally support Sales team to achieve two commercial \$100K+ MRR deals.
- Support Business Development efforts by analyzing requirements, understanding network coverage
 goals, and recommending innovative solutions to win comprehensive deals. Research technology trends
 to identify roadmaps that enhance long term contract value with Carrier and Vertical Market customers.
 Successes include 20+ new sites RFP with Pitkin County, CO., 200+ sites deal for AT&T In-Flight project,
 and 20+ sites deal with Pacific Data Vision long term equipment upgrade plans.
- Acquire and analyze carrier network performance data and develop metrics paired with site intelligence to
 proactively identify multi-tenant tower location opportunities. Released 400+ search areas over 1 year
 based on lack of 3G voice and 4G LTE data service in suburban growth markets and several heavily
 trafficked thoroughfares with no tower infrastructure. Partnered with Network Development teams to
 evaluate and lease land assets for proactive tower development.

ERICSSON (RF/BH organization spun off from Clearwire), Waltham, MA RF/BH Manager New England – Program Manager; 9 mos.

2004-2012

Directed a team of 10 Project Managers accountable for network performance monitoring, trouble ticket administration and closeout for post launch service optimization. The team served as 1st line local engineering support for capacity augments, RF repeaters, and In-Building DAS, for Clearwire's 4G network of 850+ sites stretching across 7 Northeast markets from Upstate NY to Boston, MA. Achieved Bonus Level for 35% of network KPIs within 6 months of customer launch weathering 30% head count reduction. Target exceeded on remaining 65% of KPIs. Coordinated action plans with Field Operations team to exceed 99.75% network availability target and timely trouble ticket closeouts in all markets.

CLEARWIRE (4G RF/BH organization spun off from Sprint Nextel), Waltham, MA RF/BH Manager New England – Program Manager; 2.5 yrs.

 Managed project team of up to 11 RF/BH Engineers responsible for designing, planning, integrating, and launching 450+ sites across 5 New England markets. Met strategic coverage objectives with over 8M POPs served. Achieved MW BH connectivity on 97% of sites reducing BH Opex by approx. 80%.

- Coordinated the RF/BH team's design efforts, aligning metrics and goals with local and remote crossfunctional teams, including Site Acquisition, Construction, Field Operations, National Engineering, and Sales & Marketing teams. Regularly evaluated, adjusted, and presented project milestone progress to executive team. Challenges included on-the-fly network redesigns due to difficult zoning. Collaborated daily with Network Deployment's construction efforts ensuring on time 2010 market launches in line with End of Year investor commitment.
- Developed RF/BH team led On-Air site integration and network acceptance process. Removal of implementation bottle necks enabled run rate of 40+ sites per week and associated MW backhaul links.

SPRINT NEXTEL (Nextel merger with Sprint in 2005), Bedford, MA

RF Design Manager New England North - Project Management Lead; 2 yrs.

- Headed team of RF design engineers responsible for 400+ single- and multi- technology site build plan deployment throughout New England area. Deployments of note included site relocations and Cell-On-Wheels (COWs) for capacity expansion in Boston core and special events.
- Standardized zoning message and presentation format for 3rd party Site Acquisition and Design team. Debated the efficacy via mock trials. Enabled consistent message platform for better public awareness to towns, engineer-to-engineer scheduling flexibility, and shorter time to permit for quicker NTPs.

RF Engineer III - Project Manager; 1.5 yrs.

- Prepared and released coverage goals for new and replacement site locations in accordance with build plan budgets. Sites chosen based on network performance KPI improvement requirements and Sales team coverage expansion needs. Presented RF coverage to local boards for zoning permits.
- Served as New England North Design Team POC for cross-functional groups to meet deliverable timeframes for On Air integration. Created RF plan for new sites and assisted project teams with site integrations in line with customer growth expectations, service quality degradation, Sales team customer specific requests, and budgetary constraints. Met service quality and coverage expansion needs in the metro Boston area with emphasis on urban core and reduced network trouble tickets by 50% over 1 year from customers in poorly served areas.

NEXTEL, (Converted to full time employee), Bedford, MA

2004-2005

RF Engineer II: 1 yr.

EXPERT WIRELESS SOLUTIONS, Vienna, VA

2003-2004

RF Engineering Consultant; 1 yr.

- Positioned, designed, and assisted permitting by 3rd party site acquisition teams of new tower assets for Nextel in NH, ME, and MA. Created interstate coverage footprint north of NH along I-95 through to Bar Harbor, ME and Manchester, NH through to Lake Winnipesaukee area increasing sales opportunities to resort POIs.
- Reported in-field drive test analysis enabling service optimization for initial launch of Cingular's GSM network in San Antonio, TX.

RF CONSULTING SERVICES, Marietta, GA

2001-2003

RF Engineering Consultant; 1.5 yrs.

- Implemented turnkey solutions for Cinqular's dual band GSM conversion, including design, deployment, and drive test optimization in Puerto Rico market for on time launch of modernized network.
- Oversaw field-testing team responsible for beta testing in-house proprietary software tool for engineering release. Trained and mentored drive test engineers for data processing, coverage analysis, and frequency allocation tool properties for product release to Cingular in two OH and the PR markets.

GALAXY ENGINEERING SERVICES, Alpharetta, GA

2000-2001

RF Design Engineering Consultant; 3 mos.

Proposed search locations in Northeast region for American Tower's Build-To-Fill project. Maximized potential interested carriers per tower for preemptive site builds with shortest ROI.

RF Associate Engineering Consultant; 1 yr.

AWARDS

Perfect Performance for achieving Bonus Level KPI performance supporting the Clearwire network

CITY OF TUALATIN

Ø1002



CITY OF TUALATIN

PO BOX 369 TUALATIN, CREGON 97062-0369 (503) 692-2000 TDD 692-0574

MEETING NOTICE FOR THE

CITY COUNCIL AND THE TUALATIN DEVELOPMENT COMMISSION FOR THE CITY OF TUALATIN

MONDAY

January 10, 2000

Mayor/Chairman Ogden; Councilors/Commissioners Bergstrom, Cain. Chrisman. Forrest Lamb, Weller

> The Council/Commission will meet for the work session meetings at 6:00 p.m. on the second floor of the Council Building and will meet for the regular meetings at 7:30 p.m. in the Council Building, Council Chambers, 18884 SW Martinazzi Avenue.

Assistive Listening Devices for persons with impaired hearing can be scheduled for this meeting by calling 692-2000 (voice) or 692-0574 (Text Telephone) no later than 24 hours prior to the meeting. The City will also upon request endeavor to arrange for a qualified sign language interpreter for persons with speech or hearing impairments. Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. two working days prior to the meeting date (same phone numbers as listed above): 692-2000 or 692-0574.

- SEE ATTACHED AGENDA -

MTG11CCWOTICE.COV

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01/04/00 15:21 FAX 800 692 3512

CITY OF TUALATIN

Ø 003

OFFICIAL CALENDAR OF THE COUNCIL OF THE CITY OF TUALATIN

The following is a summary of issues to come before the Council at its regular session to be held on Monday, January 10, 2000 at 7:30 p.m. in the Council Chambers.

Procedure for Legislative Hearings - (matters which affect the general welfare of the entire City rather than a specific piece of property.)

Open hearing and identify subject.

2. Review staff report, receive testimony from the public, close hearing or continue for further . testimony or investigation.

3. Council action: approve, deny or continue.

Procedure for Quasi-Judicial Hearings - (zone changes, variances, conditional use permits, comprehensive land changes, subdivision plats and land partitioning to comply with "quasi-judicial" regulrements of Supreme Court ruling.)

1. Open public hearing and identify subject.

2. Review staff report; receive testimony of proponents, testimony of opponents, proponents' rebuttal; cross examination follows each presentation; close hearing or continue for further testimony or investigation.

3. Council action: approve, deny or continue.

Time Limits for Public Hearings - The purpose of time limits on testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and timely manner. All persons providing testimony shall be limited to 10 minutes, subject to the right of the Mayor to amend or waive the time limits.

> Resolution No. Begin with 3668-00 Ordinance No. Begin with 1041-00

1. ANNOUNCEMENTS

- A. Howland Award Ceremony for Skate Park Development
- B. Swearing-in of Reserve Police Officers
- 2. OPEN MIKE For matters not appearing elsewhere on the agenda. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting. Please limit your comments to no more than 3 minutes. Total time allocated to OPEN MIKE is 15 minutes at the beginning of the meeting. If there is insufficient time to hear all those wishing to speak, the OPEN MIKE will be continued to the end of the agenda.
- 3. CONSENT AGENDA Items marked with "c" are considered routine and are part of the consent agenda. The items have been discussed by the Council in work session. They will be adopted by one motion unless a Councilor or person in the audience requests, before the vote on the motion, to have an item considered at its regular place on the agenda.

ACTION ITEMS

A. PUBLIC HEARINGS - Quasi-Judicial

CUP-99-05-A Conditional Use Permit to Allow a Family Recreation 1. Request:

Center (Outdoor Aquatic Facility) in a General Commercial (CG) Planning

Applicant: Dale Williams, Vice-President, Leisure Sports, Inc.

Site: 18120 SW Lower Boones Ferry Road (2S1 24AB, 800, 500 & 501)

01/04/00 15:21 FAX 503 892 3512___ CITY OF TUALATIN **@** 004 OFFICIAL CALENDAR OF THE TUALATIN CITY COUNCIL FOR JANUARY 10, 2000 A. PUBLIC HEARINGS - Quasi-Judicial [continued from Page 1] VAR-99-02-A Variance from Section 60.090(4) to Allow a 130' High 2. Request: Wireless Telecommunication Tower with 16' Antennae Where a 100' High Support Structure and Antenna is Allowed in a Light Manufacturing (ML) Planning District John Silenzi, Nextel Communications and Dan Boss, City of Tualatin Applicant: Operations Director 10699 SW Herman Road - Tax Map 2S1 22A, Tax Lot 900 Site: B. RECOMMENDATIONS FROM CITY ATTORNEY 1. Resolution No. ____ Granting a Variance to Allow a 10' Setback of 10' Where 30' is Required in a Light Manufacturing (ML) Planning District at 18075 SW Boones Ferry Road (2S1 13ED, 1900) (VAR-99-01) Approving the Transfer of the Solid Waste Franchise from c 2. Resolution No. United Disposal Service Inc. and Keller Drop Box Service to Altied Waste Industries Inc. 3. Ordinance No. Vacating a Portion of SW Marilyn Street and SW 112th Avenue 4. Ordinance No. Vacating a 30' Public Right-of-Way on SW Marilyn Street Vacating a Portion of SW 119h Avenue 5. Ordinance No. 6. Ordinance No. Relating to Emergency Management; Delegating the Authority to Adopt and Amend the Emergency Management Plan to the City Manager; Amending TMC 1-7.020; Repealing TMC 1-7.030; and Rescinding Resolution Nos. 1789-86, 2714-92 7. Ordinance No. Relating to Northwest Natural Gas Franchise; Correcting a Typographical Error, and Declaring an Emergency C. RECOMMENDATIONS FROM PLANNING DIRECTOR - None Additional. D. RECOMMENDATIONS FROM CITY ENGINEER Change Order No. 4 to the Contract Documents for the Construction of SW Tualatin Road 2. Authorize City Engineer to Apply for 124th Avenue / Portland & Western (SPRR) Railroad Crossing Improvements E. RECOMMENDATIONS FROM CITY MANAGER 1. Approval of Minutes for the Meeting of November 22, 1999 and December 13, 1999

2. Resolution No. _____ Approving Accounts Payable for Payment

3. Liquor License - New - Oregon Grape and Gourmet

01/04/00 15:22 FAX 503 692 3512

CITY OF TUALATIN

2005

OFFICIAL CALENDAR OF THE TUALATIN CITY COUNCIL FOR JANUARY 10, 2000

- F. RECOMMENDATIONS FROM COMMUNITY SERVICES DIRECTOR
- c 1. Authorization to Proceed with Phase Two of Park and Recreation District Feasibility Study
- G. RECOMMENDATIONS FROM ECONOMIC DEVELOPMENT DIRECTOR
- Authorizing Acceptance of Deed of Dedication in Association c 1. Resolution No. with the Construction of SW 124th Avenue and SW Leveton Drive
- EXECUTIVE SESSION: The Tualatin City Council may go into Executive Session under the 5. provisions of ORS 192.660 (1)(a)(D) to discuss personnel; ORS 192.660 (1)(d) to discuss labor relations; ORS 192,660 (1)(e) to discuss real property transactions; or ORS 192,660 (1)(h) to discuss current and pending litigation issues. All discussions within this session are confidential; therefore nothing from this meeting may be disclosed by those present. Representatives of the news media are allowed to attend this session, but must not disclose any information discussed during this session.
- COMMUNICATIONS FROM COUNCILORS 6.

20006

OFFICIAL CALENDAR OF THE TUALATIN DEVELOPMENT COMMISSION

following is a summary of issues to come before the Commission at its regular session to be held on Monday, January 10, 2000 at 7:30 p.m. in the Council Building Council Chambers. Resolution No. Begin with 338-00

Time Limits for Public Hearings - The purpose of time limits on testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and timely manner. All persons providing testimony shall be limited to 10 minutes, subject to the right of the Chairman to amend or waive the time limits.

<u>ANNOUNCEMENTS</u> 1.

- OPEN MIKE For matters not appearing elsewhere on the agenda. Matters requiring further investigation 2. or detailed answers will be referred to City staff for follow-up and report at a future meeting. Please limit your comments to no more than 3 minutes. Total time allocated to OPEN MIKE is 15 minutes at the beginning of the meeting. If there is insufficient time to hear all those wishing to speak, the OPEN MIKE will be continued to the end of the agenda.
- CONSENT AGENDA Items marked with "c" are considered routine and are part of the consent agenda. 3. The items have been discussed by the Commission in work session. They will be adopted by one motion unless a Commissioner or person in the audience requests, before the vote on the motion, to have an item considered at its regular place on the agenda.

ACTION ITEMS

- A. PUBLIC HEARINGS None.
- B. RECOMMENDATIONS FROM ECONOMIC DEVELOPMENT DIRECTOR
 - 1. Change Order No. 6 to the Contract Documents for Construction of SW 124th Avenue / SW **Leveton Drive** Authorizing Compensation for Dedication of Right-of-Way Associated 2. Resolution No. with Construction of SW 124th Avenue and SW Leveton Drive
- 3. Resolution No. _____ Authorizing Commencement of Negotiations to Acquire Rights-of-Way and Easements for the SW 124th Avenue / SW Leveton Drive to SW Myslony Street Improvements
- Resolution No. __ Approving a Certificate of Completion for Tracts 6C and 6D (Villas on the Lake III) at Tualatin Commons
- C. RECOMMENDATIONS FROM ADMINISTRATOR
- 1. Approval of Minutes of the November 22, 1999 meeting and December 13, 1999 meeting
- c 2. Approving Accounts Payable for Payment
- EXECUTIVE SESSION: The Tualetin Development Commission may go into Executive Session under the provisions of ORS 192.660(1)(a)(D) to discuss personnel; ORS 192.660 (1)(d) to discuss labor relations. ORS 192.660 (1)(e) to discuss real property transactions; or ORS 192.660 (1)(h) to discuss current and pending litigation issues. All discussions within this session are confidential: therefore nothing from this meeting may be disclosed by those present. Representatives of the news media are allowed to attend this session, but must not disclose any information discussed during this session.

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01/04/00 15:22 FAX \$03 682 3512

CITY OF TUALATIN

2007

City of Tualatin, Oregon COUNCIL AGENDA STATEMENT

Meeting Date January 10, 2000

Agenda Item No.

Hem Title

VAR-99-02—A VARIANCE FROM SECTION 50.090(4)TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNAE WHERE A 100' HIGH SUPPORT STRUCTURE AND ANTENNA IS ALLOWED IN A LIGHT MANUFACTURING (ML) PLANNING DISTRICT AT 10699 SW HERMAN ROAD ON TAX MAP 2S1 22A, TAX LOT 900.

Prepared by Jim Jacks \



Department Planning

Explanation

This is a quasi-judicial land use decision. This application requests a variance to the allow a 130' high wireless communication monopole tower and 16' antennae on the City of Tualatin Operations Center property. The significant issues of the proposal are:

- Nextel Communications (Nextel) seeks to expand its wireless communication network in the Tualatin area and proposes to construct a wireless communication facility (monpole tower, antennae and equipment shelter) on a leased area of the City of Tualatin Operations Center. Nextel is negotiating with the City of Tualatin to lease a 3,600 s.f. area on the northeast corner of the property.
- The site is in a ML Planning District which allows a wireless communication facility as a permitted use. The maximum allowed height is 100' in the ML District.
 - The site is in an existing industrial area and located approximately 1,400' from residential areas north of SW Tualetin Road. On the site is grove of 100' - 120' high conifer trees. The site was chosen for its location in an industrial area, distance from residential areas and for the buffering that the tall trees would provide for a tower and entennae.
- Because the radio signals to and from the antennae are blocked by trees and limbs, the proposed monopole tower and antennae must be taller than the nearby trees. This variance is needed to allow the antennee to be a height of up to 146' and be higher than the 100'-120' trees.
- Locating the tower and antennae in the grove of trees will screen and buffer the facility from nearby properties. No injury to adjoining properties is anticipated. The proposed facility will require the removal of six conifers so that the tower and equipment shelter can be constructed.

Applicant: John Silenzi, Nextel Communications and Dan Boss, City of Tualatin Operations Dir.

Special Issues

The statutory 120th day which a decision must be made is March 28, 2000. This hearing is on day 42.

<u>Financial Statement</u> Not applicable

Account No. Not applicable

Recommendation Staff recommends the City Council adopt the staff report and direct staff to prepare a resolution granting VAR-99-02, with the following condition.

1. The monopole tower, antenna platform and whip antennae shall not exceed 146 ft. in height LN above grade.

-oard/Commission Recommendation Not applicable

Attachments (Listed Below)

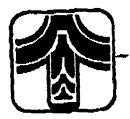
Staff Report, 1)Applicant's Reasons, 2)Vicinity Map & Site Plan, 3)Elevations, 4)Photo Simulation

01/04/00 15:23 FAX 503 692 3512

CITY OF TUALATIN

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CITY OF TUALATIN

PO BOX 369
TUALATIN, OREGON 97062-0369
(503) 692-2000
TDD 692-0574

January 10, 2000

City Council City of Tualatin

Members of the Council:

VAR-99-02-A VARIANCE FROM SECTION 60.090(4)TO ALLOW A
130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNAE
WHERE A 100' HIGH SUPPORT STRUCTURE AND ANTENNA
IS ALLOWED IN A LIGHT MANUFACTURING (ML) PLANNING DISTRICT
AT 10699 SW HERMAN ROAD ON TAX MAP 2S1 22A, TAX LOT 900

REQUEST

On November 29, 1999, the City of Tualatin received an application for a variance request from Sections 60.090(4) of the Tualatin Development Code (TDC) to allow a 130 foot wireless communication monopole tower with up to 16 ft. of antennae for a total height of up to 146 ft. The proposed site is a 3,600 square foot lesse area on the City of Tualatin Operations Center subject property located in the Light Manufacturing (ML) Planning District at 10699 SW Herman Road.

APPLICANT'S REASONS

The applicant's reasons and supporting material are made a part of this staff report (Attachment 1).

BACKGROUND

The co-applicants are John Silenzi representing Nextel Communications (Nextel) and Dan Boss, City of Tualatin Operations Director. Nextel seeks to expand its wireless communication network (Enhanced Specialized Mobile Radio, ESMR) coverage in the western area of Tualatin, Tigard and King City and along the I-5 corridor. Nextel identified the Operations Center property at 10699 SW Herman Road as a prospective wireless site. The Operations Center site offers a location for a wireless facility in an industrial area approximately 1,400 ft. or more away from the nearest residential areas north of Tualatin Road and with the proper antenna height, will provide an adequate radio frequency (RF) signal coverage in this geographic area. The site features a grove of over fifty 100'-120' (approximately) tall conifers (primarily Douglas Fir) that provide a natural buffer and screen for a monopole from nearby properties, public streets and residential areas (Attachments 1- 4).

ARRANGEMENTS CAN BE MADE TO PROVIDE THESE MATERIALS IN ALTERNATIVE FORMATS, SUCH AS LARGE TYPE OR AUDIO CASSETTE TAPE. PLEASE CONTACT THE PLANNING DEPARTMENT AND ALLOW AS MUCH LEAD TIME AS POSSIBLE.

A-2

VAR-96-02— Variance to allow a 146 ft. Wireless Communication Tower in a ML District January 10, 2000
Page 2

Nextel has entered into negotiations with the City of Tualatin to lease a 3,600 s.f. (60' x 60') area on the vacant northeast corner of the Operations Center property for a tower, equipment shelter, landscaping, security fencing and access for construction and maintenance. The City as the landowner desires to retain the large conifer trees on the subject portion of the Operations Center property and requires that development such as the proposed communications facility disturb as few conifer trees on the site as possible. The applicant states that wireless RF signals must travel in an unobstructed path from the facility to the user. Because the lower and antennae are proposed to be located in the grove of 100'-120' tall conifers and the City as the property owner does not wish to have the obstructing trees removed, the antennae must be at a height greater than the height of the neighboring trees (with consideration of the future growth of the trees).

The applicant was informed in pre-application meetings that a variance would be needed to allow a wireless communication support structure and antennae greater than 100' in height [as per TDC 60.090(4)]. Architectural Review of the facility including tower design, access, fencing, tree preservation and landscaping is required following variance approval. To meet the siting and engineering requirements for a wireless facility at this tocation, Nextel proposes a 130 ft. monopole structure with three 16 ft. omni whip antennae attached at the top of the monopole. In addition to the proposed omni antennae, future expansion may also include two 6 ft. diameter microwave dishes, and twelve 5' panel antennae located on a platform at the top of the tower (Attachment 3). The submittal shows that six conifers are proposed for removal to allow construction of the tower. The remaining 50 or more trees in this portion of the property would not be disturbed.

ANALYSIS AND FINDINGS

1. Variance Criteria: Section 33.020 of the TDC authorizes the City Council to grant a variance from the requirements of the Code when it is shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the ordinance would cause an undue hardship. In granting a variance, the City Council may attach conditions that it finds necessary to protect the best interests of the surrounding property and to meet the purposes of the Code.

No variance shall be granted by the City Council unless it can be shown that criterion (1) is met and three of the four approval criteria (2)-(5) are met. The burden is upon the applicant to demonstrate that each of the following criteria exist:

- (1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity, and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.
- (2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances such as age or financial situation of the applicant, or from regional economic conditions.
- (3) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same planning district or vicinity.
- (4) The variance shall not be detrimental to the applicable objectives of the Tualatin Community Plan and shall not be injurious to property in the planning district or vicinity in which the property is located.
- (5) The variance is the minimum remedy necessary to alleviate the hardship.

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VAR-96-02—Variance to allow a 146 ft. Wireless Communication Tower in a ML District January 10, 2000
Page 3

2. Criterion (1): A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity, and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.

Nextel Identifies the hardship as the existing conifer trees on the Operations Center property and cuttines why the site has exceptional or extraordinary circumstances (Attachment 1 pp. 4-5). One reason is the proposed location of the wireless facility on this site in the ML Planning District. Nextel seeks a location in the western portion of Tualatin to expand and improve the necessary communication network coverage in the Tualatin, Tigard and King City area. Both Nextel and the City of Tualatin desire to locate a facility such as the proposed telecommunications tower and antennae in an industrial area and in a location that minimizes visual impacts on residential areas. Wireless facilities such as Nextel utilizes are a permitted use in the ML and MG (General Manufacturing) Planning Districts [TDC 60.020(39), 61.020(1)], but are restricted in residential planning districts in Tualatin. Siting the facility in an industrial area such as the ML district is the preferred location.

The Operations Center site offers a location that with the proper height will provide an adequate radio frequency (RF) signal coverage in this geographic area and is located in an industrial area approximately 1,400 ft. or more away from residential areas north of Tualatin Road. The importance of locating the facility in an industrial district with 1,400 ft. of distance to the nearest residential property is an exceptional circumstance that applies to the property.

Another reason why this cellular tower needs to be 146 feet is outlined in the Project Description section of the application (Altachment 1, pp. 2-3). Nextel explains that "the design of a specific ESMR site is further refined by considering local topographic and geographic factors, tree canopy, water bodies and the ability to mitigate the antenna support structure's visual impact, compatibility of the facility with existing uses,..." (Attachment 1 pg. 3). With these and other technical factors evaluated by the applicant's engineers, Nextel indicates that the 130 foot tall monopole (and antenna) at this site is the minimum necessary to provide adequate radio coverage to the surrounding area. Staff agrees that existing elevation and presence of trees at this site present a hardship and is an exceptional circumstance.

The grove of 100'-120' tall conifers on the site provide a natural buffer and screen for a telecommunication facility (See Attachment 4, Photo simulation of the proposed tower siting in the tree grove). Tall trees such as on the subject property will obscure the tower and visually mitigate the tower and antennae for persons viewing it from off site and from residential areas to the north. With the benefit of the trees comes the hardship imposed by trees interfering with a RF signal and by the need to have a direct "line of sight" from the antenna to the wireless user. A facility located in the vicinity of trees such as the Operations Center grove must be taller than the 100'-120' tall trees to operate effectively. The applicant states that the height of the trees makes it impossible to build a monopole and antenna within the 100' height limit. The height of the trees is an exceptional circumstance and creates the hardship.

Only a few of the properties in the ML or MG Districts in the western areas of Tualatin have a grove of tall conifers such as exists on the subject property. To locate the facility on a treeless site would forgo the visual buffering that the trees would provide for a tower and antenna structure. The City of Tualatin is a "Tree City USA" and as the property owner is guided by policies for preserving trees in TDC Chapters 15, 73 and 74 and the Operations Center Master Plan. Removal of the grove of trees to facilitate a development such as the proposed Nextel facility and

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VAR-96-02- Variance to allow a 146 ft. Wireless Communication Tower in a ML District January 10, 2000 Page 4

avoid a varience for increase structure height is not a responsible or desirable solution for the City as a property owner. The physical circumstances of needing an unobstructed signal from a wireless tower and the requirement for retaining the grove of trees are not in the control of the applicant or property owner.

To minimize disruptions to traffic circulation and other current or planned activities on the Operations Center site, the facility needs to be located on the northeastern most edge of the property. Staff agrees that the requested location on the site would be the least disruptive to the existing and planned operations activities on the site.

The property has exceptional or extraordinary conditions due to the need to locate the wireless facility in an industrial district and removed from residential areas and the physical circumstances of the 110'-120' tall conifer trees on the site. The condition does not apply generally to other properties in the vicinity or in the ML Planning District.

Criterion "1" is met.

<u>Criterion (2).</u> The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances such as age or financial situation of 3. the applicant, or from regional economic conditions.

The applicant indicates that no hardship was created by the applicant, owner or previous owner and is a result of the natural physical conditions on the site (Attachment 1, pg. 5). The 100'-120' tall trees on the site prevent building the tower within the 100' height limit.

Staff agrees that the topography of the area and trees on this site require a tower greater than the 110'-120' height and are responsible for the applicant's need for a variance from the height requirements of the TDC. The hardship is not a result of personal circumstances of financial situation of the applicant or owner. Regional economic conditions are not a factor in this proposal.

Criterion "2" is met.

<u>Criterion (3)</u>. The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same planning district or vicinity.

The property is in the ML Planning District. Surrounding properties and uses are:

ML, Crystal Lite Manufacturing
ML, Jana's Cookies
ML, Airefco
MG, Kem Equipment, Marshall Associated Industries (Across SW Herman Rd. and the SPRR tracks)

ML, Dot Storage ML. Contractors Offices (Across SW 108th Avenue)

The applicant indicates the variance is necessary because Nextel would be denied the right to operate a wireless facility that is permitted by other property owners in the ML district (Attachment 1, pg. 5). The applicant states that the maximum structure height in the ML district must be exceeded "...so that the antennas can transmit in an unobstructed path free and clear of the surrounding trees."

CITY OF TUALATIN_

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VAR-96-02- Variance to allow a 146 ft. Wireless Communication Tower in a ML District January 10, 2000 Page 5

A wireless facility is allowed as a permitted use in the ML district. There are no other wireless facilities in the vicinity of the proposed Nextel site at this time, but other facilities such as the AT&T facility on the Northwest Natural Gas property on SW McEwan Road are located in the ML District. Staff concurs with the applicant that the variance is necessary to preserve the property right of the applicant. The presence of the tall conifer trees on the site provide buffering and mitigation of a tower and are a substantial reason for locating on the Operations Center property and not locating somewhere else in the ML District.

This variance is necessary to preserve the owner's property right the same as provided to other property owners in the ML District.

Criterion "3" is met.

Criterion (4). The variance shall not be detrimental to the applicable objectives of the Tualetin Community Plan and shall not be injurious to property in the planning district or vicinity in which the property is located.

The applicant chose not to address Criterion "4" in the application materials.

The objectives for Wireless Communication Facilities in TDC Chapter 8, Public, Semi-public and Miscellaneous Land Uses (TDC 8.060) include:

(1) To minimize the visual impacts associated with wireless communication facilities.

 (2) To provide a wide range of locations for wireless communication facilities.
 (3) To encourage creative approaches in locating wireless communication facilities that will blend with their surroundings.

The location and siting of the proposed Nextel tower will minimize the visual impact of the facility by blending in with the trees and the tower's surroundings and meets Objectives 1 and 3. The Operations Center location is a publicly owned property in a ML District and is part of a wide range of locations for the wireless communication facility.

Criterion "4" is met.

Criterion (5). The variance is the minimum remedy necessary to alleviate the hardship.

The applicant states "At this location, the height of the existing trees is the reason why Nextel is asking for a variance to exceed the height limit. The proposed 146' is the minimum height required to provide adequate radio coverage to the surrounding area." (Attachment 1, pg. 5).

Staff has inspected the site and reviewed USGS topographic maps to determine if a height of less than 146' is workable. The site's base elevation is approximately 135'. The applicant indicates that the height of the trees is approximately 100'-120'. The area north of the site north of SW Tualatin Road has a ground elevation of approximately 165'-170'. The higher areas southeast and east of the site in the vicinity of downtown Tualatin have a ground elevation of 190'-250'. With the existing height of the trees in the Operations Center grove at 100'-120', the tower and antennae must be taller than the 100' maximum requirement of TDC 60.090(4).

The elevation drawings show a 130' monopole and antennae up to a height of 146'. (Attachment 3). The drawings show the trees at heights of up to 120', accounting for a slow increase in height with future growth (Attachment 4). Staff agrees the monopole and antennae must be higher than the trees for future growth. Given the

VAR-96-02— Variance to allow a 146 ft. Wireless Communication Tower in a ML District
January 10, 2000 Page 6

trees are estimated at 100'-120' in height, the proposed 146' height is the minimum necessary. To satisfy this criterion, the monopole tower, antenna platform and whip antennae shall not exceed 146 ft. in height above grade.

Criterion "5" is met.

Based upon the application and above findings and analysis, the approval criteria of 7. Section 33.020 have been met.

RECOMMENDATION

Staff recommends the Council adopt the staff report and direct staff to prepare a resolution granting VAR-99-02 with the following condition:

The monopole tower, entenna platform and whip antennae shall not exceed 146 ft. in height above grade.

Respectfully submitted.

William Halper, AICP Associate Planner

Attachments:

- Applicant's Supporting Materials
 Vicinity Map and Site Plan
- 3. Elevation Drawings
- 4. Photos of Simulated Tower Elevations

John Silenzi, Westower Communications

file: VAR-99-02



CITY OF TUALATIN

PO BOX 369 TUALATIN, OREGON 97062-0369 (503) 692-2000 TDD 692-0574

SITE COPY

PLUMBING: SITE UTILITIES:

Nectel

- 1. All non-metallic underground yard piping, shall have an 18 gauge or heavier tracer wire along pipe in trench, green for sanitary and storm water piping. UPC 718.2 & 1106.1. blue for water main service piping, UPC 609.5.1
- 2. Piping for storm and sanitary sewer drainage shall be of approved materials within 5" of buildings including porches and steps whether covered or not. UPC 1104.1 and 718.3
- 3. Building sewer and storm piping shall be run in practical alignment at a uniform slope of 1/2" per foot, where it is impractical to obtain a 1/2" per foot slope, pipe grade maybe reduced to 1/8" per foot upon request to the Building Dept. UPC 708.0
- 4. Catch Basins shall be lynch type. In standard 24" catch basins outlets are to be a maximum of 6", if larger outlets are required, a drawing and specifications shall be submitted to the Building Dept. for approval. UPC 1108

CITY OF TUALATIN APPROVED PLANS

PERMIT NO. 00-444 DATE: 5/3/00

ADDRESS: 10699 SW HERMAN RD

APPROVED BY: MC

SITE COPY

This drawing is to be kept on the Building Site at all times

LOCATED AT: 18880 SW Martinazzi Avenue



CITY OF TUALATIN

PO BOX 369 TUALATIN, OREGON 97062-0369 (503) 692-2000 TDD 692-0574

NOTICE OF ADOPTION

On January 24, 2000, the City of Tualatin adopted Resolution #3672-00 (File No. VAR-99-02) granting a variance to allow a 130' high wireless telecommunication tower with 16' antenna where a 100' high support structure and antenna is allowed in a light manufacturing (ML) planning district at 10699 SW Herman Road (2S1 22A, 900). A copy of the resolution is enclosed for review.

A copy of the resolution is also available for review at the Tualatin Planning
Department located at 18884 SW Martinazzi Avenue from 8 a.m. to 12 noon and from
1 to 5 p.m., Monday through Friday.

Appeal of land use decisions is commenced by filing a Notice of Intent to Appeal with the Land Use Board of Appeals as provided in ORS 197.830 to 197.845. The notice of intent to appeal a land use decision must be filed no later than 21 days after the date the decision sought to be reviewed becomes final.

Date notice mailed: January 28, 2000

o: Sean Bell, NEXTEL Communications, 8405B SW Nimbus Avenue, Beaverton OR 97008

Daniel J. Boss, Operations Director, City of Tualatin, PO Box 369, Tualatin OR 97062-0369

File: VAR-99-02

10699 SW Herman Road

RESOLUTION NO. 3672-00

A RESOLUTION GRANTING A VARIANCE (VAR-99-02) TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNA WHERE A 100' HIGH SUPPORT STRUCTURE AND ANTENNA IS ALLOWED IN A LIGHT MANUFACTURING (ML) PLANNING DISTRICT AT 10699 SW HERMAN ROAD ON TAX MAP 2S1 22A. TAX LOT 900.

WHEREAS a public hearing was held before the City Council of the City of Tualatin on January 10, 2000, upon the application of Nextel Communications and the City of Tualatin, for a variance from TDC 60.090(4) to allow a 130' high structure and 16' antenna in a Light Manufacturing (ML) Planning District at 10699 SW Herman Road (Tax Map 2S1 22A, Tax Lot 900); and

WHEREAS notice of public hearing was given as required by the Tualatin Development Code by posting the notice in two public and conspicuous places, which is evidenced by the Affidavit of Posting, marked "Exhibit A", attached and incorporated by this reference, and by mailing a copy of the notice to property owners located within 300 feet of the property, which is evidenced by the Affidavit of Mailing, marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council heard and considered the testimony and evidence presented on behalf of the applicant, the City staff, and those appearing at the public hearing; and

WHEREAS based upon the evidence and testimony heard and considered by the Council, the Council makes and adopts as its findings of fact the City staff report, dated January 10, 2000, which is marked "Exhibit C," attached and incorporated by reference; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application with all Councilors voting in favor, and all Councilors present; and

WHEREAS based upon the foregoing Findings of Fact the Council finds that the applicant has provided sufficient evidence to demonstrate that all of the requirements of the Tualatin Development Code relative to a variance have been satisfied and that granting the variance is in the best interest of the residents and inhabitants of the City, the applicant, and the public generally.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Resolution No. <u>3672-00</u> - Page 1 of 2

Section 1. Nextel Communications and the City of Tualatin are granted a variance to allow a 130' high wireless telecommunication tower with 16' Antenna at 10699 SW Herman Road in a Light Manufacturing (ML) Planning District, also described on the records of Washington County Department of Assessment and Taxation as Tax Map 2S1 22A, Tax Lot 900.

INTRODUCED AND ADOPTED this 24th day of January 2000.

CITY OF TUALATIN, Oregon

Mayo

ATTEST:

By Stace Which

Resolution No. ___3672-00 ___ - Page 2 of 2



November 16, 2017

RE: PI Tower Development Project OR—Tualatin Durham / 10290 SW Tualatin Rd

To Whom It May Concern:

My name is Micah Hawthorne and I am a Principal Sales Engineer at American Tower with an RF Engineering background. My resume has been provided in support of this statement.

Per Verizon Wireless' application, American Tower Corporation has an existing tower structure that would produce "marginal coverage in residential area due to surrounding trees." This tower is less than 750 ft. at 10318 SW Herman Road (Exhibit A). The RF coverage analysis of the immediate area (attached slides) supports Verizon Wireless claim if they were to install below the existing tenant at a proposed height of 110 ft., there would be significant impact to the coverage area due to exiting tree clutter up to a canopy height of 130 ft.

The coverage scenario with no tree clutter reflects tree clearance within the nearest ~155 ft. A clearance distance of 100 ft. would produce coverage in between the two 110 ft. tree clutter scenarios in both the 700 MHz and AWS 1700/2100 MHz respective examples.

With stated interest from T-Mobile and Verizon, the attached slides also suggest that Verizon, and thereby T-Mobile with operations in similar frequency bands, may be able to achieve their coverage objectives if the existing ATC 308345 tower structure were height modified to support both tenants. A 20 to 30 ft. increase in structure height would provide clearance over the existing trees at 130 ft., drastically improving the area coverage opportunity.

If an extension were approved to 150 ft. (or 160 ft.), to support 2 (or 3) of the remaining 3 carriers from the Big 4 that are not currently installed on this asset, there might be limited future need for additional structures of similar height.

Micah T Hawthorne,

Principal Sales Engineer

Miss I Hant



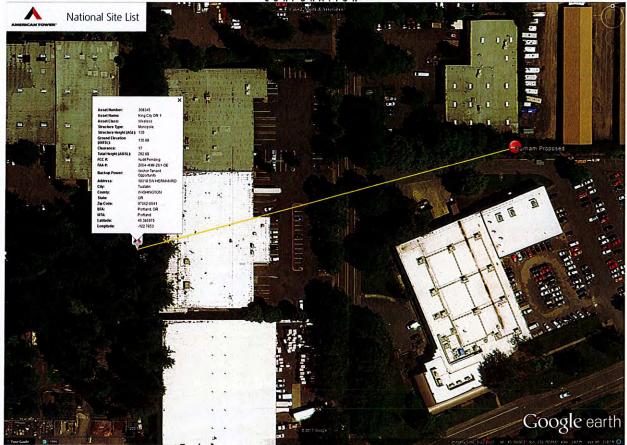
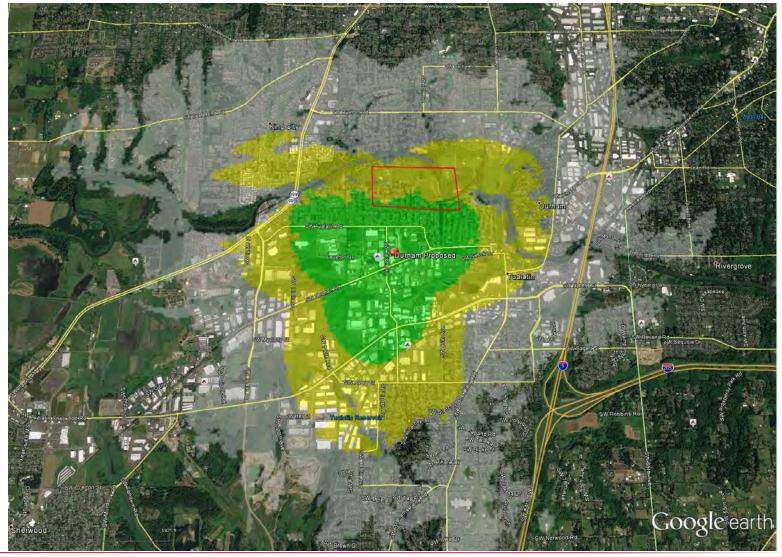


Exhibit A. ATC 308345 is approximately 750 ft. from the 10290 SW Tualatin Road location.

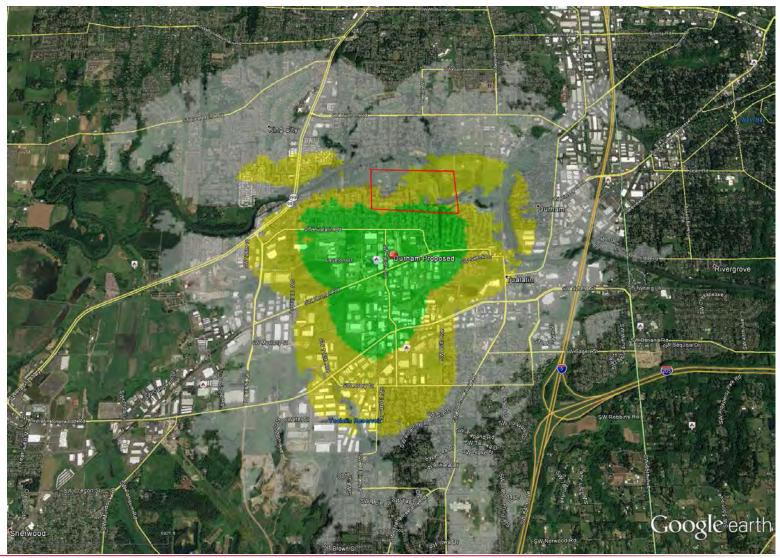
308345 700 MHz LTE Coverage:

@ 150 ft. with NO Tree Clutter



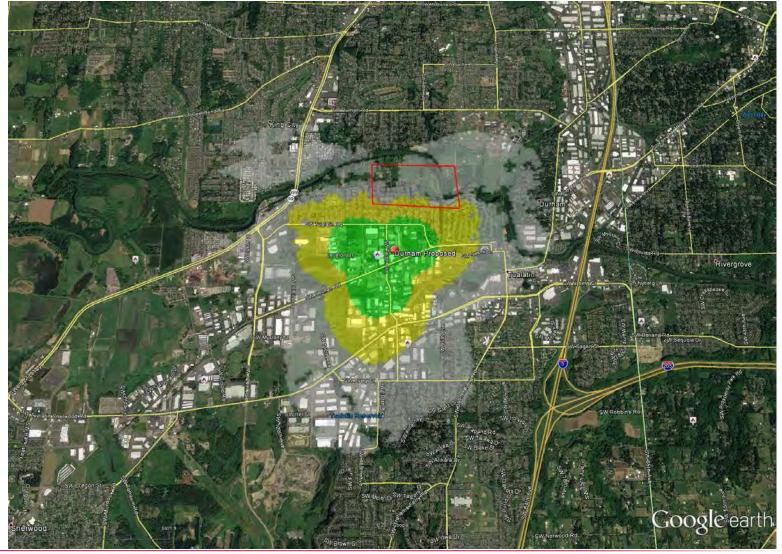
308345 700 MHz LTE Coverage:

@ 110 ft. with NO Tree Clutter



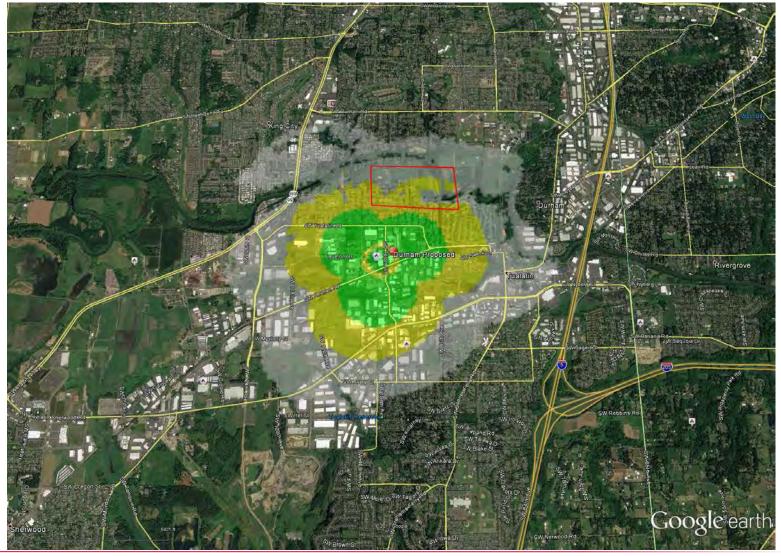
308345 700 MHz LTE Coverage:

@ 110 ft. with Tree Clutter



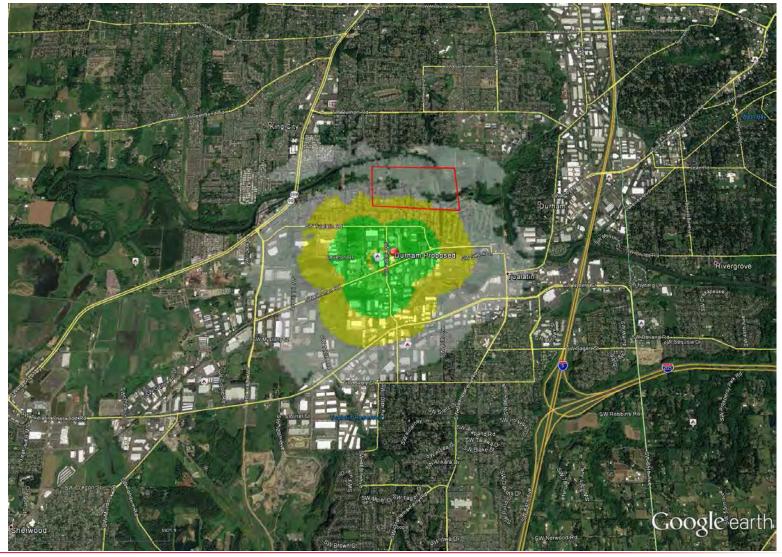
308345 2100 MHz (AWS) LTE Coverage:

@ 150 ft. with NO Tree Clutter



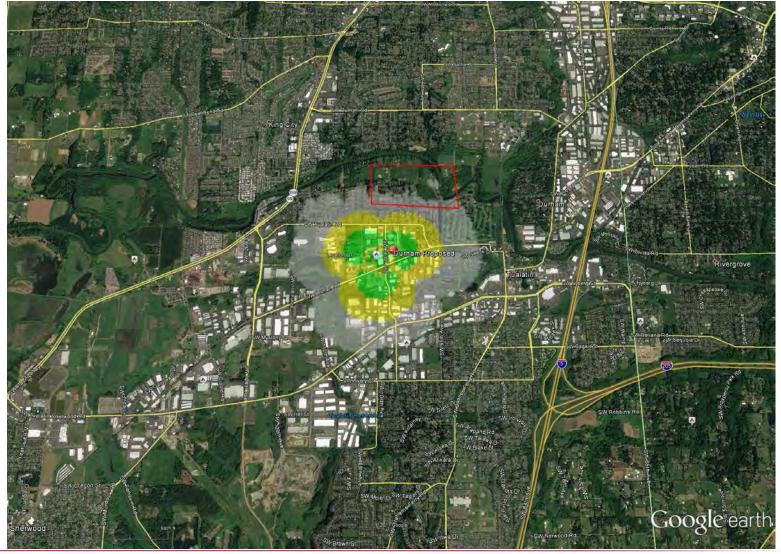
308345 2100 MHz (AWS) LTE Coverage:

@ 110 ft. with NO Tree Clutter

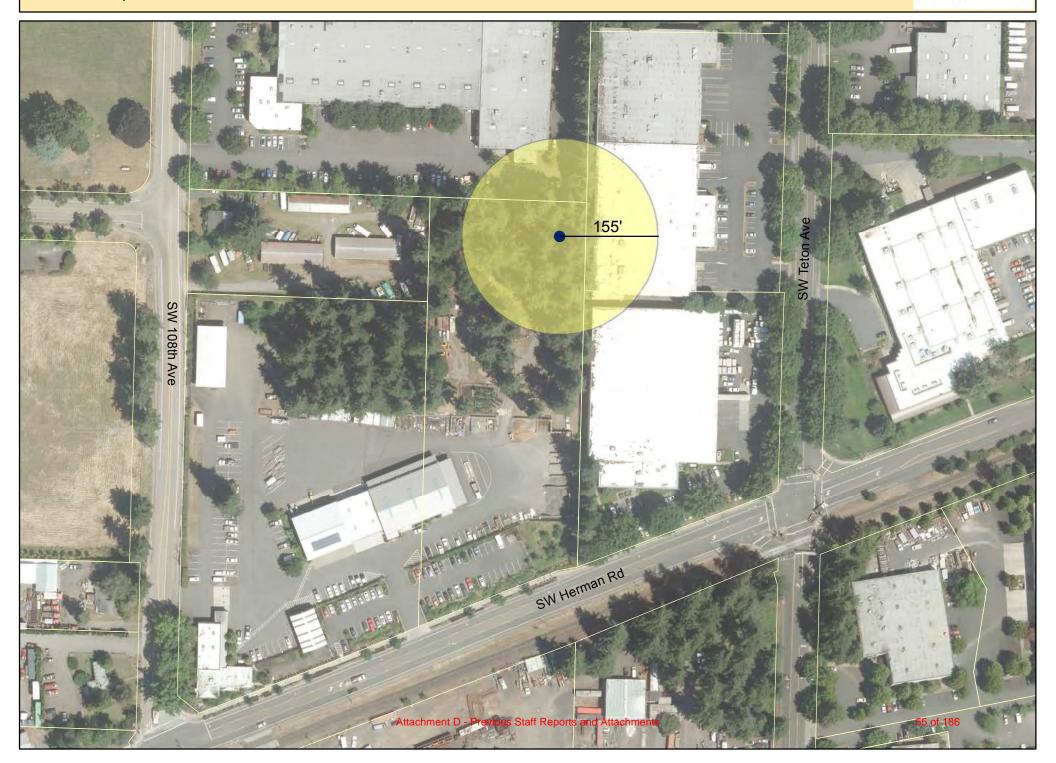


308345 2100 MHz (AWS) LTE Coverage:

@ 110 ft. with Tree Clutter









Koback Connors · Heth

November 22, 2017

VIA EMAIL

Planning Commission
City of Tualatin
Attn: Aquilla Hurd-Ravich
18880 SW Martinazzi Avenue
Tualatin, OR 97062
ahurd-ravich@tualatin.gov

Re: Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.

Application No. VAR-17-0001

Response to American Tower Corporation Submission

Dear Commissioners:

This firm represents the applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). We are submitting this letter and the enclosed material in response to the written and oral submissions by American Tower Corporation ("ATC") at the November 16, 2017 public hearing arguing that the variance application should be denied on the grounds that ATC's existing tower (the "ATC Tower") can accommodate the proposed wireless communications facility if certain modifications are made and additional approvals are obtained. The Applicant disputes ATC's claim for several reasons.

A. The City code does not require the applicant to consider an existing tower that would require additional permits or approvals, or at least those that have not yet been filed.

ATC acknowledged that "the existing ATC Tower is not suitable for colocation of additional carriers because of interference from the trees surrounding the site," but it claims that the ATC Tower could be used by the Applicant, if one of two modifications were made to the tower. Both modifications would require ATC to submit and obtain a permit and other approval in order to make these modifications. First, ATC claims that it could remove the existing trees within a 155-foot radius of the ATC Tower if it obtained a tree removal permit and the approval of the City as the property owner. Second, ATC claims that it could increase the height of the 130-foot tower by approximately 20 feet if it obtained an approval of a variance to further exceed the allowed height of

E. Michael Connors

1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
mike@hathawaylarson.com
(503) 303-3111 direct
(503) 303-3101 main
Attachment D - Previous Staff Reports and Attachments

Page 2 November 22, 2017

the tower. ATC claims that it is "feasible" to obtain the necessary permits and approvals for these options, but it provided no analysis or evidence to support this claim.

Regardless of whether or not it is feasible for ATC to obtain the necessary permits and approvals for these options, the Applicant is not required to consider the ATC Tower under the applicable approval criteria for two reasons. First, neither the tower separation nor variance criteria require the Applicant to consider existing towers that would require additional permits or approvals to accommodate the wireless communications facility. Second, to the extent the Applicant is required to consider existing towers that would require additional permits or approvals, it is only required to consider those for which the permit application has already been filed. Since ATC had not filed an application for the tree removal permit or variance by the time the Applicant filed this variance application, the ATC Tower cannot be used as a basis for denying the variance application in this case.

ATC claims that the Applicant must consider existing towers within 1,500 feet that could accommodate the wireless communications facility if additional City permits or approvals were obtained, but it fails to point to any language in the applicable sections of the Tualatin Development Code ("TDC") to support this assertion. Neither TDC 73.470(9), which contains the 1,500-foot separation requirement, nor the variance criteria for tower separation in TDC 33.025(1) require an applicant to consider an existing tower that must obtain additional permits and approvals in order to accommodate the wireless communications facility. TDC 33.025(1)(a)(ii) requires documentation that existing towers within 1,500 feet "cannot be modified to accommodate another provider," but it does not require the applicant to consider modifications that would require additional permits and approvals from the City. ATC's interpretation requires the City to insert additional terms or requirements that are not expressly set forth in TDC 73.470(9) or TDC 33.025.

To the extent an applicant is required to consider a tower that needs additional permits or approvals to accommodate the wireless communications facility, it is expressly limited to those tower proposals for which the application has already been filed. TDC 73.470(9) defines the types of "wireless communication facility monopoles" that must be considered for purposes of satisfying the tower separation requirement as follows: "For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied." (Emphasis added). Similarly, TDC 33.025(1)(a)(i) requires an applicant to demonstrate that it is technically not practicable to collocate from "an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied." (Emphasis added). This language demonstrates that the City Council intended to limit the types of towers that must be considered to those that either have the necessary permits or have filed for the necessary permits. Since ATC had not filed an application for the tree removal permit or variance by the time the Applicant filed this variance application, the Applicant was not required to consider the ATC Tower.

¹ It is important to clarify that ATC's Tower was approved at 130 feet, with an antenna tip height of 146 feet. Since there currently is an antenna at 146 feet, the tower would have to be increased close to an additional 20 feet in order to provide sufficient separation between the antennas.

While ATC's proposed interpretation serves its own financial interests, it is not consistent with the plain language or purpose of TDC 73.470(9) and TDC 33.025. Neither of these criteria require the Applicant to consider existing towers that would require additional permits or approvals, or at a minimum require consideration of those towers for which the permit application has already been filed. It would be virtually impossible to rule out existing towers within 1,500 feet because practically any tower could theoretically be modified in some way to accommodate another wireless communications facility if additional permits could be obtained. Applicants would then be beholden to the whims of the existing tower owner and would be subject to their timing and efforts to obtain the necessary approvals for the modifications. Even if the modifications may not be approved, applicants would be required to go through the modification permit process and wait until they are denied before even initiating an application like the variance application in this case. That is not the way TDC 73.470(9) and TDC 33.025 were intended to work.

B. ATC cannot demonstrate that it is feasible to obtain the necessary permits or approvals to modify the ATC Tower.

ATC repeatedly claims that it is "feasible" to obtain the necessary permits and approvals to modify the ATC Tower, but it failed to provide any analysis or evidence to support this claim. In order to demonstrate that it is "feasible" to obtain a subsequent permit or approval, the party must demonstrate that it is "possible, likely and reasonably certain to succeed." *Meyer v. City of Portland*, 67 Or App 274, 280 n.5, 678 P2d 741, *rev den* 297 Or 82 (1984); *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). ATC has not even attempted to establish, nor can it establish, that it is more likely and reasonably certain that it would obtain the necessary permits and approvals to remove the trees or increase the height of the ATC Tower.

It is not feasible for ATC to obtain the necessary permits and approvals to remove the existing trees within a 155-foot radius of the ATC Tower for multiple reasons. The variance approval for the ATC Tower (VAR-99-02) relied heavily on the screening effect of the surrounding trees to justify the variance to the height standard. For example, the variance approval noted that "[t]all trees such as the subject property will obscure the tower and visually mitigate the tower an antennae for persons viewing it from off site and from the residential areas to the north" and concluded that "[t]he location and siting of the proposed Nextel tower will minimize the visual impact of the facility by blending in with the trees and the tower's surroundings and meets Objectives 1 and 3." Variance Decision, p.3 & 5. At a minimum, ATC would have to seek a modification to its variance approval in order to remove these screening trees since it relied so heavily on these screening trees. Since the removal of virtually all of these screening trees would undermine the key justification for granting the variance in the first place, it is highly unlikely that ATC could obtain the approval necessary to remove these trees.

Nor could ATC satisfy the tree removal permit criteria. While ATC gives the impression that it can remove the existing trees for practicably any reason, nothing could be further from the truth. The tree removal criteria are actually quite strict in order to minimize a property owner's ability to cut down trees. In order to justify the removal of the trees, ATC must demonstrate that the trees are diseased, a hazard or "[i]t is necessary to remove the tree to construct proposed improvements based on Architectural Review approval, building permit, or approval of a Subdivision or Partition Review." TDC 34.230(1). Clearly these trees are not diseased or a hazard, and ATC has not applied for or obtained any of these approvals. Therefore, ATC cannot obtain a tree

Page 4 November 22, 2017

removal permit because none of the conditions precedent to obtaining such approval are present in this case.

ATC needs the City's consent to even consider removal of these trees. As the property owner, the City must agree to the removal of the surrounding trees on the City's property. ATC has not even broached this issue with the City, let alone submitted evidence demonstrating that the City is willing to agree to it. Nor is there any reason to believe that the City would support the clearing of a substantial number of trees on its property solely to support ATC's desire to generate more revenue on its tower.

ATC also needs the consent of the adjacent property to remove some of the trees since there is a row of trees to the north/northeast of the ATC Tower that are blocking the RF signals as well. We attached a tree survey, ATC King City OR1 308345, which identifies the surrounding trees that will need to be removed. A significant portion of the trees that need to be removed are located on the adjacent property to the north/northeast. ATC provided no evidence that this property owner is willing to have all of these trees removed from the property and it is highly unlikely that this adjacent owner will agree to do so in order to accommodate a taller and more visually impactful tower.

Finally, ATC suggested at the November 16 hearing that it may be possible to top or significantly trim the trees in order to remove the portion of the trees that are interfering with RF signals. There are several problems with this suggestion. Topping or significantly trimming the trees will look terrible and significantly undermine the visual screening that the trees currently provide. Similar to the proposal to remove the trees, topping or significantly trimming will require a modification to the variance approval. The Applicant also consulted with an arborist who confirmed that Topping or significantly trimming the trees could damage or kill some of the trees. These damaged trees will create hazards from falling limbs and may eventually led to their removal. The Applicant will be prepared to provide additional information on this issue if necessary at the December 7 hearing.

Similarly, it is not feasible for ATC to obtain a variance to further increase the height of the ATC Tower.² TDC 33.025(2) sets forth the criteria for obtaining a variance to the height limitation. TDC 33.025(2)(b) requires ATC to demonstrate that "existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide." (Emphasis added). ATC cannot satisfy this criteria because the proposed tower in this case is a WCF for which an application has been filed and not denied. In other words, there is a pending application for a new tower that can accommodate the wireless communications facility without exceeding the 100-foot height limit.

Additionally, it is unlikely that the City will approve a height variance to increase the height of an existing tower that already significantly exceeds the height limits. The ATC Tower already exceeds the allowed height by 30 feet or 30%, and it would be required to seek an approval for an additional 16 feet or more. If the City accepted ATC's interpretation, there would be virtually no limits on the

² ATC's attorney's letter, dated November 16, 2017, acknowledged that ATC would be required to obtain a new variance in order to increase the height of the ATC Tower. There is no question that ATC would be required to obtain a new variance since the prior variance approval was limited to 130-feet and was approved based on that specific height.

Page 5 November 22, 2017

height of towers because tower companies could perpetually increase the height of the tower by seeking new variances to accommodate additional wireless communications facilities. That is clearly not what the City intended when it adopted a 100-foot height restriction and the variance criteria.

ATC also needs the City's consent to significantly increase the height of the ATC Tower. As the property owner, the City is required to consent to the filing of a variance application and the increased height of the tower. Once again, ATC failed to submit any evidence that it had broached this issue with the City. Nor is there any reason to believe that the City would support a significant increase in the height of the ATC Tower since its prior approval limited the height to 130-feet.

C. Verizon cannot achieve its coverage and capacity objectives even if the ATC Tower is increased in height or the screening trees are removed.

Even if ATC was able to increase the height of the ATC Tower to 146 feet or remove the screening trees, the ATC Tower would still not satisfy Verizon's coverage and capacity objectives for this site. We attached Verizon's new RF Usage and Facility Justification analysis, dated November 20, 2017, which includes propagation maps showing the coverage for the proposed site, the existing ATC Tower with no trees, and the ATC Tower at 146 feet both with and without the screening trees. The propagation maps show that none of these modified ATC Tower options provide the same coverage and capacity as the proposed site at 100 feet. Verizon's RF engineer specifically noted that the ATC Tower options do not improve coverage in the residential area north of SW Tualatin Rd as well as the proposed site, which is the primary area of concern for this new facility.

Since the ATC Tower cannot be modified in a way that satisfies Verizon's coverage and capacity objectives for this site, the Applicant demonstrated compliance with the applicable variance criteria. TDC 33.025(1)(a)(i) requires an applicant to demonstrate that "[i]t is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites * * *." Verizon's new RF Usage and Facility Justification analysis demonstrates that the ATC Tower cannot provide the needed capacity or coverage intended for this site.

At the November 16 hearing, ATC suggested that its own RF analysis concluded that the modified ATC Tower could meet the coverage and capacity objectives for this site, but such a claim is not reliable. ATC has not spoken with Verizon about the coverage and capacity objectives for this site, does not have access to all of the same network data and other proprietary information as Verizon's RF engineers do and it cannot speak for Verizon. Verizon's new RF Usage and Facility Justification analysis represents Verizon's position on this matter. ATC's RF analysis is based on incomplete and less reliable information, and is self-serving.

D. ATC has not demonstrated that the City will extend the lease beyond 2020.

ATC acknowledged that the current lease for the ATC Tower expires in 2020 and the City has not yet agreed to an extension or new lease. Given how much time it will take to obtain the approvals to either increase the height of the ATC Tower or clear the screening trees, do the actual work to increase the height or clear the trees, and obtain approval for the proposed wireless communications facilities, there will be very little time left on the existing lease term. Carriers cannot be required to

Page 6 November 22, 2017

go through these time consuming and expensive processes for a site with very little time left on the existing lease. Unless and until ATC reaches an actual agreement with the City to extend or renew the lease, the ATC Tower cannot be used as a basis for denying the variance application.

E. T-Mobile is not interested in the ATC Tower.

At the November 16 hearing, ATC suggested that T-Mobile is more interested in the ATC Tower than the Applicant's proposed tower. That statement is simply not true. We attached an email exchange between the Applicant and T-Mobile, dated November 21, 2017, in which T-Mobile confirms that it did not communicate a desire to locate on the ATC Tower and that the ATC Tower will not work for the same reasons it does not work for Verizon.

As explained in the application material and the Staff Report, the Applicant demonstrated compliance with the variance criteria and therefore the variance application should be approved. There is no dispute that the ATC Tower cannot accommodate the proposed wireless communications facility and TDC 73.470(9) and TDC 33.025 do not require the Applicant to delay this project until ATC can determine if it will be able to get the necessary tree removal, variance and property owner approval to modify the ATC Tower. Moreover, the permit requirements and evidence indicate that it is not likely that ATC will be able to obtain these approvals. And even if ATC was able to increase the height of the ATC Tower or remove the screening trees, it still would not satisfy Verizon's coverage and capacity objectives for this site. For all of these reasons, the Commission should reject ATC's arguments and approve the application.

Very truly yours,

HATHAWAY LARSON LLP

& Midsal Comos

E. Michael Connors

EMC/pl Enclosures

cc: ACOM Consulting Inc.

Lendlease

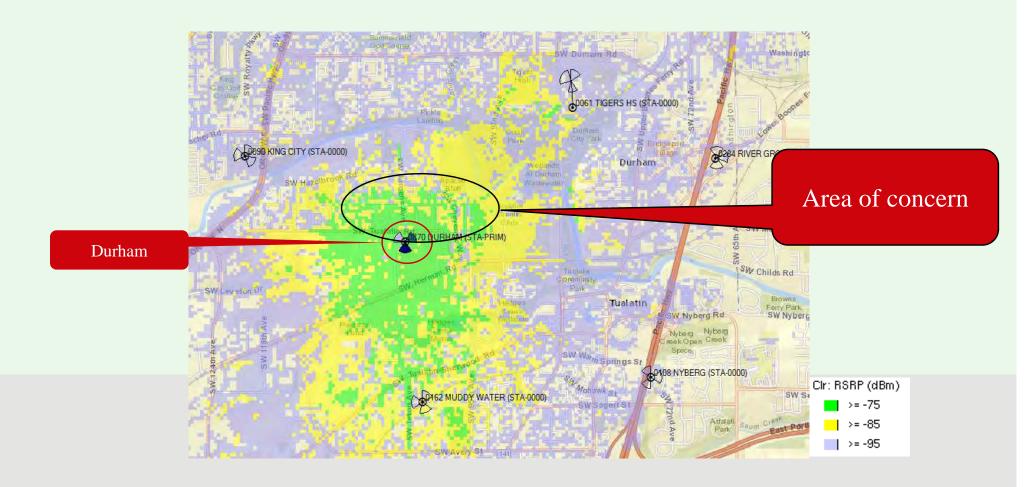
RF Usage and Facility Justification

Durham

Prepared by Verizon Wireless Walid Nasr Nov 20, 2017

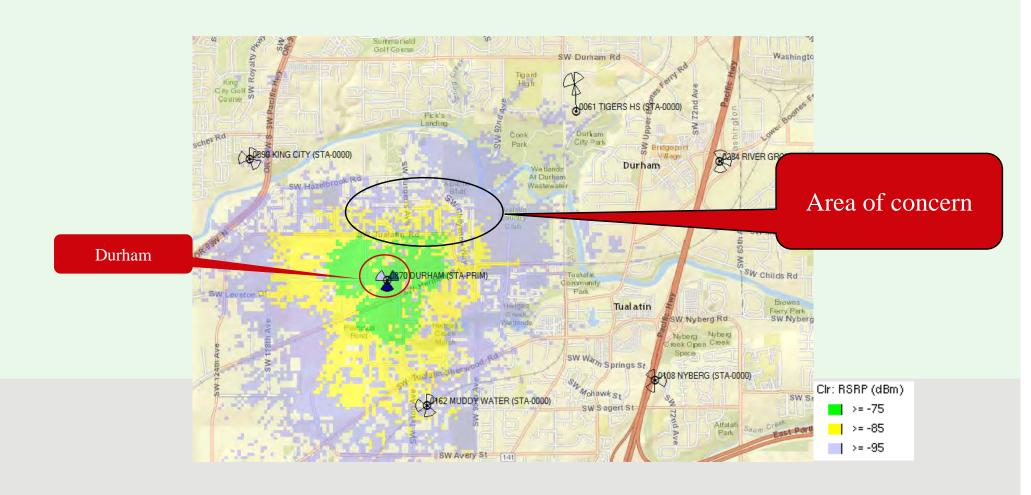


Coverage with Proposed Durham Site





Coverage at ATC location at 146' with trees



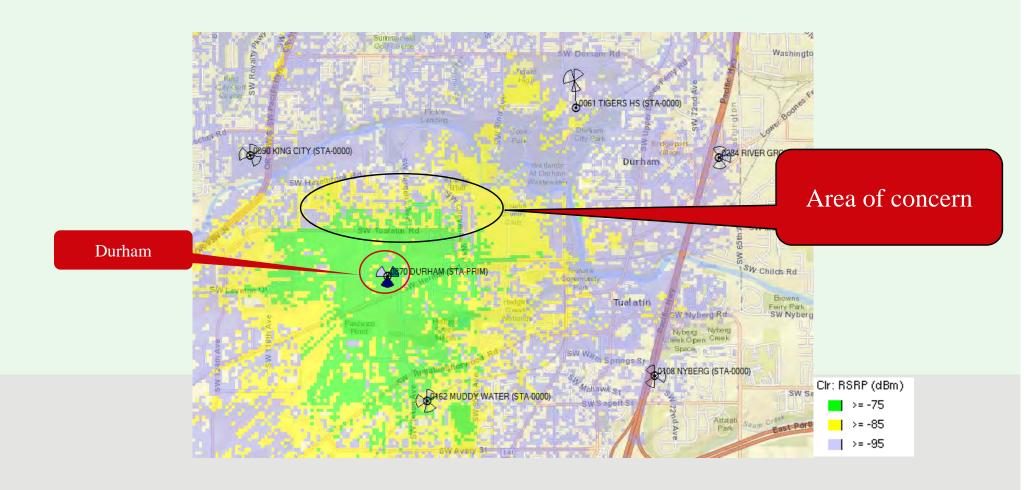


Coverage with Durham Site at ATC 146' without trees





Coverage at ATC 120' without trees





Summary

- ATC tower does not work at 146' with the existing tree cover.
- With the trees removed the ATC tower using both 146' and 120' heights will function but the area of concern is better covered with the proposed Durham location at 100 feet.
- ATC tower doesn't improve coverage in the residential area north of SW Tualatin Rd compare to proposed Durham tower location which is the area of concern.



ATC King City OR1 308345

onsite verification of trees 11/17/18

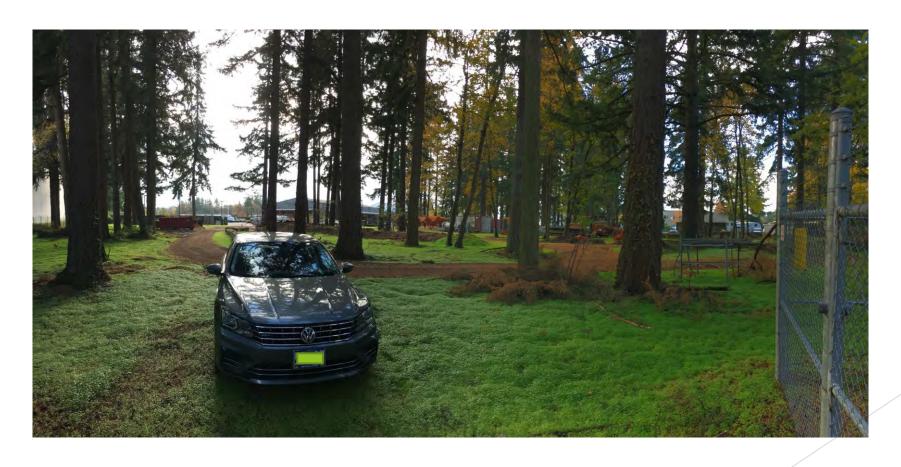
- The trees affecting the RF signal are in three main areas
 - The grove surrounding the tower.
 - The grove to the West / Southwest
 - The tree line to the North / Northeast on the adjacent property
- The affected trees are approximately 120-140 feet tall
- There are approximately 40-60 trees in the three areas shown



Looking North from ATC gate, along the fence line at tree grove



Looking West / Southwest from ATC Site at the tree grove



Looking South / Southeast from ATC Site at the tree grove



Looking East / Northeast through the ATC Site at the tree grove



Looking North from adjacent property at the tree line and tree grove (position 1)



Looking Southeast from adjacent property at the tree line and tree grove (position 2)



From: Bloom, Aaron Aaron.Bloom@lendlease.com & Subject: FW: [EXT]:RE: PI Tower: 10290 SW Tualatin Road

Date: November 21, 2017 at 11:58 AM

To: Sarah Blanchard sarah.blanchard@acomconsultinginc.com



Aaron Bloom

Area Business Development Director Telecom Infrastructure 12830 SW Park Way, Portland, OR 97225 T 503 880 4940

aaron.bloom@lendlease.com | www.lendlease.com



From: Brown, Julio [mailto:Julio.Brown@T-Mobile.com]

Sent: Tuesday, November 21, 2017 11:47 AM **To:** Bloom, Aaron <Aaron.Bloom@lendlease.com>

Subject: RE: [EXT]:RE: PI Tower: 10290 SW Tualatin Road

He confirmed what I had relayed to you. There was no communication to ATC that said we were going to locate on their tower.

As you know, that tower has major issues (buried in the trees), so I do not want to use it. While there has been a suggestion that it could be extended, there is no guarantee that that would happen, nor a specific timeline. That makes it an inferior candidate.

Julio Brown

Sr. RF Engineer T-Mobile Portland julio.brown@t-mobile.com 503-820-9337

From: Bloom, Aaron [mailto:Aaron.Bloom@lendlease.com]

Sent: Tuesday, November 21, 2017 11:37 AM
To: Brown, Julio < Julio.Brown@T-Mobile.com >
Subject: PI Tower: 10290 SW Tualatin Road

Hi Julio,

I wanted to circle back with you to see if you had a chance to speak to Gurjeet about ATC's opposition to our site, and claim that T-Mobile prefers their location. Anything you can provide would be greatly appreciated. We have until 5 pm tomorrow to submit any further evidence supporting our zoning applicaOon, with the hearing resuming on 12/7.

Thanks so much for all your support with this!

Mai Uii

Aaron Bloom

Area Business Development Director Telecom Infrastructure 12830 SW Park Way, Portland, OR 97225 T 503 880 4940

aaron.bloom@lendlease.com | www.lendlease.com



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November 22, 2017

VIA ELECTRONIC MAIL: ahurd-ravich@tualatin.gov



City of Tualatin Planning Commission Attn: Aquilla Hurd-Ravich 18880 SW Martinazzi Ave Tualatin, OR 97062-7092

RE: Pl Tower Development Project OR-Tualatin-Durham/ 10290 SW Tualatin Road

(Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001)

Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable Planning Commissioners:

Thank you for giving me and my client an opportunity to appear before you last week. As you know, I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation ("ATC"), which owns a wireless communications facility located at 10318 SW Herman Road, Tualatin, Oregon (the "ATC Tower"). ATC submitted oral and written testimony regarding its concerns regarding the proposed wireless communication facility on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "Applicant") on the southwest corner of 10290 SW Tualatin Road, Tualatin, Oregon (herein the "Subject Property"). I am submitting this letter and the attached exhibits to address certain factual and legal questions of the Commissioners and staff. Below in italics are a summary of those questions followed by my answers.

1. Can the ATC Tower accommodate additional users, if the tower was extended to 146 feet consistent with the existing approval? Yes, ATC's existing variance approval granted a variance to the wireless communications facility standard of 100 feet, subject to the following condition of approval, which is the only condition of approval: "The monopole tower, antenna platform and whip antennae shall not exceed 146 feet in height above grade." ATC has the right under the existing permit to extend the tower to 146 feet without additional land use approval, so long as there is no additional antenna extending beyond such height. Attached as Exhibit 1, you will find supplemental RF coverage maps that demonstrate the ATC tower can accommodate new uses in a manner substantially similar as represented by Applicant. Below are two images. The first is Applicant's proposed coverage map demonstrating projected Verizon coverage. The second is a coverage map by ATC demonstrating projected Verizon coverage on the ATC tower at 146 feet, without cutting any trees.

Park Place, Suite 200 250 Church Street SE Salem, Oregon 97301

Post Office Box 470 Salem, Oregon 97308

Image 1 – Applicant proposed coverage map:

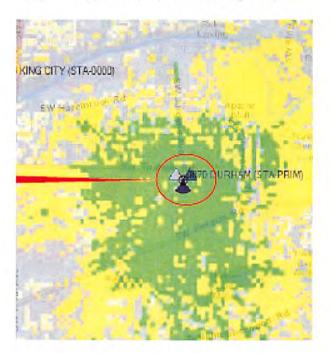
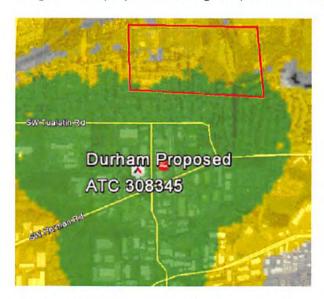


Image 2 – ATC proposed coverage map without modification of permit:



- 2. Can the ATC Tower structurally accommodate an extension of the exiting pole? Yes, ATC has submitted a letter from Bryan Lanier, an Oregon licensed P.E., S.E., who is of the expert opinion that the existing site can accommodate such an extension. See Exhibit 2.
- 3. What is the difference between green and yellow? The color coding corresponds to the measurement of decibel-milliwatts as evidenced on the ATC RF maps (green equals greater or equal to -75 dBm and yellow equals greater or equal to -85 dBm; however, the distinction between green and yellow and how that relates to coverage on cell phones (i.e., how many

bars?) is proprietary to Verizon. ATC cannot directly answer that question, and directs the Commissioners and staff to Applicant for further information.

- 4. Who determines if the ATC Tower "cannot be modified to accommodate another provider" as required under TDC 33.025(1)? Applicant has requested a variance to the City's Wireless Communication Facilities development standards; therefore, it is Applicant's burden of proof to satisfy all applicable criteria. Because Applicant's proposed tower is within 1,500 feet of the ATC Tower, TDC 33.025(1)(a) requires Applicant to prove the ATC Tower "cannot be modified to accommodate another provider." This burden of proof is not on ATC. Nonetheless, ATC has reviewed Applicant's evidence and determined that it is not accurate. Applicant's error is due to its false assumption that ATC could not extend its tower and could not accommodate an additional provider. ATC has conclusively provided evidence that the ATC Tower can be extended without an additional variance and it has the needed capacity. Therefore, Applicant cannot meet its burden of proof, and the Commissioners must deny its variance request.
- 5. Are other carriers interested in using the ATC Tower? While this question is beyond the scope of the criteria, ATC has correspondence from T-Mobile demonstrating interest in the ATC Tower as a first option. See Exhibit 3. The attached correspondence demonstrates this interest. As ATC has now demonstrated the ability to extend the ATC Tower above the tree-line, it believes it can satisfy additional carrier coverage.
- 6. What are the terms of the ATC existing lease and proposed lease? Again, review of ATC's existing lease is beyond the scope of review of Applicant's (Acom) evidence; however, in the spirit of open communication, ATC has submitted a copy of the existing lease and proposed lease amendment for the Commission's review. See Exhibit 4. Please note, the monetary terms have been redacted and the proposed lease amendment is still subject to further changes by the parties. To the extent the existing lease is relevant, it does substantiate ATC's representation that the ATC Tower may be extended to the full 146 feet as there are no such restrictions on ATC's right to "erect, maintain and operate on the premises radio communication facilities, including without limitation an antenna tower or pole and foundation."

I believe this letter answers the Commission's questions. Please let me or staff know if ATC can be of further assistance.

Based on ATC's prior written and oral testimony, this letter, and the attached exhibits, ATC requests the Commission to deny Applicant's proposed variance request.

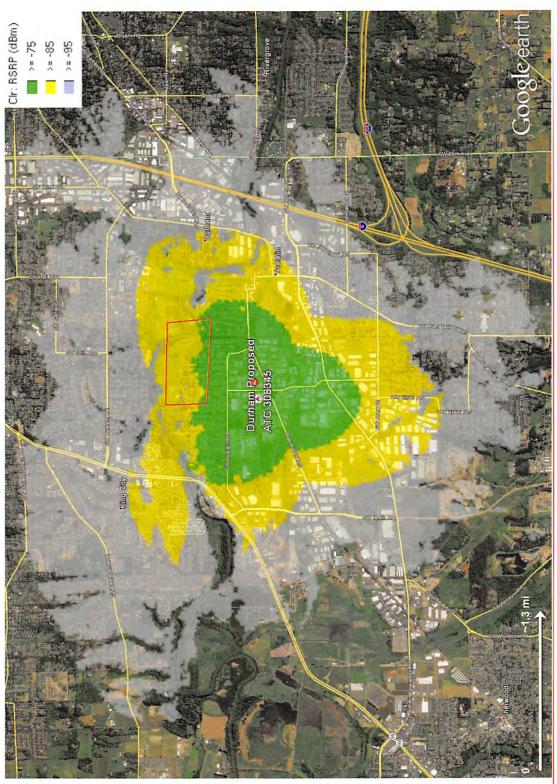
Thank you for your time and attention.

Sincerely,

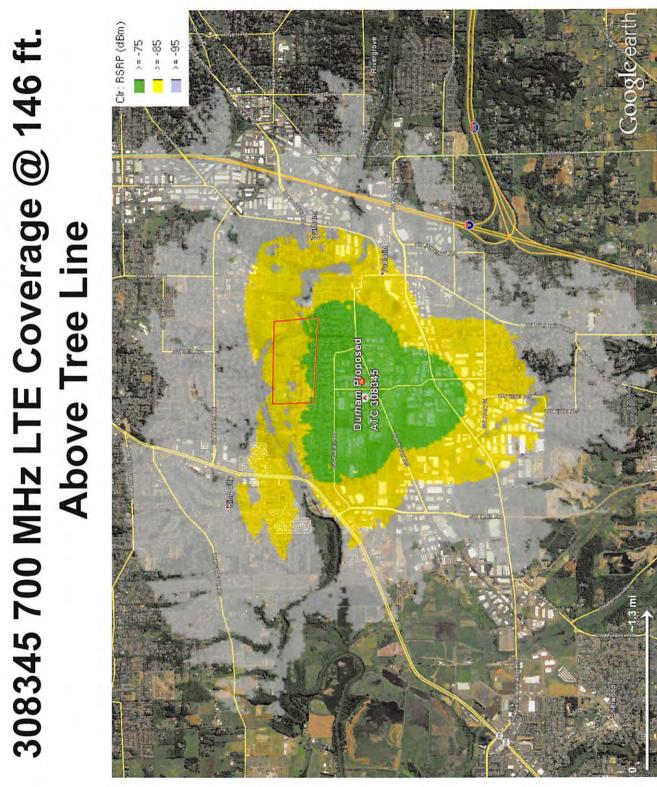
ALAN M. SOREM asorem@sglaw.com Voice Message #303

Enclosures cc: Client



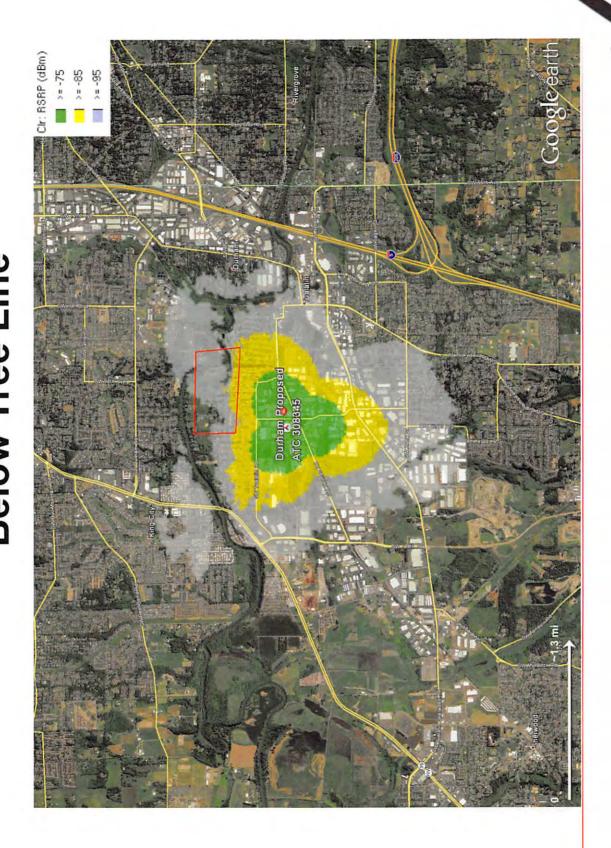






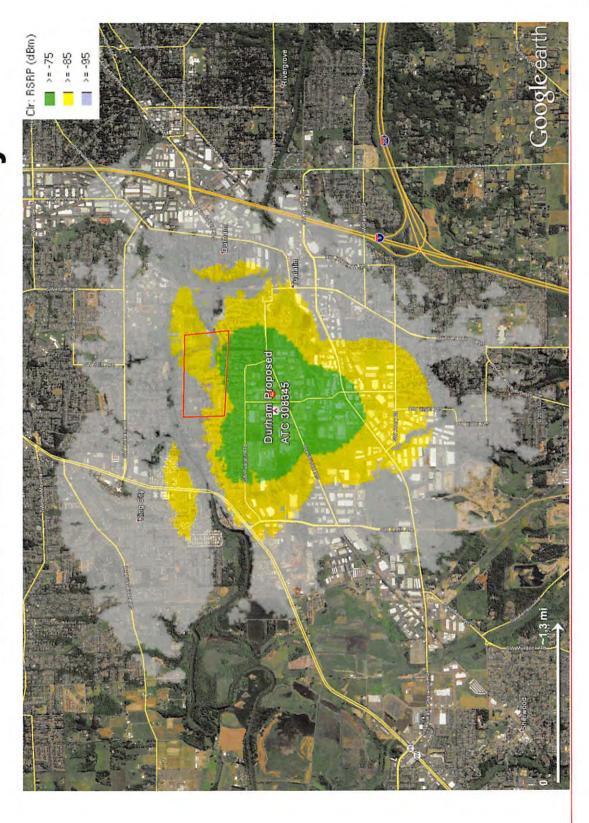


308345 700 MHz LTE Coverage @ 110 ft. Below Tree Line



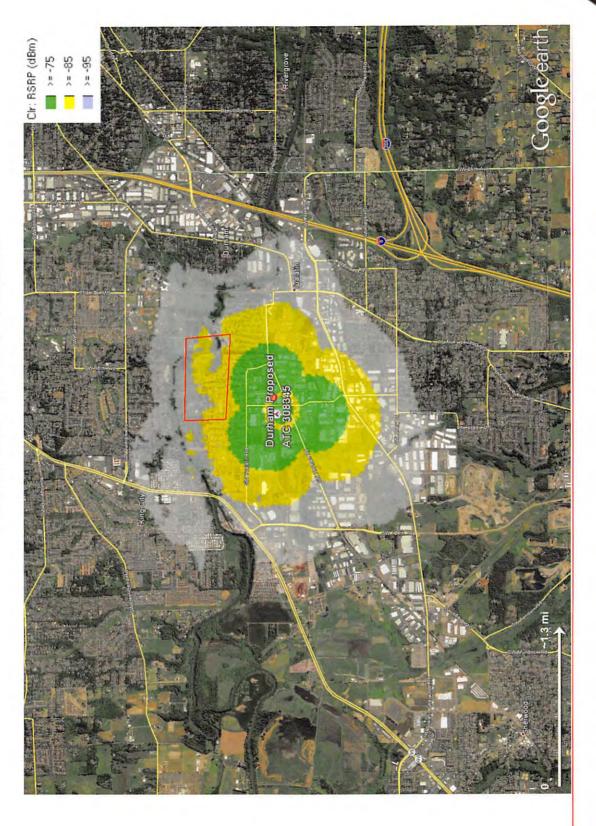


308345 700 MHz LTE Coverage @ 110 ft. Trees Pruned 155 ft. Radially



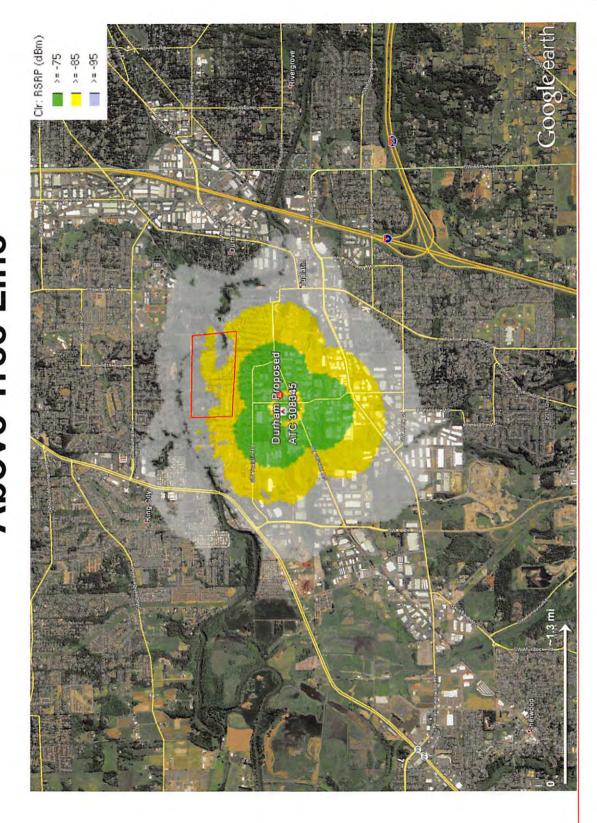


308345 2,100 MHz (AWS) LTE Coverage @ 150 ft. Above Tree Line



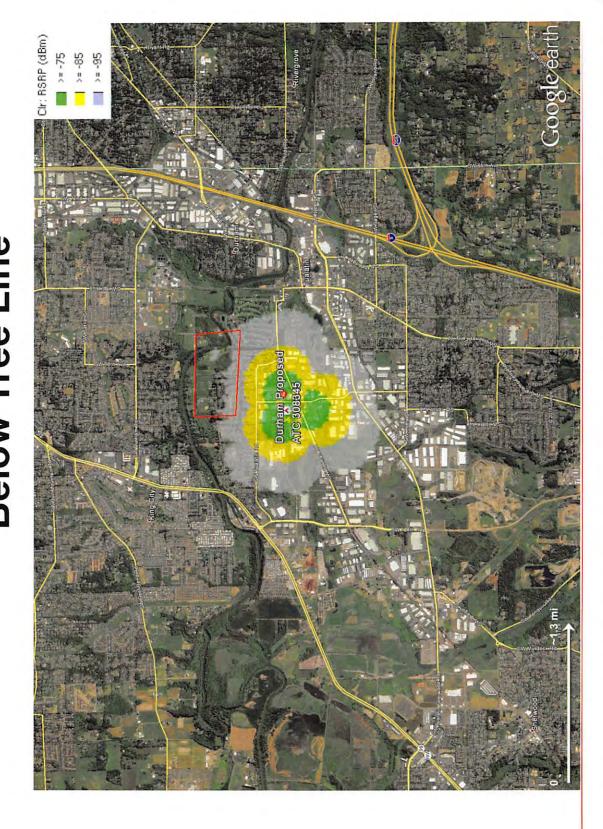


308345 2,100 MHz (AWS) LTE Coverage @ 146 ft. Above Tree Line



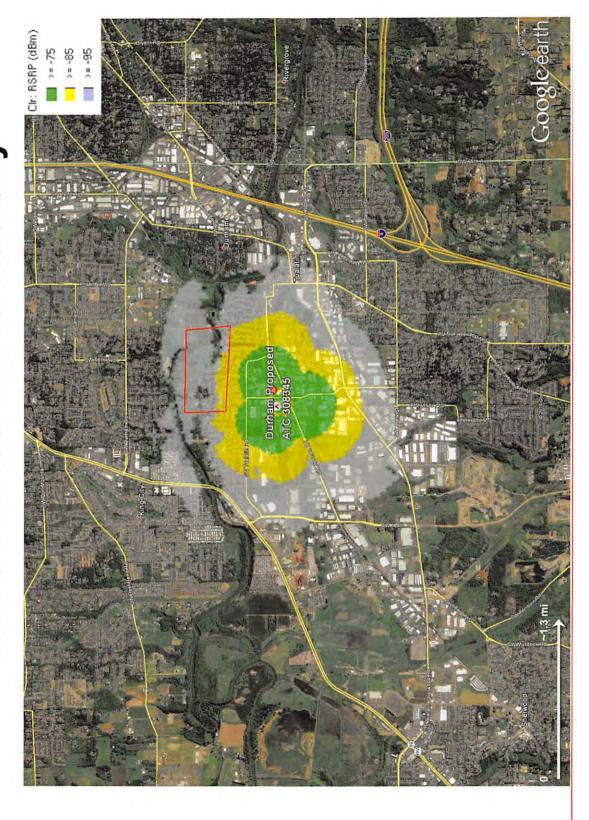


308345 2,100 MHz (AWS) LTE Coverage @ 110 ft. Below Tree Line





308345 2,100 MHz (AWS) LTE Coverage @ 110 ft. Trees Pruned 155 ft. Radially







Cantay Ozkan American Tower Corporation 10 Presidential Way Woburn, MA 01801 November 7, 2017

ATC Site: 308345 King City OR 1 (10318 SW Herman Rd, Tualatin, OR 97062-8841)

Tower: 130 ft. Monopole

Subject: Initial Structural Evaluation of Existing Tower

American Tower Engineering Services has completed an initial structural review of the above noted tower. The purpose of this review was to provide a preliminary evaluation as to if the tower can support T-Mobile and Verizon's newly proposed future equipment at the requested rad centers pertaining to two different scenarios. Both scenarios will keep the existing Sprint Nextel equipment and its corresponding rad height as existing at 130 ft.

Scenario 1: The existing 130 ft monopole to have a 20 ft proposed extension with Verizon obtaining a new rad height of 150 ft and T-Mobile of 140 ft. Both carriers will have the following loading scenario: (12) 8 ft panels and (12) RRU's on a platform w/ handrails.

Scenario 2: The existing 130 ft monopole to have Verizon obtain a new rad height of 120 ft and T-Mobile of 110 ft. Both carriers will have the following loading scenario: (12) 8 ft panels and (12) RRU's on a platform w/ handrails.

After review, the tower and foundation would be able to accommodate, structurally, both scenarios per ANSI/TIA-222-G specifications. No structural upgrades to the tower or foundation, aside from the extension, would be needed for either scenario.

Please contact the undersigned with any questions regarding this report at 919.466.5004.

OREGON OREGON

Nov 7 2017 2:26 PM COSIGN

Bryan Lanier, P.E., S.E. Director, Customer Engineering



From: T-Mobile.com

Sent: Thursday, November 02, 2017 10:12 AM

To: Mike Clarke

Subject: RE: ATC# 308345 - King City OR 1

Hi Mike,

This tower was my first choice but when we visited the location, we found it is surrounded by taller trees. We couldn't even see tower from road except from one spot. If we cando something about these trees, I would definitely like to go on this tower.

Thanks

From: Mike Clarke [mailto:Michael.Clarke@americantower.com]

Sent: Thursday, November 02, 2017 10:04 AM **To:** <u>@T-Mobile.com</u>>

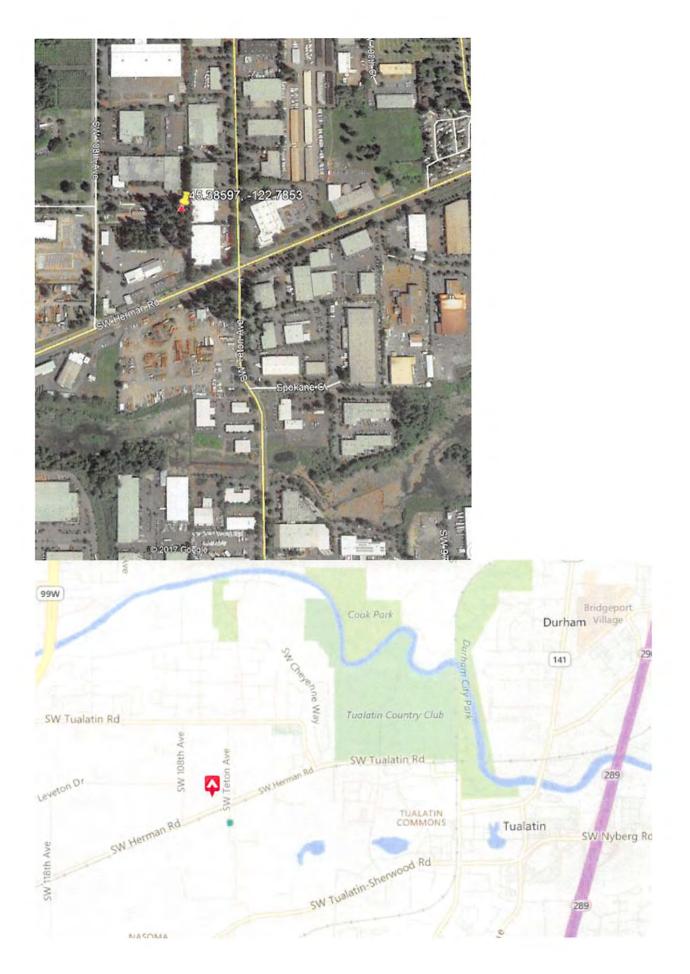
Subject: ATC# 308345 - King City OR 1



I heard for outside source that you may be interested in this site area near Tualatin. Let me know if that is correct. We have a 130' tower with plenty of space and capacity.

Lat/Long: 45.38597, -122.7853





Mike Clarke

Territory Manager - Business Development
Pacific Northwest, Alaska and Hawaii
American Tower Corporation
Carnation, WA
425-754-7533 Cell
michael.clarke@americantower.com
Find, Apply and Track Online with ON AIR Access.

COMMUNICATIONS SITE LEASE AGREEMENT

This Lease Agreement ("Agreement") is entered into this <u>13</u> day of <u>March</u>, 2000 between Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications ("Lessee"), and the City of Tualatin, Oregon, an Oregon municipal corporation ("City").

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. Premises. City is the owner of a parcel of land (the "Land") located in the City of Tualatin, County of Washington, State of Oregon, commonly known as 10699 SW Herman Road, Tualatin, Oregon 97062. The Land is more particularly described in Exhibit A, which is attached. City hereby leases to Lessee approximately 3600 square feet of the Land and all access and utility easements, if any, (the "Premises"), described in Exhibits A-2 and B which are attached.
- 2. Use. Lessee may use the Premises for permitted uses only ("Permitted Uses"). Permitted Uses include any activity in connection with the provision of communications services. City agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and all other necessary approvals that may be required for Lessee's intended use of the Premises. Subject to paragraphs 7 and 13 below, Lessee agrees to permit other telecommunications providers to colocate on Lessee's tower or pole provided the other telecommunications provider enters into an Agreement with Lessee for the tower or pole space.
- 3. Tests and Construction. After the full execution of this Agreement, Lessee may enter the Land at any time for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the Lessee Facilities, as described in Paragraph 6(a). As provided for in paragraph 6 below, the City may restrict or limit access to the Site when the City is operating its Emergency Command Center.
- 4. Term. The term of this Agreement is five (5) years, commencing eighteen months after full execution or upon the start of construction of Lessee Facilities, whichever occurs first ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided in Paragraph 10. Lessee has the right to extend the Term for three (3) successive five (5) year periods (the "Renewal").

Terms") on the same terms and conditions as set forth in this Agreement. This Agreement shall automatically be extended for each successive Renewal Term unless Lessee notifies the City of its intention not to renew prior to the commencement of the succeeding Renewal Term.

5. Rent.

(a) Upon the Commencement Date and on the first day of each month thereafter, Lessee shall pay to City as rent ("Rent"). Rent for any fractional month at the beginning or end of the Term or Renewal Term shall be pro rated. Rent shall be payable to City of Tualatin, at P.O. Box 369, Tualatin, Oregon 97062, Attention: Operations.



6. Facilities: Utilities: Access.

- (a) Lessee has the right to erect, maintain and operate on the premises radio communications facilities, including without limitation an antenna tower or pole and foundation, utility lines, transmission lines, air conditioned equipment shelters, electronic equipment, radio transmitting and receiving antennas, supporting equipment and structures ("Lessee Facilities"). In connection with these facilities, Lessee may do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense, in a good workmanlike manner. Title to Lessee's Facilities shall be held by Lessee. All of Lessee's facilities shall remain Lessee's personal property and are not fixtures. Lessee may remove all Lessee's Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided, Lessee repairs any damage to the Premises caused by such removal. Upon termination of this Agreement, Lessee shall not be required to remove any foundation more than one foot below grade level.
- (b) Lessee shall pay for the electricity it consumes in its operation at the rate charged by the servicing utility company. Lessee shall obtain separate utility service for its Facilities. City agrees to sign such documents or easements as required by the utility companies to provide services to the Premises, including the grant to Lessee or to the servicing utility company at no cost to Lessee, of an easement in,

- over, across or through the Land as required by the utility company to provide utility service as provided in this Agreement in a location acceptable to the City and the servicing utility company.
- (c) Lessee and the City shall work together to develop a system for Lessee access that will maintain security of the Premises and the Emergency Operations Center, when operating. Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises 24 hours a day, 7 days a week at no charge. City grants a non-exclusive right and easement for pedestrian and vehicular ingress and egress across the portion of the Land described in Exhibit B to Lessee, its agents, employees, contractors, guests and invitees.
- (d) The City shall maintain all access roadways from the nearest public roadway sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. The City shall be responsible for maintaining and repairing such roadway at its sole expense, except for damage caused by Lessee's use of the roadways.
- (e) Lessee agrees to retain an arborist, approved by the City, to determine tree type, health, growth potential and characteristics of trees at the Site that may be impacted by the Lessee Facilities. This information shall be used in the planning of the location of Lessee Facilities. Lessor grants to Lessee permission to construct an access road from (name of nearest public road) to the Premises (the "Access Road", across Land owned by Lessor and adjacent to the Premises, as more fully described in Exhibit B. Lessee will maintain the Access Road at its sole cost and expense, except for any damages resulting from use of the Access Road by Lessor, its agents, employees, licensees, invitees, or contractors, and which costs to repair such damage shall be Lessor's sole responsibility. Lessee agrees to work with the City to locate its Facilities and Access Road in a manner that minimizes the removal of and impact to existing trees. The timber value that results from Lessee removing trees from the Land to construct and operate the Lessee Facilities shall be agreed upon prior to removal and split 50/50 with the City.

7. Interference.

(a) Lessee shall operate the Lessee Facilities in a manner that will not cause interference to the City or to Tualatin Valley Fire and Rescue ("TVF&R"). Lessee shall operate the Lessee Facilities in a manner that will not cause interference to other lessees or licensees of the Land, provided that the lessees' or licensees' installations predate that of the Lessee Facilities and provided their operations are in compliance with all Federal Communications Commission ("FCC") requirements. All operations by Lessee shall be in compliance with all FCC requirements.

- (b) Subsequent to the installation of the Lessee Facilities, City shall not permit its lessees or licensees to install new equipment on the Land or contiguous property which is owned or controlled by the City, if such equipment is likely to cause interference with Lessee's operations. Such interference shall be deemed a breach by City. Prior to the installation of any new equipment by City, TVF&R, future lessees or licensees, City agrees to provide Lessee not less than three (3) months prior written notice along with any relevant plans and specifications for Lessee's review. With respect to future lessees or licensees. Lessee shall review such plans and give its approval, request for changes, or in the event significant interference is likely to result, its refusal to approve the plans. Lessee's approval of the Equipment by other licensees or lessees ("Tenant") shall not be unreasonably withheld or delayed, but may be conditioned upon; (i) receipt of technical information and documentation from the Tenant, by Lessee, which may be reasonably needed in order to perform an analysis, and/or (ii) the implementation of specific measurers by Tenant to assure that interference does not occur. Any such analysis or consent by Lessee shall not constitute a warranty that Tenant's Equipment shall not interfere with Lessee's operations. Both the City and Lessee agree to cooperate and use best efforts in accommodating any future lessees or licensees to the extent technologically feasible. In the event interference occurs, City agrees to take all reasonable steps necessary to eliminate such interference, in a reasonable time period. Nothing in this Agreement shall prohibit the City or the TVF&R from installing, upgrading, or operating their current radio and communication systems, or any future radio and communications systems.
- 8. Taxes. Lessee shall pay all personal and real property taxes on the Land that are attributable to Lessee Facilities.

9. Waiver of Lessor's Lien.

- (a) Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures. Lessee may remove such property at any time without the City's consent.
- (b) City acknowledges that Lessee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection to these arrangements, the City consents to the installation of the Collateral; disclaims any interest in the Collateral, as fixtures or otherwise; and agrees that the Collateral shall be exempt from

execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due; and that the Collateral may be removed at any time without recourse by Lessee to legal proceedings.

- **10. Termination.** This Agreement may be terminated without further liability on 30 days prior written notice as follows:
 - (a) by either party upon a default of a term of this Agreement by the other party which is not cured within 60 days of receipt of written notice; or
 - (b) by Lessee for any reason if Lessee delivers written notice of early termination to the City no later than 30 days prior to the Commencement Date; or
 - (c) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities, or
 - (d) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or
 - (e) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including without limitation, signal interference; or
 - (f) by the City, any time after the completion of the second Renewal Term, so long as City provides written notice to the Lessee at least 60 days prior to the third Renewal Term.
- 11. Destruction or Condemnation. If the Premises or Lessee Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation. If Lessee chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.
- 12. Insurance. Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million Dollars per occurrence. This insurance shall insure, on an occurrence basis, against all liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises. The City, its officers, employees and agents shall be named as an additional insured on Lessee's policy. Lessee shall provide a certificate of insurance to the City evidencing the required coverage within 30 days of the Commencement Date.
- 13. Assignment and Subletting. Lessee may assign this Agreement or the Premises or any portion of the Premises to any entity, subject to the assignee assuming all of Lessee's obligations under this Agreement. Upon

assignment, Lessee shall be relieved of all future performance, liabilities, and obligations under this Agreement. Lessee may sublet this Agreement with the written consent of the City, such consent shall not be unreasonably withheld, conditioned or delayed. This Agreement shall run with the property and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, heirs and assigns. Notwithstanding anything to the contrary in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent, its interest in the Agreement to a financing entity or agent behalf of a financing entity to whom Lessee has obligations for borrowed money or in respect to guaranties for such obligations, has obligations evidenced by bonds, debentures, notes or similar instruments, or has obligations under or with respect to letters of credit, bankers, acceptances and similar facilities or in respect to such guarantees.

- 14. Warranty of Title and Quiet Enjoyment. The City warrants that it owns the Land in fee simple, has rights of access to the Land, and that the Land is free and clear of all liens, encumbrances and restrictions. The City has full right to make and perform this Agreement and covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises. The City agrees to indemnify and hold harmless Lessee from all claims on Lessee's leasehold interest.
- 15. Repairs. Lessee shall keep Lessee Facilities in a reasonable state of repair so that the Facilities are not unsightly or constitute a safety issue. If repairs are needed, Lessee shall make them within a reasonable time. Except as set forth in Paragraph 6(a), upon expiration or termination of this Agreement, Lessee shall restore the Premises to the condition in which it existed upon execution of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.
- 16. Hazardous Substances. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. The City represents, warrants and agrees that neither the City nor, to the City's knowledge, any third party has used generated, stored or disposed of, or permitted the use, generation, storage or disposal of any Hazardous Material on, under, about or within the Land in violation of any law or regulation, and that the City will not and will not permit a third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. The City and Lessee each agree to defend, indemnify and hold harmless the other and the other's officers, employees, and agents against all losses, liabilities, claims and costs, including reasonable attorney's fees and costs arising from a breach of any representation, warranty or agreement contained in this

paragraph. As used in this Agreement, "Hazardous Material" means petroleum or petroleum product, asbestos, any substance known by the State of Oregon to cause cancer or reproductive toxicity, or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state, or local law or regulation. This paragraph shall survive the termination of this Agreement.

17. Miscellaneous.

- (a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. Amendments to this Agreement must be in writing and executed by both parties.
- (b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to person other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (c) This Agreement shall be binding and inure to the benefit of the successors and permitted assignees of the respective parties.
- (d) Any notice or demand required to be given in this Agreement shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the parties set forth below:

Lessee:

Nextel West Corp. d/b/a Nextel Communications 1750 112th Avenue NE, Suite C-100 Bellevue, WA 98004

City: City of Tualatin 18880 SW Martinazzi Tualatin, OR 97062 Attn: Operations Director

With a copy to:

Nextel West Corp. d/b/a Nextel Communications 1750 112th Avenue NE, Suite C-100 Bellevue, WA 98004 Attn: System Development Mgr.

And a copy to:

Nextel Communications, Inc. 2001 Edmund Halley Drive Reston, VA 20191 Mail Stop 6E630

Attn: Site Leasing Services, Contracts Mgr.

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. Notices shall be deemed received upon actual receipt.

- (e) This Agreement shall be governed by the laws of the State of Oregon.
- (f) The City agrees to execute and record a Memorandum of Agreement, attached as Exhibit C, in the official records of Washington County, Oregon.
- (g) Lessee may obtain title insurance on its interest in the Land. The City shall cooperate by executing documentation required by the title insurance company.
- (h) Where the approval or consent of a party is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.
- (i) All Riders and Exhibits attached to this Agreement are material parts of the Agreement.
- (j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:

City of Tualatin, Oregon an Oregon municipal corporation		Nextel West Corp. a Delaware corporation, d/b/a Nextel Communications		
Ву:	Suthery R. Wille	By: Mah B. M		
Date:	3-13-00	Date: 3/10/2000		
Title:	Mayor Pro Tem	Title: Vice President		
Tay ID#:	93-6002269			

LESSEE:

STATE OF OREGON
COUNTY OF Washington
On 3-13-00 before me, the undersigned, a Notary Public for the state, personally appeared Tony Weller personally known to me (or proved to me on the oath of who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposes and says that he/she was present and saw the same person described in and whose name is subscribed to the within and annexed instrument in his/her/their authorized capacity(ies) as a party thereto, execute the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request of
WITNESS my hand and official seal. OFFICIAL SEAL
Maureen A Smith (SEAL) MAUREEN A SMITH NOTARY PUBLIC-OREGON COMMISSION NO. 300886
Notary Public MY COMMISSION EXPIRES JULY 4, 2D
My commission expires: 7/4/2001
STATE OF OREGON Washington
COUNTY OF King Mary M. Murdoch On March 10, 2000, before me, Kassy M. Schashard. Notary Public, personally appeared 41 m/s of Mary Public,
On March 10 Dow, before me, Kasey D. Schashaus, Notary Public,
personally appeared Marie B. Mel Con personally known to me to
proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he
executed the same in his authorized capacity, and that by his signature on the
instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.
WITNESS my hand and official seal.
manny Joch (SEAL)
Notary Public
My commission expires: //// // // // // // // // // // // //

EXHIBIT A-1

DESCRIPTION OF LAND

to the Agreement dated <u>March 13</u> , 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, as Lessor, and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.
The Land is described and/or depicted as follows:
APN: R0530134
The East 247 feet of Lot 11, GLENMORAG PARK, in the City of Tualatin, County of Washington and
The East 247 feet of Lot 11, GLEHMORAG PARK, in the City of Idalatic, Courty of Washington and State of Oregon.

EXHIBIT A-2

DESCRIPTION OF PREMISES

to the Agreement dated <u>March 13</u>, 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, as Lessor, and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Premises is described and/or depicted as follows (metes and bounds):

APN: R0530134

A TRACT OF LAND IN THE HORTHEAST CHARTER OF SECTION 22, TOWNSHIP 2 SOUTH, PLANCE I WEST OF THE WALLAUSTIE MERDIAN, IN. WASHINGTON COUNTY, ORECON, AND BEING A PORTION OF THAT PROPERTY DESCRIBED IN THE PREJUMNATY REPORT BY FIRST AMERICAN TITLE INSURANCE COMPANY OF ORECOM, PREJUMNATY TITLE REPORT NO. 885557, DATED AUGUST 26, 1999, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BECHARING AT THE MORTHEAST CORNER OF LOT 11 OF GLIDAVORAC PARK, THENCE SOUTH OT2610" MEST ALONG THE EAST LINE OF SAID LOT 11, 60.00 FEET, THENCE LEAVING SAID EAST LINE, HORTH 8833'50" NEST, 60.00 FEET, THENCE HORTH 0126'10" EAST, 60.00 FEET, THENCE SOUTH 6833'50" EAST, 60.00 TO THE POINT OF BECHRING.

CONTAINS 3,600 SQUARE FEET, MORE OR LESS

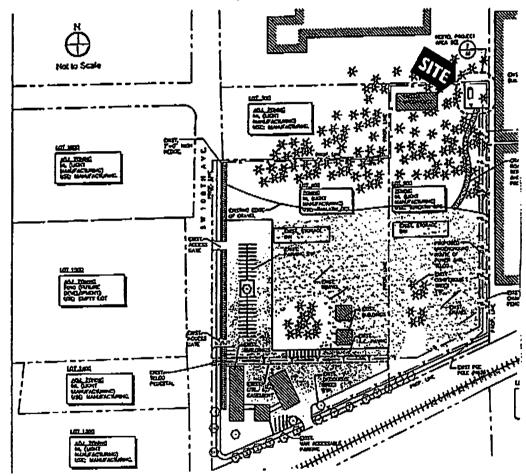


EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated <u>March 13</u>, 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, as Lessor and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Premises are described and/or depicted as follows:



Notes:

- 1. This Exhibit may be replaced by a land survey of the Premises once it is received by Lessee.
- Setback of the Premises from the Land's boundaries shall be the distance required by the applicable governmental authorities.
- Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
- 4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.
- The location of any utility easement is illustrative only. Actual location shall be determined by the servicing utility company in compliance with all local laws and regulations.



CLERK: Please return this document to: Nextel West Corp. 1750 112th Avenue NE, Suite C-100 Bellevue, WA 98004 Attn: Property Manager

EXHIBIT C

MEMORANDUM OF AGREEMENT OR-0146-5 APN: R0530134

This Memorandum of Agreement is entered into on this _____ day of 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, with an address at 18880 SW Martinazzi, Tualatin, OR 97062 (hereinafter referred to as "Lessor") and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, with an office at 1750 112th Avenue NE, Suite C-100, Bellevue, WA 98004 (hereinafter referred to as "Lessee").

- 1. Lessor and Lessee entered into a Communications Site Lease Agreement ("Agreement") on the _____ day of ______, 2000, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.
- 2. The term of the Agreement is for five (5) years commencing on ("Commencement Date"), and terminating on the fifth anniversary of the Commencement Date with three (3) successive five (5) year options to renew.
- 3. The Land which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Lessee (the "Premises") is described in Exhibits A-2 and B annexed hereto.



LESSOR:
City of Tualatin, Oregon,
an Oregon municipal corporation

By:
Date:
Date:
Title:
Title:

SUBSCRIBING WITNESS:

LESSEE:
Nextel West Corp.
a Delaware corporation,
d/b/a Nextel Communications

Title:

Title:

Date:

Date:
Date:

IN WITNESS WHEREOF, the parties have executed this Memorandum of

Agreement as of the day and year first above written.

Title:

STATE OF OREGON

COUNTY OF
On, before me, the undersigned, a Notary Public for the state personally appeared, personally known to me (or proved to me on the oath of, who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposes and says that he/she was present and saw, the same person described in and whose name is subscribed to the within and annexed instrument in his/her/their authorized capacity(ies) as a party thereto, execute the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request of
·
WITNESS my hand and official seal.
(SEAL)
Notary Public
My commission expires:
STATE OF OREGON
COUNTY OF
On, before me,, personally known to me (o proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted executed the instrument.
WITNESS my hand and official seal.
(SEAL)
Notary Public
My commission expires:

THE FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Communications Site Lease Agreement (this "Amendment") is made effective as of the latter signature date hereof (the "Effective Date") by and between City of Tualatin, Oregon, an Oregon municipal corporation ("Landlord") and Tower Asset Sub, Inc., a Delaware corporation ("Tenant") (Landlord and Tenant being collectively referred to herein as the "Parties").

RECITALS

WHEREAS, Landlord owns the real property described on <u>Exhibit A</u> attached hereto and by this reference made a part hereof (the "*Parent Parcel*"); and

WHEREAS, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Communications Site Lease Agreement dated March 13, 2000 (as the same may have been amended from time to time, collectively, the "Lease"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "Leased Premises"), which Leased Premises are also described on Exhibit A; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. One-Time Payment. Tenant shall pay to Landlord a one-time payment in the amount of subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before September 31, 2017; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's ownership; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
- 2. Lease Term Extended. Notwithstanding anything to the contrary contained in the Lease or this Amendment, the Parties agree the Lease originally commenced on April 1, 2000 and, without giving effect to the terms of this Amendment but assuming the exercise by Tenant of all remaining renewal options contained in the Lease (each an "Existing Renewal Term" and, collectively, the "Existing Renewal Terms"), the Lease is otherwise scheduled to expire on March 31, 2020. In addition to any Existing Renewal Term(s), the Lease is hereby amended to provide Tenant with the option to extend the Lease for each of four (4) additional five (5) year renewal terms (each a "New Renewal Term" and, collectively, the "New Renewal Terms"). Notwithstanding anything to the contrary contained in the Lease, (a) all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease at least sixty (60) days prior to the commencement of the next Renewal Term (as defined below) and (b) Landlord shall be able to terminate this Lease only in the event of a material default by Tenant, which default is not cured within sixty (60) days of Tenant's receipt of written notice thereof, provided, however, in the event that Tenant has diligently commenced to cure a material default within sixty (60) days of Tenant's actual receipt of notice thereof and reasonably requires additional time beyond the sixty (60) day cure period described herein to effect such cure, Tenant shall have such additional time as is necessary (beyond the sixty [60] day cure period) to effect the cure. References in this Amendment to "Renewal Term" shall refer, collectively, to

the Existing Renewal Term(s) and the New Renewal Term(s). The Landlord hereby agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as Exhibit B and by this reference made a part hereof (the "Memorandum") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3.	Lea	tand Escalation. Commencing on April 1, 2020, the rent payable from Tenant to Landlord under the se is hereby increased to per onth (the "Rent"). Commencing on April 1, 2021 and on each successive annual anniversary thereof the "Increase Date"),
	Dat	In the nt of any overpayment of Rent or Collocation Fee (as defined below) prior to or after the Effective e, Tenant shall have the right to deduct from any future Rent payments an amount equal to the rpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any
	oth Am esc	er payments expressly required to be paid by Tenant to Landlord under the Lease and this endment shall be paid to City of Tualatin, Oregon. The escalations in this Section shall be the only alations to the Rent and any/all rental escalations otherwise contained in the Lease are hereby null void and of no further force and effect.
4.	Rev	venue Share.
	a.	Subject to the other applicable terms, provisions, and conditions of this Section, Tenant shall pay Landlord of any rents actually received by Tenant under and pursuant to the terms and provisions of any new sublease, license or other collocation agreement for the use of any portion of the Leased Premises entered into by and between Tenant and a third party (any such third party, the "Additional Collocator") beginning Effective Date (any such amounts, the "Collocation Fee"). Notwithstanding the foregoing, Landlord shall not be entitled to receive any portion of any sums paid by a licensee or sublessee to reimburse Tenant, in whole or in part, for any improvements to the Leased Premises or any structural enhancements to the tower located on the Leased Premises (such tower, the "Tower"), or for costs, expenses, fees, or other charges incurred or associated with the development, operation, repair, or maintenance of the Leased Premises or the Tower.
	b.	The initial payment of the Collocation Fee shall be due within thirty (30) days of actual receipt by Tenant of the first collocation payment paid by an Additional Collocator. In the event a sublease or license with an Additional Collocator expires or terminates, Tenant's obligation to pay the Collocation Fee for such sublease or license shall automatically terminate upon the date of such expiration or termination. Notwithstanding anything contained herein to the contrary, Tenant shall have no obligation to pay to Landlord and Landlord hereby agrees not to demand or request that

Tenant pay to Landlord any Collocation Fee in connection with the sublease to or transfer of Tenant's obligations and/or rights under the Lease, as modified by this Amendment, to any subsidiary, parent or affiliate of Tenant.

- Landlord hereby acknowledges and agrees that Tenant has the sole and absolute right to enter into, C. renew, extend, terminate, amend, restate, or otherwise modify (including, without limitation, reducing rent or allowing the early termination of) any future or existing subleases, licenses or collocation agreements for occupancy on the Tower, all on such terms as Tenant deems advisable, in Tenant's sole and absolute discretion, notwithstanding that the same may affect the amounts payable to the Landlord pursuant to this Section.
- d. Notwithstanding anything to the contrary contained herein, Landlord hereby acknowledges and agrees that Tenant shall have no obligation to pay and shall not pay to Landlord any Collocation Fee in connection with: (i) any subleases, licenses, or other collocation agreements between Tenant, or Tenant's predecessors- in-interest, as applicable, and any third parties, or such third parties' predecessors or successors- in-interest, as applicable, entered into prior to the Effective Date (any such agreements, the "Existing Agreements"); (ii) any amendments, modifications, extensions, renewals, and/or restatements to and/or of the Existing Agreements entered into prior to the Effective Date or which may be entered into on or after the Effective Date; (iii) any subleases, licenses, or other collocation agreements entered into by and between Tenant and any Additional Collocators for public emergency and/or safety system purposes that are required or ordered by any governmental authority having jurisdiction at or over the Leased Premises; or (iv) any subleases, licenses or other collocation agreements entered into by and between Tenant and any Additional Collocators if the Landlord has entered into any agreements with such Additional Collocators to accommodate such Additional Collocators' facilities outside of the Leased Premises and such Additional Collocators pay any amounts (whether characterized as rent, additional rent, use, occupancy or other types of fees, or any other types of monetary consideration) to Landlord for such use.
- 5. Landlord and Tenant Acknowledgments. Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. The parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent or approval from, or to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant's interest in this Lease, as modified by this Amendment. Tenant and Tenant's sublessees and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way on a 24 hours per day, 7 days per week basis, together with utilities services to the Leased Premises from a public right of way. Upon request by Tenant and at Tenant's sole cost and expense but without additional consideration owed to Landlord, Landlord hereby agrees to promptly execute and return to Tenant building permits, zoning applications and other forms and documents, including a memorandum of lease, as required for the use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. Landlord hereby appoints Tenant as Landlord's attorney-in-fact coupled with an interest to prepare, execute and deliver land use and zoning and building permit applications that concern the Leased Premises, on behalf of Landlord with federal, state and local governmental authorities, provided that such applications shall be limited strictly to the use of the Leased Premises as a wireless telecommunications facility and that such attorney-in-fact shall

Site No: 308345

- not allow Tenant to re-zone or otherwise reclassify the Leased Premises or the Parent Parcel. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
- 6. Limited Right of First Refusal. Notwithstanding anything to the contrary contained herein, this paragraph shall not apply to any fee simple sale of the Parent Parcel from Landlord to any prospective purchaser that is not a Third Party Competitor (as herein defined). If Landlord receives an offer or desires to offer to: (i) sell or convey any interest (including, but not limited to, leaseholds or easements) in any real property of which the Leased Premises is a part to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "Third Party Competitor") or (ii) assign all or any portion of Landlord's interest in the Lease to a Third Party Competitor (any such offer, the "Offer"), Tenant shall have the right of first refusal to purchase the real property or other interest being offered by Landlord in connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant must provide Landlord with notice of its election not later than forty-five (45) days after Tenant receives written notice from Landlord of the Offer. If Tenant elects not to exercise Tenant's right of first refusal with respect to an Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease, as modified by this Amendment. Landlord hereby acknowledges and agrees that any sale or conveyance by Landlord in violation of this Section is and shall be deemed to be null and void and of no force and effect. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
- 7. Landlord Statements. Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the sole owner of the Leased Premises and all other portions of the Parent Parcel; (v) to the best of Landlord's knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises or any other portion of the Parent Parcel which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment; and (vi) the square footage of the Leased Premises is the greater of Tenant's existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment. Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs, fees, expenses, or charges of any kind sustained or incurred by Tenant as a result of the breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.
- 8. <u>Confidentiality.</u> Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential.

Except with Landlord's family, attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.

- 9. Notices. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: City of Tualatin, Oregon, 18880 SW Martinazzi Avenue, Tualatin, OR 97062; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
- 10. Counterparts. This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
- 11. Governing Law. Notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.
- 12. <u>Waiver</u>. Notwithstanding anything to the contrary contained herein, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
- 13. Tenant's Securitization Rights; Estoppel. Landlord hereby consents to the granting by Tenant of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "Security Interest") in Tenant's interest in this Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("Tenant's Mortgagee") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a "Holder") as "Tenant" hereunder in the event a Holder succeeds to the interest of Tenant hereunder by the exercise of such remedies. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Holder.
- 14. <u>Taxes</u>. The Parties hereby agree that Section 8 of the Lease is deleted in its entirety. During the term of the Lease, Landlord shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Parent Parcel, including the Leased Premises. Tenant hereby agrees to reimburse Landlord for any personal property taxes in addition to any increase in real property taxes levied against the Parent Parcel, to the extent both are directly attributable to Tenant's improvements on

the Leased Premises (but not, however, taxes or other assessments attributable to periods prior to the Effective Date), provided, however, that Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of such personal property taxes or real property tax increase to Tenant along with proof of payment of same by Landlord. Anything to the contrary notwithstanding, Tenant shall not be obligated to reimburse Landlord for any applicable taxes unless Landlord requests such reimbursement within one (1) year after the date such taxes became due. Landlord shall submit requests for reimbursement in writing to: American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801 unless otherwise directed by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Landlord. Tenant shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Tenant. If Landlord fails to pay when due any taxes affecting the Parent Parcel as required herein, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord's behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord's behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord's behalf by any lawful means.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

LANDLORD:	
City of Tualatin, Oregon an Oregon municipal corporation	
Signature:	
Print Name:	
Title:	
Date:	

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

TENANT:		
Tower Asset Sub	, Inc.	
a Delaware corpo	•	
Signature:		
Print Name:		
Title:		
Data		

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below.

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

EXHIBIT A (Continued) LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE I WEST OF THE WILLAMETTE MERIDIAN, CITY OF TUALATIN, WASHINGTON COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 11. "GLENMORAG PARK"; THENCE ALONG THE EAST LINE OF SAID LOT 11, S01°23'18"W, A DISTANCE OF 60.00 FEET; THENCE LEAVING SAID EAST LINE, N88°05'14"W, A DISTANCE OF 60.00 FEET; THENCE N01°23'18"E, A DISTANCE OF 60.00 TO THE NORTH LINE OF SAID LOT 11; THENCE ALONG THE NORTH LINE OF SAID LOT 11, S88°05'14"E, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT A (Continued) ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

TOGETHER WITH A 20 FOOT ACCESS AND UTILITY EASEMENT OVER, ACROSS OR THROUGH THE EAST PORTION OF LOTS 11, 12 AND 13, "GLENMORAG PARK", SITUATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE I WEST OF THE WILLAMETTE MERIDIAN, CITY OF TUALATIN, WASHINGTON COUNTY, OREGON, THE CENTERLINE OF SAID EASEMENT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING S01°23'18"W, A DISTANCE OF 60.00 FEET AND N88°05'14"W, A DISTANCE OF 47.09 FEET FROM THE NORTHEAST CORNER OF SAID LOT 11; THENCE S11°04'34"W, A DISTANCE OF 186.33 FEET; THENCE S30°43'39"W, A DISTANCE OF 161.21 FEET; THENCE S06°27'58"W, A DISTANCE OF 162.15 FEET; THENCE S08°36'31"W, A DISTANCE OF 120.65 FEET; THENCE S11°24'13"E, A DISTANCE OF 19.50 FEET TO THE NORTH RIGHT OF WAY LINE OF S.W. HERMAN ROAD (40 FEET WIDE).

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

Prepared by and Return to:

American Tower 10 Presidential Way Woburn, MA 01801

Attn: Land Management/Sean Chen, Esq.

ATC Site No: 308345

ATC Site Name: King City OR 1
Assessor's Parcel No(s): R0530189

MEMORANDUM OF LEASE

This Memorandum of Lease (the " <i>Memorandum</i> ") is entered into on the	day of
, 201 by and between City of Tualatin, Oregon, an O	regon municipal corporation
("Landlord") and Tower Asset Sub, Inc., a Delaware corporation ("Tenant").	

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

- 1. Parent Parcel and Lease. Landlord is the owner of certain real property being described in Exhibit A attached hereto and by this reference made a part hereof (the "Parent Parcel"). Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Communications Site Lease Agreement dated March 13, 2000 (as the same may have been amended from time to time, collectively, the "Lease"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary ofcertain easements for access and public utilities all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "Leased Premises"), which Leased Premises is also described on Exhibit A.
- Expiration Date. Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise
 by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be
 March 31, 2040. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any
 option to renew the term of the Lease.
- 3. <u>Leased Premises Description</u>. Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on <u>Exhibit A</u> with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.
- 4. Right of First Refusal. There is a right of first refusal in the Lease.

- 5. Effect/Miscellaneous. This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
- 6. Notices. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: City of Tualatin, Oregon, 18880 SW Martinazzi Avenue, Tualatin, OR 97062; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
- 7. Counterparts. This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- 8. Governing Law. This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

Site No: 308345

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day and year set forth below.

LANDLORD	2 WITNESSES
City of Tualatin, Oregon an Oregon municipal corporation,	
Signature: Print Name: Title: Date:	Print Name:
WITNES	S AND ACKNOWLEDGEMENT
State of	
County of	
personally appeared of satisfactory evidence, to be the person(s) acknowledged to me that he/she/they exect	, 201, before me, the undersigned Notary Public, who proved to me on the basis whose name(s) is/are subscribed to the within instrument and uted the same in his/her/their authorized capacity(ies), and that ent, the person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	
Print Name: My commission expires:	[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Site No: 308345

TENANT	WITNESS		
Tower Asset Sub, Inc. a Delaware corporation			
Signature: Print Name: Title: Date:	Print Name:		
WITNESS	AND ACKNOWLEDGEMENT		
Commonwealth of Massachusetts			
County of Middlesex			
the undersigned Notary Public, personally app who proved to me on the basis of satisfactory to the within instrument and acknowledged t	vevidence, to be the person(s) whose name(s) is/are subscribed o me that he/she/they executed the same in his/her/their their signature(s) on the instrument, the person(s) or the entity		
WITNESS my hand and official seal.			
Notary Public			
Print Name: My commission expires:	[SEAL]		

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below.

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

Site No: 308345

Site Name: King City OR 1 124 of 186

EXHIBIT A (Continued) LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE I WEST OF THE WILLAMETTE MERIDIAN, CITY OF TUALATIN, WASHINGTON COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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EXHIBIT A (Continued) ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

TOGETHER WITH A 20 FOOT ACCESS AND UTILITY EASEMENT OVER, ACROSS OR THROUGH THE EAST PORTION OF LOTS 11, 12 AND 13, "GLENMORAG PARK", SITUATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, CITY OF TUALATIN, WASHINGTON COUNTY, OREGON, THE CENTERLINE OF SAID EASEMENT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING S01°23'18"W, A DISTANCE OF 60.00 FEET AND N88°05'14"W, A DISTANCE OF 47.09 FEET FROM THE NORTHEAST CORNER OF SAID LOT 11; THENCE S11°04'34"W, A DISTANCE OF 186.33 FEET; THENCE S30°43'39"W, A DISTANCE OF 161.21 FEET; THENCE S06°27'58"W, A DISTANCE OF 162.15 FEET; THENCE S08°36'31"W, A DISTANCE OF 120.65 FEET; THENCE S11°24'13"E, A DISTANCE OF 19.50 FEET TO THE NORTH RIGHT OF WAY LINE OF S.W. HERMAN ROAD (40 FEET WIDE).



STAFF REPORT CITY OF TUALATIN

TO: Tualatin Planning Commissioners

FROM: Charles Benson, Associate Planner

DATE: 11/16/2017

SUBJECT: Consideration of a Variance to the Wireless Communication Facility (WCF)

Separation Requirement for the POR Durham project in the Light Manufacturing

(ML) Planning District at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B

000800) (VAR-17-0001) (RESO TDC 609-17).

ISSUE BEFORE TPC:

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance request for a Wireless Communication Facility (WCF), POR Durham, to locate at 10290 SW Tualatin Road within 1,500 feet of an existing WCF. A separate Architectural Review decision will review the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment. The existing WCF is located at 10699 SW Herman Road approximately 750 feet southwest of the proposed WCF location (see Attachment A).

RECOMMENDATION:

Staff recommends that the Tualatin Planning Commission (TPC) consider the staff report and supporting attachments and grant a variance based on the analysis and findings of the variance criteria.

EXECUTIVE SUMMARY:

Acom Consulting, Inc. proposes to construct a new unmanned wireless communication facility (WCF) on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. on the southwest corner of 10290 SW Tualatin Road. The proposed WCF would include a new 100-foot monopole support tower with antennas mounted at the top and opportunities for ancillary ground equipment including equipment cabinets, natural gas generator, cabling and ice bridge will be located below in a new 25' x 48' secure fenced lease area surrounding the tower. It is anticipated that the proposed WCF will generate approximately 1-2 visits per month from a site technician.

The proposed WCF would be located on an approximately 3.6-acre parcel (Washington County Tax Lot 2S1 23B 000800), the southern of two lots that comprise the entire Tote 'N Stow property. The Tote 'N Stow provides a range of covered and open storage services for recreational vehicles and the proposed WCF would be located on a paved area in the southwest corner of the project site and would not affect existing storage operations. The subject lot and neighboring properties on all sides are located in the City of Tualatin's Light

Manufacturing (ML) Planning District, which generally extends northward to SW Tualatin Road, eastward to SW 100th Court, southward to SW Herman Road, and westward to SW 108th Avenue.

A pre-application conference for this project was held on March 23, 2017. A neighborhood/developer meeting—as required by Tualatin Development Code (TDC) 31.063—was held on May 10, 2017, commencing at 5:30 PM at the Juanita Pohl Center, 8513 SW Tualatin Road, Tualatin, OR 97062. Meeting attendees included members from the project team, one representative from the City of Tualatin, and 14 members from the community.

As the proposed WCF would be located within 1,500 feet of an existing WCF at 10699 SW Herman Road, the proposed WCF requires a variance by the Tualatin Planning Commission (TPC) from the provisions of Tualatin Development Code (TDC) 73.470(9), which requires a 1,500-foot separation between WCFs (see Attachment B, Variance Application).

As stated in TDC Section 33.025(1): "(1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b)." The applicant has chosen to demonstrate compliance with TDC Section 33.025(1)(a)(i) through (iii), and staff have reviewed the application materials included pertinent excerpts in Attachment C, Analysis & Findings, a summary of which is included below.

To grant the requested variance, the TPC must find the applicant has demonstrated compliance with the following:

TDC 33.025(1)(a): Coverage and Capacity

(i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report.

The applicant states that the potential sites outside of the 1,500-foot radius from the existing WCF at 10699 SW Herman Road were eliminated from consideration due to the lack of adequacy of service improvements from these locations and their close proximity to residential areas where these facilities are not permitted or where visual impacts may occur. The applicant also noted that the existing WCF at 10699 SW Herman Road was not a suitable location due to interference from trees surrounding this site (which would affect coverage) and the applicant provided a RF Engineer Interference Letter in addition to the required RF report.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider.

The applicant states that modifications to the existing WCF at 10699 SW Herman Road required to host the proposed antennas would result in greater impacts than those of constructing an entirely new monopole structure at the proposed Tote 'N Stow site, namely increasing the height of the 146-foot-tall existing WCF (which required a variance to permit its construction in 2000) or the topping or removal of trees that were preserved as a condition of that variance (VAR-99-02). The maximum permitted height of WCFs in the Light Manufacturing (ML) Planning

District is 100 feet and the proposed WCF would not require a height variance.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

Staff has confirmed via study area reconnaissance that no such structures exist in the immediate area, noting that maximum structure height in ML Planning Districts (outside of flagpoles and WCFs) is 50 feet.

Staff finds that VAR-17-0001 meets the criteria of TDC 33.025(1)(a).

Staff received one public comment letter voicing concerns about this proposal prior to the scheduled public hearing for this application, which is included as Attachment E.

OUTCOMES OF DECISION:

Approval of VAR-17-0001 and Resolution TDC 609-17 would result in the following:

- Allows the applicant to locate a Wireless Communication Facility (WCF) at 10290 SW Tualatin Road; and
- Allows staff to review an Architectural Review (AR) for the proposed WCF project with an appropriate location.

Denial of VAR-17-0001 would result in the following:

• Prohibits the applicant from locating a WCF at 10290 SW Tualatin Road.

ALTERNATIVES TO RECOMMENDATION:

The Tualatin Planning Commission (TPC) has three options:

- 1. Approve the proposed variance (VAR-17-0001);
- 2. Deny the proposed variance with findings that state which criteria in Tualatin Development Code (TDC) 33.025(1) the applicant fails to meet; or
- 3. Continue the discussion of the proposed variance and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

The Fiscal Year 2017/18 budget allocated revenue to process current planning applications, and the applicant submitted payment per the City of Tualatin Fee Schedule to process the application.

Attachments: Attachment A - Vicinity Map

Attachment B - Variance Application

Attachment C - Analysis & Findings

Attachment D - Powerpoint Presentation

Attachment E - Public Comments

POR DURHAM WIRELESS COMMUNICATION FACILITY

VARIANCE APPLICATION

ATTACHMENT A: VICINITY MAP





City of Tualatin

www.tualatinoregon.gov

APPLICATION FOR VARIANCE

Information						
Name: Reid Stewart			Title: (Consultant/	Agent	
Company Name: Acom Consulting, Inc.						
Current address: 4015 SW Batt	aglia Av	<u>renue</u>				
City: Gresham		State: OR			ZIP Code: 97080	
Phone: 503.720.6526	Fax: N/	A	E	Email: reid.st	ewart@acomconsultinginc.com	
Applicant						
Name: Brandon Olsen			Compa	any Name: <mark>Len</mark> (dlease (US) Telecom Holdings LLC	
Address: 909 Lake Carolyn P	arkway			c/o F	PI Tower Development LLC	
City: Irving	T	State: TX			ZIP Code: 75039	
Phone: 503.951.7515	Fax: N	/A	E		on.olsen@pitowers.com	
Applicant's Signature: See atta	ched LO	DA		Date:		
Property Owner						
Name: TOTE-N-STOW INC	Joar	na Freedman				
Address: 10290 SW Tualatin	Road					
City: Tualatin		State: OR			ZIP Code: 97062	
Phone: 503.692.3930	Fax: N/	A	6	Email:		
Property Owner's Signature:	See a	attached LOA		Date		
(Note: Letter of authorization is requ	ired if not	signed by owner)				
Architect						
Name: Rick Matteson						
Address: 5200 SW Meadows	Road,	Suite 150				
City: Lake Oswego		State: OR			ZIP Code: 97035	
Phone: 425.209.6723	Fax: N/	Ά	1	Email:rick.ma	tteson@acomconsultinginc.com	
Landscape Architect						
Name: N/A						
Address:						
City:		State:			ZIP Code:	
Phone:	Fax: N	<u>/A</u>	E	Email:		
Engineer						
Name: TBD						
Address:						
City:		State:			ZIP Code:	
Phone:	Fax: N	<u>/A</u>		Email:		
Project						
Project Title: POR Durham						
Address: 10290 SW Tualatin	Road	_				
City: Tualatin		State: OR			ZIP Code: 97062	
Brief Project Description:	-1-4: 1	and the second of the second			(114)	
New 100' monopole associated with new wireless communications facility						
Proposed Use: Wireless communication	ne facilit	7/				
vvii 61633 CUITIITIUTIICALIUI	is racill	У				

Value of Improvements:	
\$130,000	

AS THE PERSON RESPONSIBLE FOR THIS APPLICATION, I HEREBY ACKNOWLEDGE THAT I HAVE READ THIS APPLICATION AND STATE THAT THE INFORMATION ABOVE, ON THE FACT SHEET, AND THE SURROUNDING PERTY OWNER MAILING LIST IS CORRECT. I AGREE TO COMPLY WITH ALL APPLICABLE CITY AND COUNTY ORDINANCES AND STATE LAWS REGARDING BUILDING CONSTRUCTION AND LAND USE.

Applicant's Signature:	Date:

Office Use			
Case No:	Date Received:		Received by:
Fee: Complete Review:		Receipt No:	
Application Complete as of:		ARB hearing date (if applicable):	
Posting Verification:		6 copies of drawings (folded)	
1 reproducible 8 ½" X 11" vicinity map		1 reproducible 8 ½" X 11" site, grading, LS, Public Facilities plan	
Neighborhood/Developer meeting materials			

Revised: 6/12/14

APPLICATION FOR VARIANCE

UNMANNED WIRELESS TELECOMMUNICATIONS FACILITY AT:

10290 SW Tualatin Road Tualatin, OR 97062

Prepared By



Date October 03, 2017

Project Name POR Durham



<u>Applicant:</u> Lendlease (US) Telecom Holdings LLC

c/o PI Tower Development LLC 909 Lake Carolyn Parkway

Irving, TX 75039

Co-Applicant: Verizon Wireless (VAW), LLC dba, Verizon Wireless

5430 NE 122nd Avenue Portland, OR 97230

Representative: Acom Consulting, Inc.

Reid Stewart

5200 SW Meadows Road, Suite 150

Lake Oswego, OR 97035

Property Owner: Tote 'N Stow, Inc.

10290 SW Tualatin Road Tualatin, OR 97062

Project Information:

Site Address: 10290 SW Tualatin Road, Tualatin, OR 97062

Parcel: 2S123B000800
Parcel Area: 3.63 acres

Zone Designation: ML (Light Manufacturing Planning District)

Existing Use: Storage Facility

Project Area: 1,200 square foot lease area (25' x 48' fenced equipment area)

Chapter 33: Variances

Section 33.025 - Criteria for Granting a Variance for a Wireless Communication Facility.

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.

 (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not



denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

Response: Verizon Wireless, the co-applicant, has done extensive research looking at opportunities in the area to collocate on existing towers or buildings, as that is always a preferred option when available. If an existing tower or structure is not available at the specified height or not attainable because of space constraints or unreliable structural design, then Verizon Wireless will propose a new tower. In this instance, there is one existing tower, the ATC tower, which is located outside of the search area designated as usable by Verizon Wireless' RF department, but within the 1,500-foot radius of the proposed facility. This tower is not viable as a solution to meet their coverage and capacity objectives due to the existing trees that would cause interference. There are no other existing towers available to collocate on within the area of interest thus a new tower is being proposed, which will in turn be available for other providers to collocate on in the future.

In order to meet the Verizon's coverage and capacity objectives, it is necessary to site a tower within the search ring provided by Verizon's RF department as shown below. Moving outside this search ring is technically not practicable and has adverse effects on providing the needed coverage and capacity objectives the tower is intended to provide, which include nearby high-traffic residential areas to the North. Siting outside the search ring can also create interference with other nearby network sites where coverage may overlap.

The Applicant is requesting a variance to the 1,500-foot tower separation requirement. There is an existing 146-foot ATC monopole support structure outside of the search ring, approximately 750 feet to the SW of the proposed support tower, located at 10699 SW Herman Road. Per the tower owner, there is currently available space on the tower at the 100-foot level, however this is not high enough to avoid interference from multiple trees surrounding the tower and still meet coverage and capacity objectives to the North, as detailed in the attached RF Usage and Facility Justification Report and RF Engineer Interference Letter.

Locating the tower within the search ring and outside the 1,500-foot radius of the nearby existing ATC tower is also not a desirable alternative as it would mean locating in another part of the ML zone without existing screening or in the RML or RMH zone, where a conditional use permit would be required and where it would be very visible to nearby residential areas.

In addition, T-Mobile has also indicated that they intend on co-locating on the proposed WCF, if approved, as the existing ATC tower to the SW will not meet their coverage and capacity requirements either as noted in the attached Letter from T-Mobile RF.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,

Response: The only existing monopole tower located within 1,500 feet of the proposed location cannot be modified as it is not designed to be extended to the necessary height required to avoid interference from the tall trees currently surrounding the tower. The existing tower would need to be removed and replaced with a new tower at least 20-30 feet taller to avoid interference unless the trees were to be removed or reduced in height to approximately the 100-foot level or lower.



Topping the trees would create undesirable visual impacts to nearby residential areas, whereas the proposed location is well screened to nearby residential areas to the North and does not require the removal or trimming of any existing trees. The topped trees would also create a negative visual impact on their own, as over a third of the height would need to be removed to avoid interference.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

Response: No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

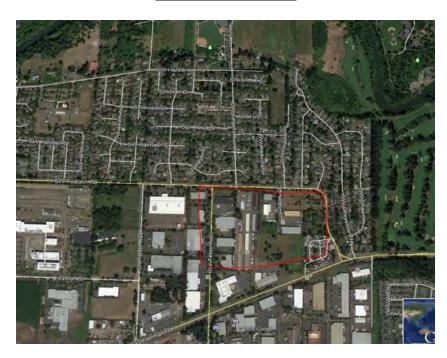
Response: Application has demonstrated compliance with Section 33.025(1)(a) above, however proposed location also meets this requirement and includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.

- (2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:
 - (a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,
 - (b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.

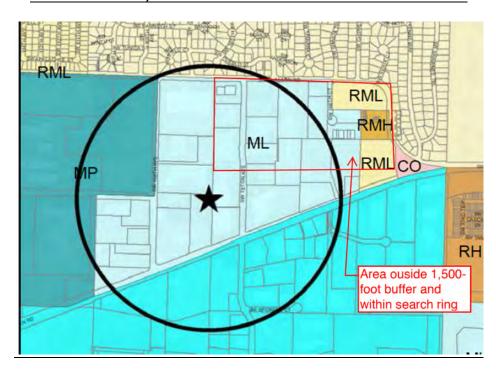
Response: Not applicable – Applicant is not requesting a variance to the maximum allowable height for the proposed WCF.



VERIZON SEARCH RING



EXISTING TOWER 1,500' RADIUS WITH VERIZON SEARCH RING OVERLAP





½ MILE RADIUS OF PROPOSED TOWER



RF Usage and Facility Justification

Durham

Prepared by Verizon Wireless Walid Nasr Jun 14, 2017



Introduction:

There are two main drivers that prompt the need for a new cell site. One is coverage and the other is capacity.

Coverage is the need to expand wireless service into an area that either has no service or bad service. The request for service often comes from customers or emergency personnel. Expansion of service could mean improving the signal levels in a large apartment complex or new residential community. It could also mean providing new service along a newly built highway.

Capacity is the need for more wireless resources. Cell sites have a limited amount of resources to handle voice calls, data connections, and data volume. When these limits are reached, user experience quickly degrades. This could mean customers may no longer be able to make/receive calls nor be able to browse the internet. It could also mean that webpages will be very slow to download.



Capacity is the amount of resources a cell site has to handle customer demand. We utilize sophisticated programs that use current usage trends to forecast future capacity needs. Since it takes an average of (1-3) years to complete a cell site project, we have to start the acquisition process several years in advance to ensure the new cell site is in place before the existing cell site hits capacity limits.

Location, Location. A good capacity cell site needs to be in the center of the user population which ensures even traffic distribution around the cell. A typical cell site is configured in a pie shape, with each slice (aka. sector) holding 33% of the resources. Optimal performance is achieve when traffic is evenly distributed across the 3 sectors.



Coverage Area of Existing Site

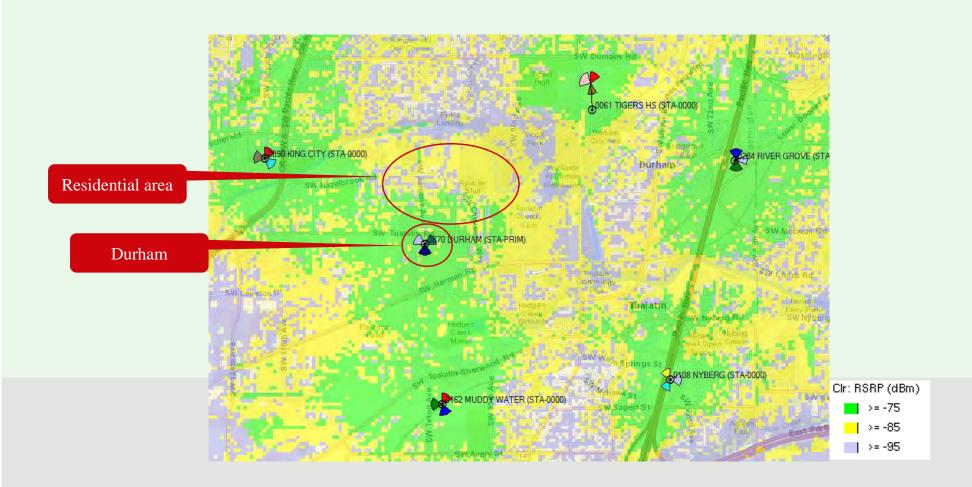
The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.





Coverage Area Offloaded by New Site

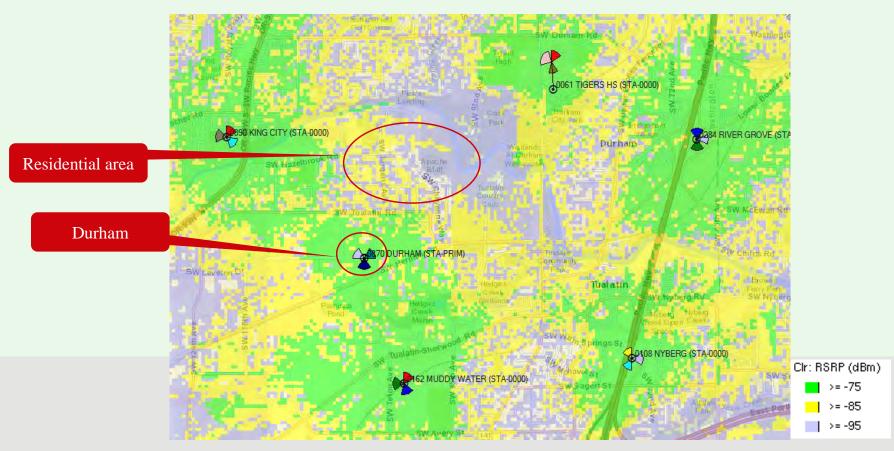
The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.





Coverage Area Offloaded by New Site at New Proposed Location

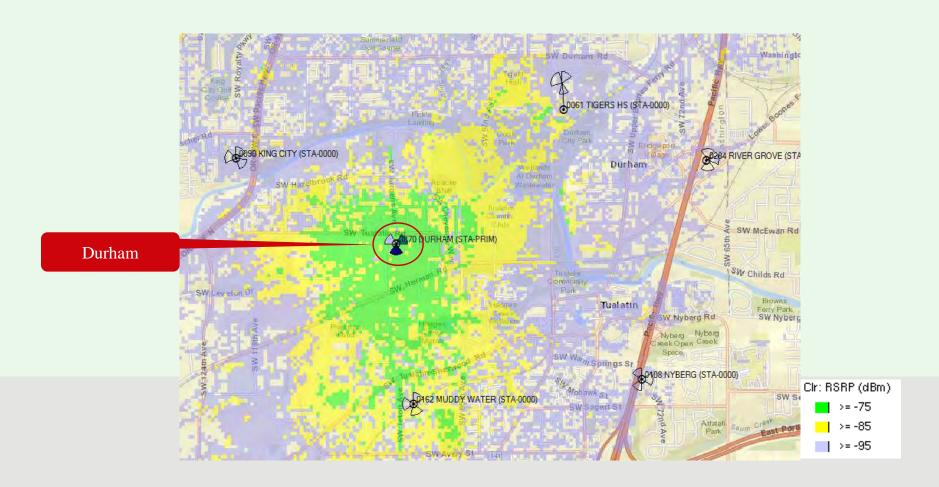
The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.



Marginal coverage in residential area due to surrounding trees at existing ATC tower

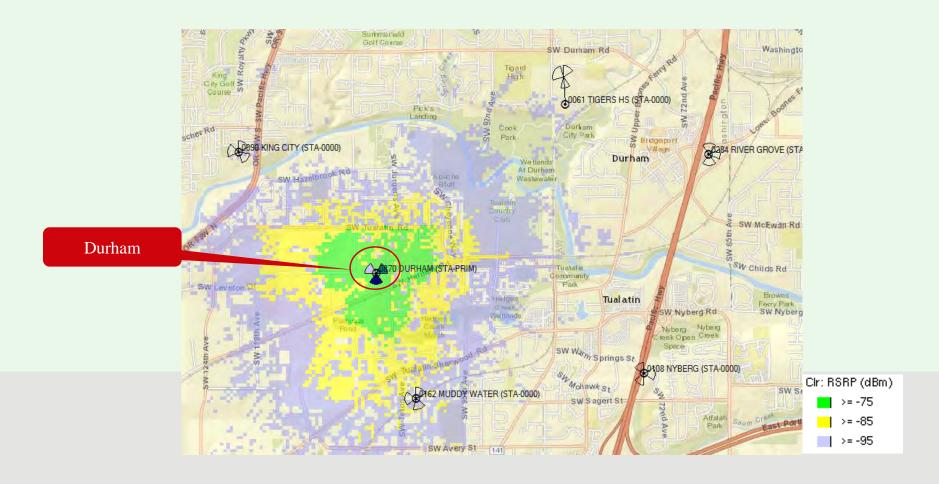


Coverage with Durham Site





Coverage with Durham Site at New Proposed Location





Need Case for: Durham

Summary: The existing sites King City, Muddy Water, TigerHS cannot carry the data traffic that exists in the area it serves.

Detail below:

- Exact data about sites is proprietary and cannot be disclosed due to competitive reasons.
- The existing cell sites King City, Muddy Water, TigerHS are forecasted to reach capacity in the near future.
- The new cell site Durham will provide additional resources to existing sites. It will take some users off of existing sites, which will alleviate the capacity constraint.
- This will improve customer experience (faster webpage downloads and fewer drop calls).
- Without the new site Durham, existing sites in area will reach capacity which will negatively impact customer's ability to make/receive calls and browse the internet.



Andrew H. Thatcher

Environmental Health Physics

July 13, 2017

To: Acom Consulting, Inc. 5200 SW Meadows Rd Suite 150 Lake Oswego, OR 97035

Acom consulting has requested that I review the existing antenna site at 10699 SW Herman Road, Tualatin OR, and evaluate the interference potential due to the existing tree canopy as shown in Figure 1. In performing this evaluation I'll review the basics of wireless transmission, what cellular technology can compensate for and what results in a deficient site. Included in the review is Verizon's propagation models¹ for both their proposed Durham site and the existing ATC tower.

In a perfect world for wireless transmission, an un-attenuated radio signal would be sent by the antenna and received by the user without any interference. This is rarely the case as buildings, hills and trees all combine to make the signals propagate along multiple pathways. The three primary components of signal propagation paths are reflection, diffraction and scattering. Reflection occurs from large smooth surfaces such as roadways or buildings. Diffraction occurs when a large object is in the direct line of sight path, such as a hill or building. Scattering occurs when the radio waves contact objects similar or smaller than the wavelength of the frequency of interest. For wireless transmission that can be from 700 MHz (~17" wavelength) to 2100 MHz (~6" wavelength). Scattering would be the dominant interaction with trees while all sources of interference serve to attenuate the signal to some degree with each interaction.

So the presence of trees creates scattering which causes signal distortion in addition to signal attenuation. The transmitted signals received by the end user (a person's cell phone) will consist not only of the original (un-attenuated) signal but also several secondary signals traveling on different paths. These multi-path signals, since they are a result of scattering (since we're concerned with the effects of trees), travel a longer signal path and therefore arrive at an end user (cell phone) later than the original un-attenuated signal. These late signal arrivals become interference and can result in distortion of the original signal. This type of distortion is frequency dependent with greater distortion occurring at higher frequencies. Multi-path signals are a common occurrence in our environment but such multi-path signals are due to stationary objects such as homes, rooftops, and even trees at a distance. Such distortions can readily be corrected due to the use of a RAKE² receiver in the phone. However, for a tree canopy in a near field environment such as in Figure 1 the obstruction is not constant but in fact continuously

¹ Propagation modeling provided by W. Nasr, Verizon RF Engineer, 7/5/2017.

² Briefly, RAKE receivers are used in the receiver phones of Code Division Multiple Access (CDMA) systems. The receiver collects and treats each time shifted version of the original signal as an independent signal and then combines them into a single signal provided the delay is not too long.

-2- July 16, 2017

changing. The result is scattered signals that may be stronger than direct signal due to signal attenuation since the tree canopy density is not uniform and the signals going through the tree will be attenuated differently. Further, the motion of the trees with wind presents a continuously changing foliage density that results in selective signal fading with time. For the tree canopy shown in Figure 1, the near field environment could easily result in signal attenuation of 10 dB to as much as 20 dB. Combine this attenuation with the constantly changing signal fading environment and the result in a constantly changing delay (due to wind) that the RAKE receiver would have difficulty separating as noise. Reviewing Figure 1 again and one can see that the antennas are near the tops of the trees so the tree movement would include swaying of the trees in addition to individual branch movements.

Figure 2 is the predicted propagation to the residential location of interest from the existing antenna located within the trees. Figure 3 shows the same residential area with the antenna located in the proposed location. Both figures are provided to support the previous qualitative analysis. The figures show that the Reference Signal Received Power (RSRP) is at least 10 dBm lower for each location. Note that this analysis does not consider the effect of wind.

Trees at a distance from the antennas may present acceptable interference as the overall impact could be managed. For antennas placed well beneath the tree canopy in a near field environment affecting all three radiating sectors, it would be difficult to envision a wireless network that could compensate for these factors, the presence of wind, and remain effective in terms of capacity for the site and successful integration with the surrounding wireless sites. The attenuation and scattering of the signal through the trees would result in a lower transmitted power level that could not be improved by increasing the power as that would only serve to also increase the power of the multipath signals. In short, such a setup in the trees would present a problem regardless of the transmitted power level.

To summarize, the existing ATC tower is not a suitable antenna site without substantial modification based on the information provided in this report.



Figure 1: Photo of existing tower surrounded by a dense tree canopy in a near field environment

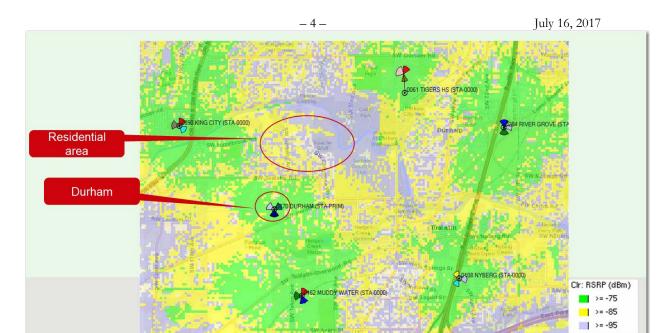


Figure 2: Predicted propagation model showing the residential area of interest from the existing antenna.

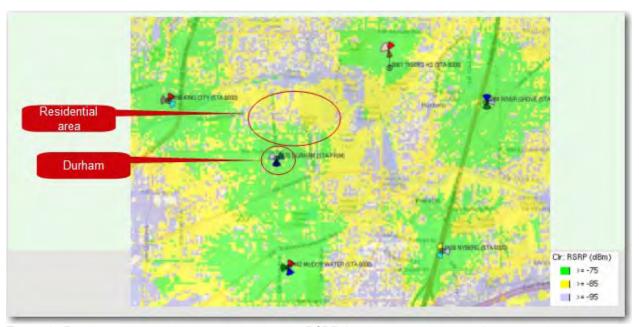


Figure 3: Predicted propagation model showing the RSRP for the residential area of interest with the proposed antenna location.

Qualifications

I am a member of the IEEE, the Institute of Electrical and Electronics Engineers as well as a member of the Health Physics Society. I am a board certified health physicist with a masters in health physics from the Georgia Institute of Technology. I have over 29 years of experience in the evaluation of both ionizing and non ionizing radiation sources. I am a consultant to the ACGIH Threshold Limit Values for Physical Agents Committee as well as a non ionizing subject matter editor for the Health Physics Journal.

Regards,



Andrew H. Thatcher, MSHP, CHP



September 12, 2017

RE: PI Tower Development Project OR-Tualatin-Durham / 10290 SW Tualatin Road

To Whom It May Concern:

T-Mobile West LLC has been seeking to address a significant gap in network coverage in and around the subject vicinity. After assessing the viability of the existing infrastructure in the area, we have identified the proposed PI Tower Development wireless telecommunications facility to be located at 10290 SW Tualatin Rd in Tualatin, Oregon, as the only candidate that will address and eliminate this network gap in coverage. As a result, once the site is completed, T-Mobile intends to proceed with entering into a lease agreement with PI Tower Development and ultimately install equipment on site.

Best regards,

Julio Brown

Sr. RF Engineer

T-Mobile West LLC

Portland, Oregon

POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

VARIANCE APPLICATION (VAR-17-0001)

ATTACHMENT C: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 800 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included within the application materials (Attachment B), and staff has reviewed this and other application materials and included pertinent excerpts below.

The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in Italic font.

<u>Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.</u>

No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.
 - (a) coverage and capacity.
 - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;

<u>Applicant Response:</u> Verizon Wireless, the co-applicant, has done extensive research looking at opportunities in the area to collocate on existing towers or buildings, as that is always a preferred option when available. If an existing tower or structure is not available at the specified height or not attainable because of space constraints or unreliable structural design, then Verizon Wireless will propose a new tower. In this instance, there is one existing tower, the ATC tower, which is located outside of the search area designated as usable by Verizon Wireless' RF department, but within the 1,500-foot radius of the

proposed facility. This tower is not viable as a solution to meet their coverage and capacity objectives due to the existing trees that would cause interference. There are no other existing towers available to collocate on within the area of interest thus a new tower is being proposed, which will in turn be available for other providers to collocate on in the future.

In order to meet the Verizon's coverage and capacity objectives, it is necessary to site a tower within the search ring provided by Verizon's RF department as shown below. Moving outside this search ring is technically not practicable and has adverse effects on providing the needed coverage and capacity objectives the tower is intended to provide, which include nearby high-traffic residential areas to the North. Siting outside the search ring can also create interference with other nearby network sites where coverage may overlap.

The Applicant is requesting a variance to the 1,500-foot tower separation requirement. There is an existing 146-foot ATC monopole support structure outside of the search ring, approximately 750 feet to the SW of the proposed support tower, located at 10699 SW Herman Road. Per the tower owner, there is currently available space on the tower at the 100-foot level, however this is not high enough to avoid interference from multiple trees surrounding the tower and still meet coverage and capacity objectives to the North, as detailed in the attached RF Usage and Facility Justification Report and RF Engineer Interference Letter.

Locating the tower within the search ring and outside the 1,500-foot radius of the nearby existing ATC tower is also not a desirable alternative as it would mean locating in another part of the ML zone without existing screening or in the RML or RMH zone, where a conditional use permit would be required and where it would be very visible to nearby residential areas. In addition, T-Mobile has also indicated that they intend on co-locating on the proposed WCF, if approved, as the existing ATC tower to the SW will not meet their coverage and capacity requirements either as noted in the attached Letter from T-Mobile RF.

Staff notes that the search ring is defined by the service provider based on their coverage and capacity objectives. As highlighted in the "RF Usage and Facility Justification" report, the proposed WCF is intended to improve service to the residential areas immediately adjacent to and on both sides of the Tualatin River (see Figures C-1 and C-2). Areas within the search ring but outside of the 1,500-foot radius of the existing WCF at 10699 SW Herman Road are either within or closer to residential planning districts which either prohibit completely or restrict heights of WCFs (see Figure C-3).



Figure C-1: Existing Coverage

Figure C-2: Proposed Coverage

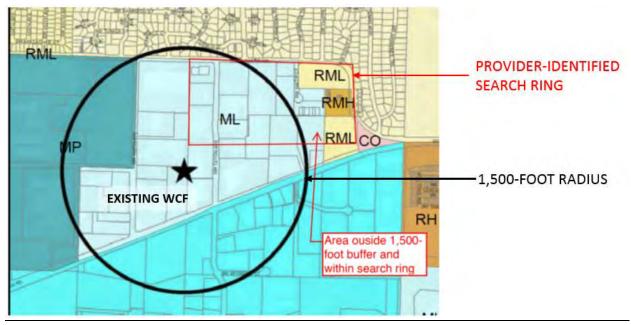


Figure C-3: Search Ring and 1,500-Foot Separate Overlap Map

Staff finds that this criteria is met.

(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and

<u>Applicant Response:</u> The only existing monopole tower located within 1,500 feet of the proposed location cannot be modified as it is not designed to be extended to the necessary height required to avoid interference from the tall trees currently surrounding the tower. The existing tower would need to be removed and replaced with a new tower at least 20-30 feet taller to avoid interference unless the trees were to be removed or reduced in height to approximately the 100-foot level or lower.

Topping the trees would create undesirable visual impacts to nearby residential areas, whereas the proposed location is well screened to nearby residential areas to the North and does not require the removal or trimming of any existing trees. The topped trees would also create a negative visual impact on their own, as over a third of the height would need to be removed to avoid interference.

Based on the conditions at 10699 SW Herman Road, modifying the existing WCF to attach functioning antennas would require either an additional height variance for the existing WCF (which already received one to permit its construction in 2000) or a forced height reduction in the trees adjacent to the existing monopole. In the analysis and findings for the variance (VAR-99-02) that allowed the construction of the existing 146-foot-tall WCF, it was noted that one of the reasons for the granting of that variance was to preserve the grove of approximately 50 tall conifers at heights of 100 to 120 feet (the construction of the existing WCF resulted in the removal of 6 trees). VAR-99-02 included the following:

"The City as the landowner desires to retain the large conifer trees on the subject portion of the Operations Center property and requires that development such as the proposed communications facility disturb as few conifer trees on the site as possible. The applicant states that wireless RF

signals must travel in an unobstructed path from the facility to the user. Because the tower and antennae are proposed to be located in the grove of 100'-120' tall conifers and the City as the property owner does not wish to have the obstructing trees removed, the antennae must be at a height greater than the height of the neighboring trees (with consideration of the future growth of the trees)."

As such, barring a reversal in the City's preference to not remove trees on its Operations Center site, the options for locating a new WCF in this area include either further increasing the height of the existing 146-foot-tall WCF (the maximum allowed WCF height in the Light Manufacturing [ML] Planning District is 100 feet) or constructing a new structure. The applicant is making the case that a new 100-foot-tall structure would result in less impacts than extending the height of the existing WCF at 10699 SW Herman Road.

Staff finds that this criteria is met.

(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

<u>Applicant Response:</u> No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps.

Staff notes that—through field visits—the applicant is correct in their assertion that there are no other structures of suitable height to attach antennas that would provide approximate coverage as the proposed WCF, also noting the maximum structure height (outside of flagpoles and WCFs) of 50 feet in the Light Manufacturing (ML) Planning District.

Staff finds that this criteria is met.

(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

<u>Applicant Response</u>: Application has demonstrated compliance with Section 33.025(1)(a) above, however proposed location also meets this requirement and includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.

Staff notes that the applicant has chosen to demonstrate compliance with TDC Sections 33.025(1)(a)(i) through (iii) above; therefore, a compliance determination with TDC Section 33.025(1)(b) is not required and the standards in this section do not apply.

SUMMARY OF ANALYSIS AND FINDINGS

Based on the application materials and the analysis and findings presented above, staff finds that VAR-17-0001 meets all criteria of TDC 32.025(1)(a), "Criteria for Granting a Variance for a Wireless Communication Facility."





PURPOSE OF HEARING

- Consideration of a variance to allow a new wireless communication facility (WCF) within 1,500-feet of an existing WCF
- Planning Commission must find that applicant demonstrates compliance with Tualatin Development Code (TDC) 33.025(1)(a) or 33.025(1)(b)



HEARING AGENDA

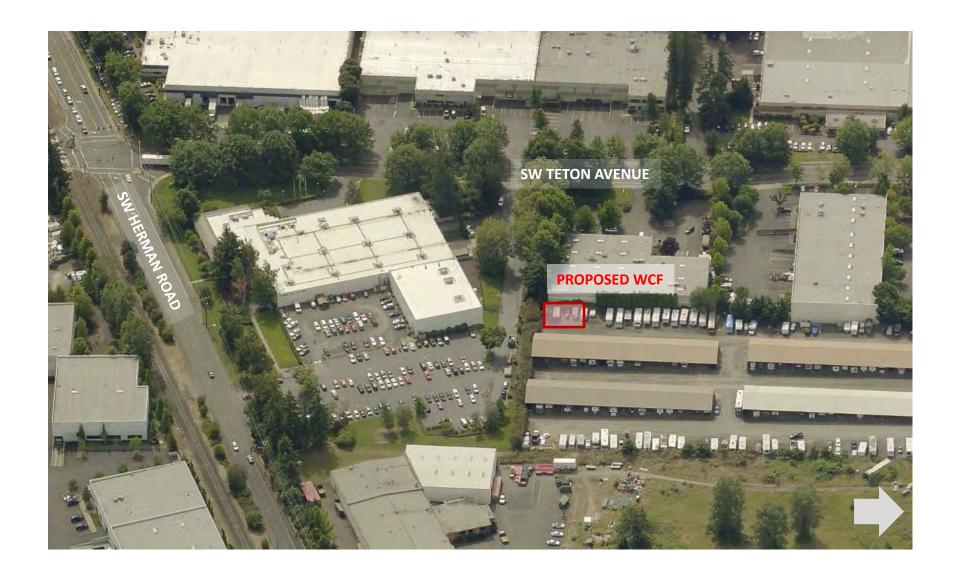
Staff Presentation

- Applicant Presentation
- Public Comment

Commission Deliberation and Decision



VAR-17-0001 POR DURHAM WCF TUALATIN PLANNING COMMISSION
NOVEMBER 16, 2017



VAR-17-0001 POR DURHAM WCF TUALATIN PLANNING COMMISSION NOVEMBER 16, 2017



APPLICANT PROPOSAL

 Applicant proposes to locate a monopole/WCF on the Tote 'N Stow property at 10290 SW Tualatin Road within 1,500 feet of an existing WCF



TDC 33.025(1)(a)

The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below:

- (a) Coverage and capacity; or
- (b) Site characteristics.



TDC 33.025(1)(a)(i)

It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility.

Staff finds this criterion is met.

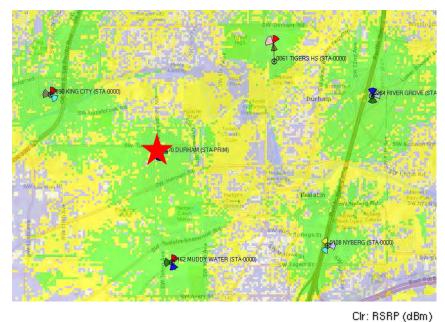


TDC 33.025(1)(a)(i)









Proposed Coverage



VAR-17-0001 POR DURHAM WCF TUALATIN PLANNING COMMISSION NOVEMBER 16, 2017

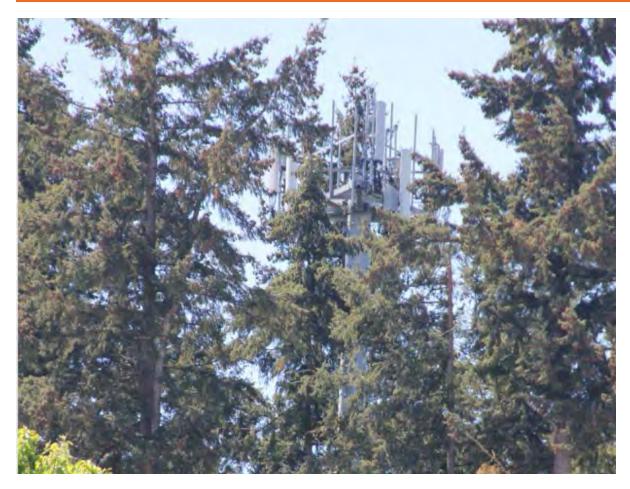


TDC 33.025(1)(a)(ii)

The collocation report shall document that the existing WCFs within 1,500 feet of the proposed WCF cannot be modified to accommodate another provider.

Staff finds this criterion is met.





TDC 33.025(1)(a)(ii)

Existing 146-foot-tall WCF at 10699 SW Herman Road

VAR-17-0001 POR DURHAM WCF TUALATIN PLANNING COMMISSION NOVEMBER 16, 2017



TDC 33.025(1)(a)(iii)

There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

Staff finds this criterion is met.



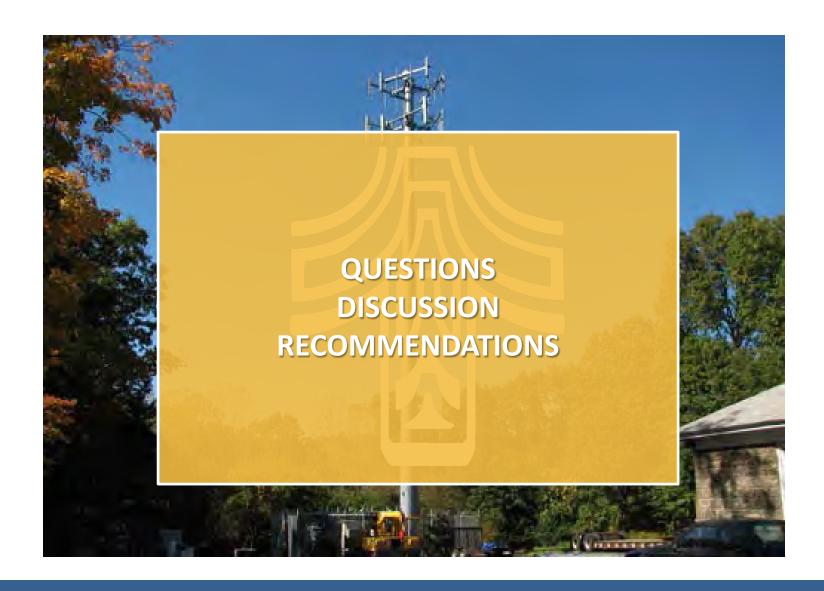
NEXT STEPS (IF APPROVED)

 Architectural Review (AR) of the physical elements of the proposed WCF



PLANNING COMMISSION OPTIONS

- 1. Approve VAR-17-0001 as drafted;
- 2. Deny VAR-17-0001 and cite which criteria applicant fails to meet; or
- 3. Continue discussion to a later date.



VAR-17-0001 POR DURHAM WCF TUALATIN PLANNING COMMISSION NOVEMBER 16, 2017

 From:
 Jason Rogers

 To:
 Charles Benson

 Subject:
 AR17-0010 POR Durham

Date: Thursday, November 02, 2017 1:59:37 PM

Charles –

In response to the notice from the City of Tualatin, I wanted to send my comments as a property owner. Myself and another homeowner from my neighborhood plan to attend the meeting that is planned for 11/16/17 at the Juanita Pohl Center. In the event that something may eliminate attendance between now and 11/16/17, I'm sending so these are part of the record and discussion:

In reviewing the original notice dated 4/17/17 I became concerned about not only the facility but also the monopole. My first concern relates to the facility and equipment that has been described. More specifically the concern is for any increased commercial and truck / vehicle traffic at and around a largely residential area with a predominance of children. The second concern relates to the 100' monopole. As mentioned, this is a largely residential and low-rise industrial area so my concern as a property owner is any negative effect on property values with the construction of the tower which could become an eye-sore. Many of the marketing documents on the project have described the location consideration to include the aesthetic component and that the first priority would be a location that can be shielded by existing trees. Considering the aforementioned demographic of the area I find it hard to visualize where, around the Tote-N-Stow property one could "hide" what equates to a 9+ story building. Finally the last document I received outlined this as a Verizon project. I am not nor do I anticipate being a Verizon customer so if this facility or pole have any negative, aesthetic result (as I understand it) I would see no benefit.

Regards,

Jason Rogers

Agency Principal - AOA West Insurance, Inc. (503) 245-1960 ph. (503) 245-2049 fax

www.aoawest.com



Koback · Connors - Heth

November 29, 2017

VIA EMAIL

Planning Commission City of Tualatin Attn: Aquilla Hurd-Ravich 18880 SW Martinazzi Avenue Tualatin, OR 97062 ahurd-ravich@tualatin.gov

Re: Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.

Application No. VAR-17-0001 Applicant's Closing Argument

Dear Commissioners:

As you know, this firm represents the applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). Pursuant to ORS 197.763(6)(e), this letter constitutes the Applicant's final written argument. Since our November 22, 2017 letter already addresses many of the legal issues, this final written argument will focus on responding to American Tower Corporation's ("ATC") November 22, 2017 submission.

A. The ATC Tower is only approved for 130 feet and will require a new variance to extend it to 146 feet or more.

A critical component of ATC's argument is that ATC's existing tower (the "ATC Tower") has been approved up to 146 feet and it can extend the height of the 130-foot ATC Tower an additional 16 feet without any additional land use approvals. ATC's assertion is directly contrary to the express language in the City Council's variance approval for the ATC Tower (VAR-99-02).

The City Council approved the variance for the ATC Tower pursuant to Resolution No. 3672-50, dated January 24, 2000, and attached findings which clearly limited the height of the tower to 130 feet. See Staff Report, dated December 7, 2017, Attachment A, Exhibit A, p.19-20. The title for Resolution No. 3672-50 provides: "A RESOLUTION GRANTING A VARIANCE (VAR-99-02) TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNA * * *." Staff Report, Attachment A, Exhibit A, p.19. The Resolution further notes that the City Council was considering "the application of Nextel Communications and the City of Tualatin, for a variance from TDC 60.090(4) to allow a 130' high structure and 16' antenna * * *."

> E. Michael Connors 1331 NW Lovejoy Street, Suite 950 Portland, OR 97209 mike@hathawaylarson.com

Page 2 November 29, 2017

Staff Report, Attachment A, Exhibit A, p.19. The City Council findings supporting the Resolution mirror this language, specifically referring to the variance application as a request for "a 130 foot wireless communications monopole tower with up to 16 ft. of antenna * * * ." Staff Report, Attachment A, Exhibit A, p.11.

Based on this express language in the City Council's Resolution and findings for the variance approval for the ATC Tower (VAR-99-02), there is no question that the approval was limited to a 130-foot tower. That is why the ATC Tower is currently 130 feet, as opposed to a 146-foot tower. Since the City has only approved a variance for a 130-foot tower, ATC will be required to obtain a new variance in order to extend the ATC Tower to 146 feet.

B. ATC will be required to obtain a new variance in order to remove the screening trees surrounding the ATC Tower.

As we explained in our November 22 letter, the City Council relied heavily on the screening effect of the surrounding trees to justify the variance when it approved it in 2000. In fact, the City Council specifically relied on these screening trees as one of the primary bases for determining compliance with approval criteria 1, 3 and 4. Staff Report, Attachment A, Exhibit A, p.13-15. For example, the City Council concluded that "[t]all trees such as the subject property will obscure the tower and visually mitigate the tower and antennae for persons viewing it from off site and from the residential areas to the north" and "[t]he location and siting of the proposed Nextel tower will minimize the visual impact of the facility by blending in with the trees and the tower's surroundings and meets Objectives 1 and 3." Staff Report, Attachment A, Exhibit A, p.13 & 15.

Since the variance approval specifically relied on these trees for screening and mitigating the visual impacts, ATC cannot remove these trees without obtaining a new variance or modification to the prior variance approval. Doing so would undermine one of the key justifications for the variance approval.

If the City were to conclude otherwise, it would establish a dangerous precedent for the City. Any applicant that proposed a tower on a site with screening trees and relied on those trees to justify the approval would be allowed to subsequently remove those same screening trees without any additional review. The City should not establish a new precedent that essentially allows an applicant to unilaterally change the very same site conditions that the City and neighbors relied on in reviewing and approving the original tower request.

C. ATC failed to establish that a new variance is feasible.

As noted above, ATC will be required to obtain a new variance whether it is proposing to increase the height of the tower and/or remove the trees. Since ATC will be required to obtain a new variance approval, at a minimum it was required to demonstrate that it is feasible to obtain such an approval. However, ATC failed to submit any analysis, evidence or information to demonstrate that a new variance is feasible.

In our November 22 submittal, the Applicant demonstrated why it is not feasible for ATC to obtain a new variance for a variety of reasons. ATC will need the City's consent to even request an increase in the height of the ATC Tower, which it failed to address. It is unlikely that the City will approve a height variance to substantially increase the height of an existing tower that already

significantly exceeds the height limits by 30 feet or 30%, or a proposal to remove virtually all of the screening trees the City relied on in its original approval. Nor can ATC satisfy Tualatin Development Code ("TDC") 33.025(2) because there is a pending application for a new tower that can accommodate the wireless communications facility without exceeding the 100-foot height limit.

Since ATC failed to address why it believes it is feasible to obtain a new variance and the Applicant demonstrated that it is not feasible, the only conclusion the Commission can reach is that it is not feasible. Absent some evidence or argument that a new variance approval is at least feasible, there is no evidentiary or legal basis for concluding that the ATC Tower can be modified to accommodate the new wireless communication facilities.

D. ATC failed to establish that a tree removal permit is feasible.

ATC was also required to demonstrate that it is feasible to obtain a tree removal permit. Similar to the variance issue, ATC failed to submit any analysis, evidence or information to demonstrate that it is feasible to obtain a tree permit to remove the screening trees.

In our November 22 submittal, the Applicant demonstrated why it is not feasible for ATC to obtain a tree removal permit for a variety of reasons. Since some of the screening trees are on the City's property and others are on the adjacent property to the north/northeast of the ATC Tower, ATC will be required to get the consent of both the City and the adjacent property owner to remove these trees. ATC has not even broached this request with these parties, let alone demonstrated that they will likely agree to it. Nor could ATC satisfy the tree removal permit criteria. In order to justify the removal of the trees, ATC must demonstrate that the trees are diseased, a hazard or must be removed to construct improvements that have already been approved. TDC 34.230(1). Clearly these trees are not diseased or a hazard, and ATC has not applied for, or obtained, any of these approvals.

Since ATC failed to address why it believes it is feasible to obtain a tree removal permit and the Applicant demonstrated that it is not feasible, the only conclusion the Commission can reach is that it is not feasible. Absent some evidence or argument that a tree removal permit is at least feasible, there is no evidentiary or legal basis for concluding that the ATC Tower can be modified to accommodate the new wireless communication facilities.

E. ATC failed to establish that the City will extend the lease beyond 2020.

As we noted in our November 22 letter, ATC acknowledged that the current lease for the ATC Tower expires in March 31, 2020 and the City has not agreed to an extension or new lease. Given how much time it will take to obtain the approvals to either increase the height of the ATC Tower or clear the screening trees, do the actual work to increase the height or clear the trees, and obtain approval for the proposed wireless communications facilities, neither Verizon nor T-Mobile will site their wireless communication facilities on this tower for such a short duration. Therefore, the ATC Tower is not a viable option unless and until ATC reaches an actual agreement with the City to extend or renew the lease.

ATC's November 22 submission makes it clear that the City has not agreed to extend or renew the lease. ATC submitted an unsigned draft of a proposed lease amendment, which it acknowledge is "subject to further changes by the parties." Letter from Alan Sorem, dated November 22, 2017, p.3.

ATC provided zero information about the status of its discussions with the City or whether the City even supports the concept of an extension or renewal of the lease. In other words, ATC's sole evidence is that ATC drafted a lease amendment. The mere drafting of a lease amendment is not sufficient evidence to demonstrate that it is feasible or likely that the City will extend or renew the lease.

F. The City code does not require the Applicant to consider an existing tower that would require additional permits or approvals, or at least those that have not yet been filed.

In our November 22 submittal, the Applicant provided a detailed analysis of the City code explaining why neither TDC 73.470(9), which contains the 1,500-foot separation requirement, nor the variance criteria for tower separation in TDC 33.025(1), require an applicant to consider an existing tower that must obtain additional permits and approvals in order to accommodate the wireless communications facility. Neither the tower separation nor variance criteria require the Applicant to consider existing towers that would require additional permits or approvals to accommodate the wireless communications facility. To the extent the Applicant is required to consider existing towers that would require additional permits or approvals, it is only required to consider those for which the permit application has already been filed. Since ATC had not filed an application for the tree removal permit or variance by the time the Applicant filed this variance application, the ATC Tower cannot be used as a basis for denying the variance application in this case.

ATC, on the other hand, provided no analysis or interpretation of the applicable code sections to support its position. ATC simply assumes that if there is an existing tower within 1,500 feet that can theoretically be modified to accommodate the wireless communication facility, regardless of whether it would require multiple consents and land use approvals, or how likely it would be to obtain those approvals, it automatically precludes a variance for a new tower. As we explained in our November 22 letter, that position is inconsistent with the express language in TDC 73.470(9) and TDC 33.025(1).

There is also a practical problem with ATC's interpretation. Even if ATC could demonstrate that it can theoretically modify the ATC Tower in order to accommodate Verizon and T-Mobile's wireless communication facilities, ATC is not obligated to pursue those approvals and has absolutely no time constraints. ATC can take as much time as it wants to commence the actions necessary to modify the ATC Tower and neither Verizon nor T-Mobile can force the issue. Even if ATC started the process immediately, it will still take a considerable amount of time to negotiate a new lease with the City, obtain the City and adjacent property owner's consent to remove the trees, obtain a new variance approval and tree removal permit, and do the construction work necessary to remove the trees and increase the height of the tower. Meanwhile, Verizon and T-Mobile have existing coverage and capacity gaps that need to be addressed immediately and they will be completely beholden to ATC's schedule. TDC 73.470(9) and TDC 33.025(1) were not intended to give existing tower operators such broad authority to force carriers to wait months or years until the operator can obtain the necessary approvals to modify the existing tower.

G. The Applicant demonstrated that Verizon cannot achieve its coverage and capacity objectives even if the ATC Tower is increased in height or the screening trees are removed.

As part of our November 22 submission, the Applicant demonstrated that the ATC Tower cannot be modified in a way that satisfies Verizon's coverage and capacity objectives for this site, in particular the residential area north of SW Tualatin Rd which is the primary area of concern for this new facility. The Applicant submitted a RF Usage and Facility Justification analysis, dated November 20, 2017, prepared by a Verizon RF engineer, which concludes that Verizon's coverage and capacity objectives cannot be satisfied even if the ATC Tower is increased in height or the screening trees are removed.

ATC submitted its own RF analysis, but this evidence is not as reliable. ATC has not spoken with Verizon about the coverage and capacity objectives for this site, does not have access to all of the same network data and other proprietary information as Verizon's RF engineers do and it cannot speak for Verizon. In fact, ATC acknowledged that it cannot explain the distinction between the green and yellow areas on the RF coverage maps or the impacts on Verizon customers in the area because that information is "proprietary". Letter from Alan Sorem, dated November 22, 2017, p.1-2. Verizon's new RF Usage and Facility Justification analysis represents Verizon's position on this matter and it clearly states that the ATC Tower, even if modified, will not work. Verizon's RF analysis is the evidence the Commission must rely upon since it is the most relevant and reliable evidence on this issue.

H. ATC failed to address the need to accommodate both Verizon and T-Mobile wireless communication facilities.

ATC claims that the Commission's question about whether or not T-Mobile is interested in siting a wireless communication facility on either the proposed tower or the ATC Tower is "beyond the scope of the criteria," but that is not true. Both Verizon and T-Mobile are interested in siting a wireless communication facility on the Applicant's proposed tower, as evident by the November 21, 2017 email from a T-Mobile representative we included in our November 22 submission. Therefore, the ATC Tower must be able to accommodate both Verizon and T-Mobile to demonstrate that it can be modified to address the wireless needs of the proposed tower.

ATC completely failed to account for the need to modify the ATC tower to accommodate two new carriers. The evidence in the record demonstrates that there is a Sprint antenna at the top of the ATC Tower (antenna tip of approximately 131 feet) and each additional antenna from another carrier will require at least 10-feet of separation. Therefore, a 146-foot tower will not be sufficient to accommodate both carriers since both Verizon and T-Mobile will require at least an additional 10 feet of separation. ATC did not address if it can, and how it would, extend the ATC Tower to 160 feet. Without any evidence that the ATC Tower can accommodate both Verizon and T-Mobile, ATC cannot demonstrate that it can be modified to accommodate these additional carriers.

I. The Commission should not rely heavily on the new staff report because it does not take into account the parties' November 22 submissions or this final written argument.

Since the procedures established at the Commission's November 16 hearing required the parties to submit new evidence by the November 22 deadline, with the exception of the Applicant's final written argument which it is entitled to under ORS 197.763(6)(e), the City staff submitted a new staff report on November 22. Although the new staff report is dated December 7, 2017, it was submitted on November 22 and did not take into account the parties November 22 submission or this final written argument.

It is important for the Commission to understand the timing of this new staff report since staff modified its recommendation to a denial. While staff may have changed its recommendation based on the information ATC presented at the November 16 hearing, it did not consider the November 22 submissions or this final written argument. Therefore, the new staff recommendation is not based on any of the evidence and argument presented since the November 16 hearing.

The Commission must base its decision on all of the evidence and arguments in the record, including the Applicant's November 22 submission and this final written argument. Since ATC raised its issues for the first time at the November 16 hearing, and the Applicant was not prepared to address them in detail at that time, the Applicant's post-hearing evidence and arguments are far more thorough and relevant. The Applicant's November 22 submission and final written argument clearly demonstrate that the ATC Tower is not a viable alternative for multiple reasons and therefore compliance with the variance criteria.

J. The Applicant demonstrated compliance with TDC 33.025(1)(b).

TDC 33.025(1) provides two alternatives for a variance approval. TDC 33.025(1) provides that "The City may grant a variance from the provisions of TDC 73.470(9) which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below." So the variance application must be approved if the Applicant demonstrates compliance with either (a) or (b). Although ATC has focused exclusively on subsection (a), the Applicant also argued that it complies with subsection (b).

TDC 33.025(1)(b) allows for a variance to the separation requirements if: "The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District." This criteria does not require the Applicant to demonstrate that the ATC Tower is not a viable option. As noted on page 4 of the variance application narrative, the Applicant demonstrated that the proposed site has tall, dense evergreen trees that will screen at least 50% of the proposed monopole from residential districts. ATC does not dispute this claim. Therefore, the application can be approved based on compliance with TDC 33.025(1)(b).

Conclusion

As explained in the application material, the November 22 submission and this final written argument, the Applicant demonstrated compliance with the variance criteria and therefore the variance application should be approved. There is no dispute that the ATC Tower cannot accommodate the proposed wireless communications facilities and TDC 73.470(9) and TDC 33.025 do not require the Applicant to delay this project until ATC can determine if it will be able to get the necessary tree removal, variance and property owner approval to modify the ATC Tower. Moreover, the permit requirements and evidence indicate that it is unlikely that ATC will be able to obtain these approvals. And even if ATC was able to increase the height of the ATC Tower or remove the screening trees, it still would not satisfy Verizon's coverage and capacity objectives for this site. For all of these reasons, the Commission should reject ATC's arguments and approve the application.

Very truly yours,

HATHAWAY LARSON LLP

E. Michael Connors

EMC/mo

cc: ACOM Consulting Inc.

Lendlease

Koback · Connors · Heth

December 7, 2017

VIA HAND DELIVERY

Planning Commission City of Tualatin 18880 SW Martinazzi Avenue Tualatin, OR 97062

Re:

Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.

Application No. VAR-17-0001

Applicant's Request for Continuance

Dear Commissioners:

As you know, this firm represents the Applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). The Applicant is requesting that the Planning Commission continue the December 7, 2017 public hearing to enable the Applicant to provide additional information regarding compliance with TDC 33.025(1)(b).

Based on our communications with City staff, it is our understanding that the hearing can be continued to January 18, 2018. If the Planning Commission grants our request to continue the hearing until January 18, 2018, the Applicant hereby grants an extension of the 120-day deadline under ORS 227.178 and the 150-day FCC Shot Clock deadline to April 13, 2018.

We appreciate the Planning Commission's consideration of our request.

Very truly yours,

HATHAWAY LARSON LLP

E. Michael Connors

EMC/pl

cc: ACOM Consulting Inc.

Lendlease

E. Michael Connors

1331 NW Lovejoy Street, Suite 950 Portland, OR 97209

mike@hathawaylarson.com

(503) 303-3111 direct

(503) 303-3101 main

January 18, 2018

VIA ELECTRONIC MAIL: ahurd-ravich@tualatin.gov Original to follow via hand delivery



City of Tualatin Planning Commission Attn: Aquilla Hurd-Ravich 18880 SW Martinazzi Ave Tualatin, OR 97062-7092

RE: PI Tower Development Project OR-Tualatin-Durham/ 10290 SW Tualatin Road

(Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001)

Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable Planning Commissioners:

As you are aware, I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation (herein collectively "ATC"), which owns a wireless communications facility located at 10318 SW Herman Road, Tualatin, Oregon (the "ATC Tower"). I am writing regarding ATC's opposition to the proposed wireless communication facility on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "Applicant") on the southwest corner of 10290 SW Tualatin Road, Tualatin, Oregon (herein the "Subject Property").

I have previously submitted testimony explaining that Applicant cannot meet its burden of proof regarding TDC 33.025(1)(a) because modifications to either the ATC Tower or the surrounding trees can be made that will allow ATC to provide service to additional carriers. Staff's revised staff report continues to support ATC's opposition to Applicant's arguments under TDC 33.025(1)(a). However, Applicant has submitted additional arguments and evidence regarding TDC 33.025(1)(b) and staff now supports the variance request and concludes that Applicant met its burden of proof. ATC strongly disagrees with Staff's interpretation of TDC 33.025(1)(b) and findings of fact.

The Subject Property does not contain "tall, dense evergreen trees."

TDC 33.025(1)(b) requires the applicant to prove that the "proposed monopole location includes tall, dense evergreen trees." This is a foundational requirement. Failure to show that the Subject Property contains such "tall, dense evergreen trees" prohibits a granting of variance under the second variance test. This is a very specific requirement and the text is unambiguous. Staff's report and Applicant's proposal ignore the fact that the Subject Property fails to have this inherent characteristic.

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> > www.sglaw.com

Applicant's evidence fails to meet the requirement for "tall, dense evergreen trees" in TDC 33.025(1)(b) on every account. Applicant does not include any photos of "tall, dense evergreen trees" on the Subject Property because no such tall, dense evergreen trees exist. The only photo of the Subject Property provided in the supplemental staff report and submitted by Applicant shows a single line of trees bordering the southern boundary of the Subject Property and a portion of the western boundary of the Subject Property. See Applicant Photo Simulation 1 of 6, Exhibit B to Applicant's Analysis and Findings dated January 18, 2018. The attached photo from Google Maps provides evidence that the few trees located on the Subject Property are sparsely located and deciduous in nature. The record contains a perfect example of property containing the type of trees that can qualify as "tall, dense evergreen trees," which is the ATC Tower property. As Applicant made clear in its prior arguments, the ATC Tower is surrounded by tall, dense evergreens as provided by the TDC and approved by the City of Tualatin. See Revised Staff Report, pg. 66, 80-86. Unlike the ATC Tower property, there is nothing inherent to the Subject Property – no tall, dense evergreen trees – that will provide year-round natural screening from the nearby RL and RML districts. There is no ambiguity in the text and no evidence provided by Applicant suggesting otherwise. Thus, the Planning Commission must deny the variance request.

II. Screening caused by evergreen trees located offsite cannot be used to satisfy the criterion.

Applicant submitted only five photo simulations. Photo Simulation No. 1 was taken north of the intersection of SW Pueblo Street and SW Jurgens Ave. Applicant points to three tall evergreen trees located along the SW Tualatin Rd right-of-way as evidence of satisfactory screening. The criterion clearly requires the evidence of evergreen screening to be those trees located on the Subject Property. Taking a photo behind an off-site tree to guarantee an image of screening is gross distortion of the text, purpose, and policy behind variance criteria. Were this to be allowed as satisfactory evidence, the Planning Commission could never deny an application where even one tree existed in the abutting residential neighborhood to hide behind. Photo Simulation No. 1 is not evidence, and Applicant and staff are incorrect to suggest it can substantiate approval.

III. Photo simulations from the ML district are not substantial evidence.

Photo Simulation No. 2 is from the SW 100th Court turnaround. This photo was taken from the ML district. The criterion clearly requires evidence that the proposed tower is screened from the surrounding RL and RML districts. This evidence is of no value in determining whether Applicant has met its burden of proof. The inclusion by Applicant of this photo as evidence demonstrates an ignorance, willful or unintentional, of the text, purpose, and policy of the variance criteria. Moreover, the photo shows the tower unscreened from any evergreen trees. Rather, it is clearly visible notwithstanding the previously mentioned deciduous trees in the area. The low angle of the photo, which suggests that the tower is screened by the hedge (which is roughly the height of a low-profile van) suggests the simulations lack professional credibility. Photo Simulation No. 2 is not evidence, and it should be disregarded except as evidence as to the questionable credibility of the simulations themselves.

IV. Screening provided by buildings does not satisfy the criterion.

Applicant's final three photo simulations were all taken behind buildings. Even if the tower was screened by buildings, such a fact is not the type of evidence needed to satisfy the criteria. As explained

above, Applicant needed to prove that onsite, tall, and dense evergreen trees screen at least fifty-percent of the proposed tower, like they do for the existing ATC Tower. Applicant's simulations are irrelevant and are clearly "cherry-picked" photos. If an applicant were able to satisfy a variance criterion by taking photo simulations from behind a building, no variance request would ever be denied. Clearly, individuals who are inside those buildings, including the multi-family buildings shown in Photo Simulation No. 3 and the residence shown in Photo Simulation No. 5, can see the tower. If anything, these simulations are evidence that Applicant cannot satisfy the criteria. The Planning Commission must reject the invitation to "water-down" TDC 33.025(1)(b) so that it is effectively meaningless. An approval of Applicant's variance request is a misinterpretation TDC 33.025(1)(b).

V. Applicant's assertion that a balloon test was conducted is not supported by the evidence in the record.

Even if Applicant was able to prove that its request does not require a misinterpretation of TDC 33.025(1)(b), Applicant's evidence is not credible. Applicant's representatives assert a balloon test occurred to ensure the simulations were done correctly. However, Applicant failed to include any photos of the balloon test. It is customary to offer photographic evidence that the balloon test in fact occurred. There is no affidavit or testimony by the person who conducted such test, and no affidavit testifying to the parameters of such a test. Applicant's assertion as to an issue of fact without corroborating evidence is further evidence of a lack of credibility. Applicant must provide evidence that the balloon test occurred, it was floated at the correct height, and that it is not visible from surrounding multi-story residential buildings.

VI. Applicant's proposed interpretation is inconsistent with the text, context, purpose and policy of the variance chapter and inconsistent with general variance laws.

As explained above in detail, the text of TDC 33.025(1)(b) is unambiguous, and it requires showing that onsite tall, dense evergreen trees screen fifty percent or more of the proposed pole. Applicant's requested interpretation is as follows: offsite trees and offsite buildings that screen the proposed tower can substantiate the variance under TDC 33.025(1)(b). In addition to being inconsistent with the unambiguous text, such an interpretation is inconsistent with the context, purpose, and policy of the variance chapter and inconsistent with general variance laws.

Variances are generally subject to the review criteria under TDC 33.020; however, variances for towers are subject to the criteria under TDC 33.025. While ATC acknowledges TDC 33.020 is not the mandatory approval criteria, it is relevant context. TDC 33.020(1) requires the applicant to prove a hardship exists and that it "is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control." These elements, while stated slightly differently and with greater specificity, are also present in TDC 33.025. The requirement for a hardship reflected in the obligation for Applicant to prove that an existing tower cannot technically provide the needed coverage and cannot be modified to accommodate another provider under TDC 33.025(1)(a). Similarly, the requirement for "extraordinary circumstances applying to the property" is reflected in the requirement under 33.025(1)(b) that onsite "tall, dense evergreen trees" screen the proposed tower. Applicant's request essentially removes any factor that would differentiate this proposal and this

property from any other future variance case or other property. Essentially, the Planning Commission's approval would be precedent that the "criteria" means nothing. Put differently, what is to stop the application for a third tower on the neighboring property? A fourth tower next to that?

Variances are supposed to be difficult. They allow a proposal that is in violation of the code's development standards. They should not be granted with ease or based on evidence that is inconsistent with the text, context, purpose, and policy of the code. For these reasons, ATC respectfully requests Planning Commission to deny the requested variance.

Thank you for your time and attention.

Sincerely

ALAN M. SOREM asorem@sglaw.com Voice Message #303

AMS:jsm Enclosures cc: Client







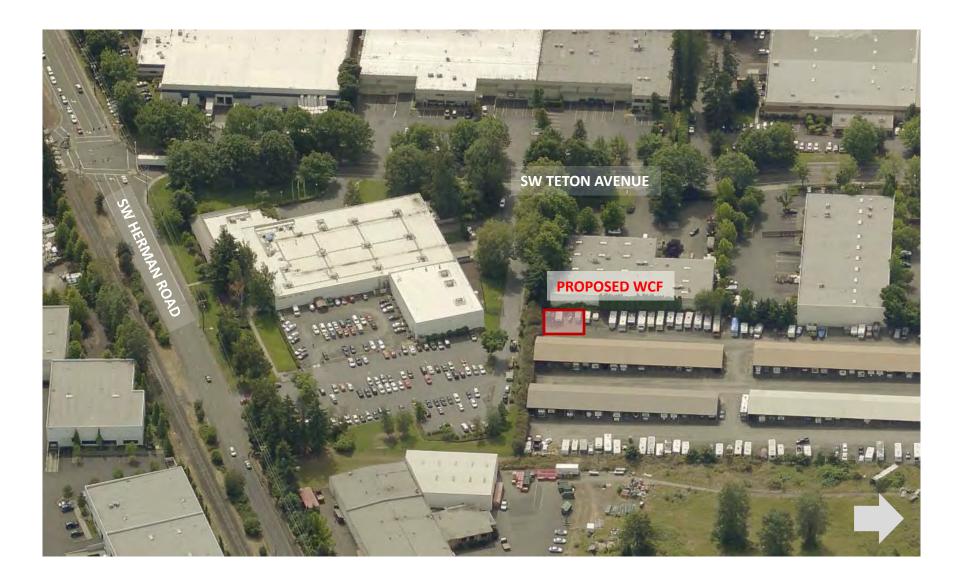
HEARING AGENDA

- Staff Presentation
- Appellant and Applicant Presentation
- Public Comment
- Record left open at appellant request
- Deliberation and Decision

- Council consideration of a variance to allow a new wireless communication facility (WCF) within 1,500-feet of an existing WCF
- Council must find that applicant demonstrates compliance with Tualatin Development Code (TDC) 33.025(1)(a) or 33.025(1)(b)



VAR-17-0001 POR DURHAM WCF City Council April 14, 2018



VAR-17-0001 POR DURHAM WCF City Council April 9, 2018



APPLICANT PROPOSAL

 Applicant proposes to locate a monopole/WCF on the Tote 'N Stow property at 10290 SW Tualatin Road within 1,500 feet of an existing WCF



TDC 33.025(1)

The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1,500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below:

- (a) Coverage and capacity; OR
- (b) Site characteristics.



TDC 33.025(1)(b) Site Characteristics

The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

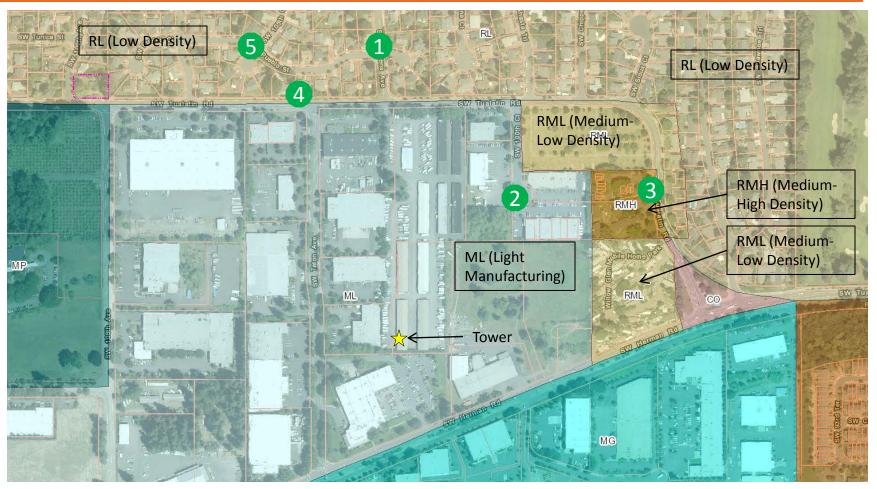
Staff finds this criterion is met.





VAR-17-0001 POR DURHAM WCF





VAR-17-0001 POR DURHAM WCF





VAR-17-0001 POR DURHAM WCF





VIEW #2 LOOKING SOUTHWEST ON SW 100TH COURT



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

TIM BRADLEY IMAGING





CURRENT

VIEW #3 LOOKING SOUTHWEST ON SW TUALATIN ROAD



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

IM BRADLEY IMAGIN

VAR-17-0001 POR DURHAM WCF





CURRENT

VIEW #4 LOOKING SOUTHEAST ON SW TUALATIN RD. AT SW TETON AVE.



Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

TIM BRADLEY IMAGING

VAR-17-0001 POR DURHAM WCF





CURRENT

VIEW #5 LOOKING SOUTHEAST ON SW 105TH COURT & SW PUEBLO ST.

PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the

IIM BRADLEY IMAGING

VAR-17-0001 POR DURHAM WCF



Summary of review

Summary

Based on the photo simulations (views 1 & 5) the applicant has demonstrated that 50% of the monopole will be screened by tall dense evergreen trees from the RL (Residential Low Density) Planning District



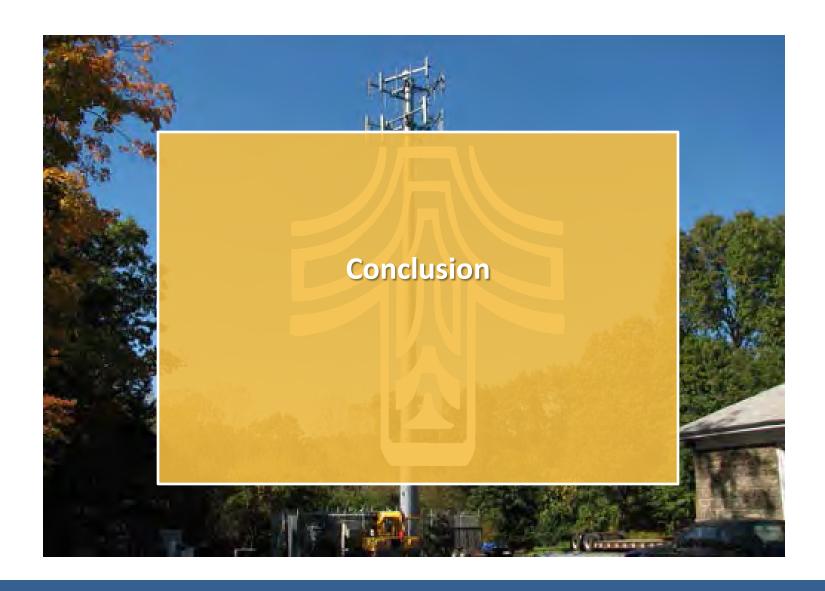
NEXT STEPS (IF APPROVED)

 Architectural Review (AR) of the physical elements of the proposed WCF



City Council OPTIONS

- 1. Approve VAR-17-0001 as drafted; or
- 2. Deny VAR-17-0001 and cite which criteria applicant fails to meet.



VAR-17-0001 POR DURHAM WCF



STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Paul Hennon, Community Services Director

DATE: 05/14/2018

SUBJECT: Tualatin Interceptor and Syphon Improvement Project Update

ISSUE BEFORE THE COUNCIL:

Clean Water Services is preparing to upgrade the capacity of the existing sanitary sewer infrastructure along the south side of the Tualatin River from the Durham Advanced Wastewater Treatment Facility (in Tigard) to west of Pacific Highway (Hwy 99). Clean Water Services staff will present information on the purpose, scope, schedule, local impacts, and public outreach approaches for the project.

RECOMMENDATION:

Consider presentation and provide direction as needed.

Attachments: A. Interceptor and Syphon Improvement Project Update

UPPER TUALATIN INTERCEPTOR AND SIPHON IMPROVEMENT PROJECT

Date 4-27-18

City of Tualatin Council Meeting Wade Denny, P.E.









Outline

Overview/Background

What/When

Impacts

Q/A





Existing Sanitary Sewer Infrastructure

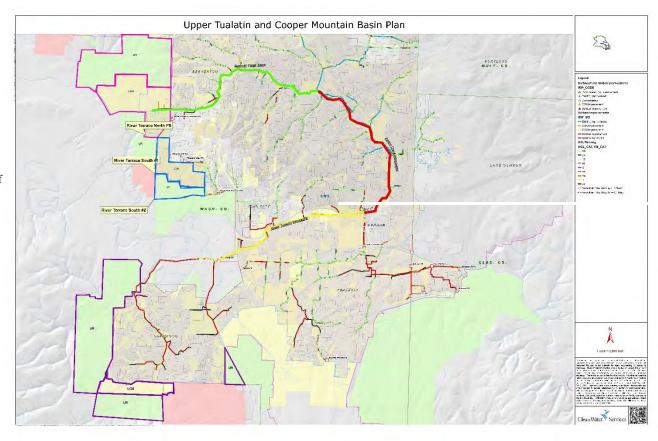
Service Area Overview

Sani System

- Gravity
 - SCT-Built 1986, 10,000 ft of 27 to 42 inch Pipe
 - UT-Built 1985, 15,000 ft of 27 to 42 inch Pipe.

Existing Capacity

- Summer Creek-2035
- Upper Tualatin-2025





Upper Tualatin Study

Goal

 Optimize existing infrastructure capacity and effectively transport flows while meeting the future developmental capacity demands and maximizing the benefit to our customers and the environment.

Objectives

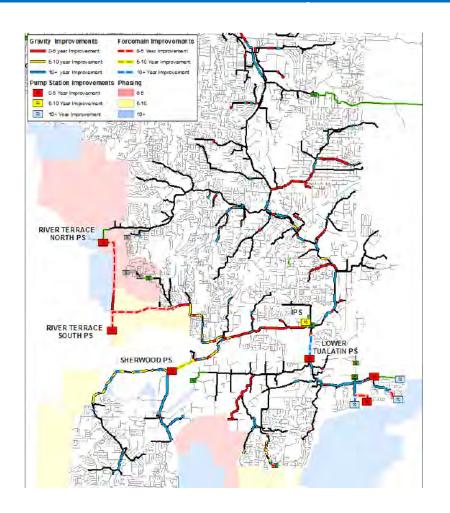
- Review of existing and planned development and model projected sanitary sewer flows
 - Determine Improvements and ID Capacity Relief Provided on Existing Infrastructure.
 - Assessed on a Cost/Benefit Analysis Based On:
 - Impacts to cultural, historical and environmental systems, permitting, and property acquisition required

Final Plan

- 20 Projects Identified
 - Completed over next 10-15 years



Estimated Cost of \$73 Million



Tualatin Interceptor Project

Alternative Contract Delivery

- Progressive Design Build
- General Contractor/Engr
 - Mortenson/KJ

Design Start- October 2017

Phase 2A: June 2018 – Dec 2018

- 100% Designed
- 2,300 LF 60"& 48" Pipe
- 580'

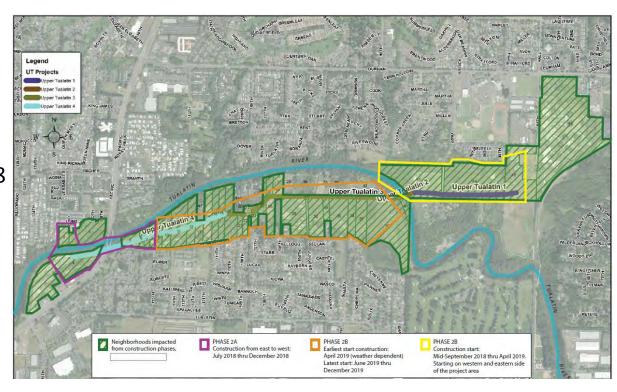
74" Tunnel-King City Siphon

Phase 2B: Oct 2018 – Feb 2020

• 7,951 LF 66" & 60" Pipe



910' 2-30" & 1-22" HDD-Cook Park Siphon



Tualatin Interceptor Project Impact Mitigation

Project Impacts

- Truck Traffic
- Construction Through City Parks (Cook Park, Jurgens Park)

Pre-Construction Outreach

- Citizen Advisory Group Meetings
- City Leadership
- Localized Mailers

Outreach During Construction

- Coffee with Contractor
- Tours
- After Hours Hotline







Questions





STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Kathy Kaatz, Program Coordinator

DATE: 05/14/2018

SUBJECT: Consideration of **Resolution No. 5365-18** to adopt Solid Waste and Recycling

Rate Adjustment and Interim Surcharge

ISSUE BEFORE THE COUNCIL:

Consideration of Resolution No. 5365-18 to adopt Solid Waste and Recycling Rate Adjustment and adding an interim recycling surcharge with an effective date of June 1, 2018, while rescinding Resolution No. 5273-16.

RECOMMENDATION:

Council to review and direct staff how to proceed on submitted rate adjustment for Solid Waste and Recycling Franchise Agreement with Republic Services and an interim recycling surcharge.

EXECUTIVE SUMMARY:

Earlier this month, Republic Services presented to staff a letter (attachment C) for consideration for a rate adjustment to the Solid Waste and Recycling rates for the City of Tualatin with an effective date of June 1, 2018. Republic Services is requesting a 6.5% rate adjustment. According to the letter, Republic Services stated this increase will enable their company to continue providing the quality services desired by the City through its franchise with Republic. The last price increase of 5.9% was approved by Council two years ago, effective May 1, 2016.

The effect of this price increase for 57 percent of the residential customers using 35-gallon carts would be \$1.66 per month.

Republic's operating costs are expected to increase \$1,337,737 since the last price adjustment effective May 1, 2016 through 2018.

- Inflation increased an aggregate of 6.5% for the two year period of 2016-18 according to the Portland CPI-U:
- Disposal costs increase 3% but this excludes any of the recycling market volatility. This cost alone represents on average over 40% of company total operating costs and results from: increase in tons of solid waste collect in the City and delivered to WRI for disposal, a new tax levied in 2016 by Metro (Community Enhancement) of \$1 per ton on all wet

waste received at WRI;

- Labor and Medical insurance expenses increased 31% following employee approval of a new four-year labor agreement, effective December 1, 2016 and,
- Depreciation increase 13% due to the purchase of eight new vehicles fueled with Compressed Natural Gas (CNG). Total costs of these vehicles is \$3,622,455.

In addition to the rate adjustment, Republic Services is following the lead of Washington County by requesting an interim recycling surcharge to assist in managing costs related to the unprecedented challenges of the current trend of recycling costs. At the current time there is no longer an avenue to sell materials to offset the collection and transportation which are now costing to recycle. Washington County is projecting that processing costs will reach a 400% increase by September of 2018.

They are proposing a monthly surcharge as follows:

- \$2.00 for residential and commercial can/cart collection service
- Monthly surcharge of 4% for commercial container service collection rates
- Monthly surcharge of \$2.00 for drop box/compactor and commercial recycling only can/cart recycling
- Monthly surcharge of 4% for additional container recycling collection.

OUTCOMES OF DECISION:

The outcome of the decision if City Council approves the rate adjustment and interim recycling surcharge would increase rates as outlined.

Attachments:

- 1. Resolution 5365-18 Solid Waste Rate Adjustment
- 2. Solid Waste Rate Adjustment Proposal
- 3. Republic Services Powerpoint Presentation

RESOLUTION NO. 5365-18

RESOLUTION AUTHORIZING SOLID WASTE AND RECYCLING RATE ADJUSTMENTS AND RESCINDING RESOLUTION 5273-16

WHEREAS, City of Tualatin has an exclusive franchise with Republic Services, as set forth in Ordinance No.1318-11;

WHEREAS, Republic Services has requested a 6.5% aggregate rate adjustment because of increased costs due to inflation, fuel and disposal costs, vehicle and container replacements and a decline in the commodity revenues;

WHERAS, the City Council considered the 6.5% aggregate rate adjustment to the solid waste and recycling fees from Republic Services; and

WHEREAS, the proposed rate adjustment will keep Tualatin rates comparable with the average cost of service to surrounding cities.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. Effective June 1, 2018, the services rates and changes set forth in Schedule A and B, which are attached and incorporated into this resolution, are established and authorized for collection of solid waste, refuse, and recycling material within the corporate limits of the City of Tualatin.

Section 2. This resolution is effective upon adoption.

INTRODUCED AND ADOPTED this 14th day of May, 2018.

	CITY OF TUALATIN, OREGON
	ВҮ
	Mayor
APPROVED AS TO FORM	ATTEST:
BY	BY
City Attorney	City Recorder

SCHEDULE A

REPUBLIC SERVICES OF CLACKAMAS AND WASHINGTON COUNTY

CITY OF TUALATIN Effective Date: June 1, 2018

I. RECYCLING SERVICES: The rates below were established to include the cost for specific recycling services, as well as the collection and disposal of solid waste. They include the items listed below. The current recycle surcharge that is being considered by the city is excluded from the scheduled items below:

A. SINGLE-FAMILY RESIDENTIAL:

- 1. Weekly curbside pick-up of co-mingled recycling on the same day as garbage service providing one 65-gallon roll-cart container and two 14-gallon totes.
- 2. Weekly curbside pick-up of yard debris providing a 90-gallon roll cart. Only yard debris at the curb in the 90-gallon roll cart will be collected.
- B. MULTI-FAMILY RESIDENTIAL: Weekly or weekly on-call pick-up of recyclables (newspaper, glass, tin, aluminum, and cardboard).
- C. CITY OFFICES: Office paper recycling of all items included in the Republic Services Mixed Paper Program and corrugated cardboard.
- II. MONTHLY RATE FOR RESIDENTIAL SERVICE OF ONE CART:

Cart Size	One Stop per Week
20-Gallon	\$ 21.75 \$23 .00
35-Gallon	\$ 25.54 \$27 .00
60-Gallon	\$33.69 \$3 6.00
Occasional extra	\$ 5.15 \$5.50
(35-gallon can or 1 bag)	\$ 10.29 \$11.00
An additional cart will be charged	at double the single cart rate.

NOTES ON RESIDENTIAL SERVICE: (1) In mobile home parks and apartment complexes where residents have individual cart service and individual billing, single-family cart rates will apply. Where park residents have individual service, but the owner of the park is responsible for payment of services. (2) All carts will be provided by the franchisee to regular, weekly customers with a cart service level only. *No carts will be*

provided on an on-call basis. (3) Only 35-gallon carts can be used for the occasional extra cart for both regular and occasional customers. (4) An occasional extra 35-gallon cart for a regular customer is \$5.43\$5.50. (5) The minimum charge for any stop for an occasional customer is \$10.29 \$11.00. Occasional customers (on-call) should have their carts serviced a minimum of once (1) every other month.

(6) Recycling service will be provided to an occasional customer only on days that garbage is collected from that customer. A fee of \$11.08 may be charged for replacement of damaged or lost recycling bins or to customers who request more than two. Customers will be charged \$65.41 for a lost or damaged garbage cart, \$68.58 \$70.00 for a yard debris cart, and \$68.58 \$70.00 for a recycling cart. (7) State Accident Insurance Fund safety recommendations shall be followed. Cans provided by customers shall not exceed 35-gallons and 60-pounds when full. (8) Yard debris carts are intended for the collection of yard debris only. If the yard debris or recycle cart contains material other than yard debris/recycling, collection shall be charged at garbage rates (\$10.87) \$11.00 per contaminated cart). (9) Carts and recycling bins shall be at curbside no more than 24 hours prior to collection and shall be removed within 24 hours after collection of solid waste and recyclables by the franchisee. (10) An extra charge may be made for service that incurs additional disposal costs such as tires, major appliances, etc., or for handling oversized, odorous, dangerous, or liquid articles. (11) Customers may request recycling only (\$6.86 \$7.00 per month); yard debris collection only (\$6.86 \$7.00 per month); or both (\$ 14.00 per month). (12) An extra charge of \$21.89 \$27.00 for a driver to go back and pick up customer who was reinstated or failed to put cart out on time after driver has left area.

III. MULTI-FAMILY AND COMMERCIAL SERVICE:

Monthly Rates For Mul	ti-Family and Commercial		
Single Cart S	Service - Loose		
Cart Size	One Stop Per Week		
35-Gallon	\$23.00 \$24 .50		
60-Gallon \$31.00 \$33.02			
90-Gallon	\$38.00 \$40.47		
An occasional extra 35-gallon o	can or bag will be		
An additional cart will be charg	ed at double the single cart rate.		

Monthly Rates For Multi-Family and							
Commercial Container Service - Loose							
Container Siz	е		Stops 1	Per Week			
	1	2	3	4	5	6	
1 Cubic Yard	\$ 98.60	\$ 188.39	\$ 275.79	\$	\$	\$	
1 Cubic Yard	\$105.01	\$ 200.64	\$ 293.72	\$ -	\$ -	\$ -	
1.5 Cubic Yards	\$125.00	\$ 245.23	\$ 358.58	\$ 466.87	\$ 572.07	\$	
1.5 Cubic Yards	\$133.13	\$ 261.17	\$ 381.89	\$ 497.22	\$ 609.25	\$ -	
2 Cubic Yards	\$165.03	\$ 320.51	\$ 467.76	\$ 607.40	\$ 745.44	\$ 894.97	
2 Cubic Yards	\$175.76	\$ 341.34	\$ 498.16	\$ 646.88	\$ 793.89	\$ 953.17	
3 Cubic Yards	\$230.32	\$ 455.81	\$ 648.90	\$ 836.75	\$1,035.29	\$1,257.80	
3 Cubic Yards	\$245.29	\$ 474.79	\$ 691.08	\$ 891.14	\$ 1,102.58	\$ 1,339.56	
4 Cubic Yards	\$292.12	\$ 565.36	\$ 836.71	\$1,092.80	\$1,340.56	\$1,608.65	
4 Cubic Farus	\$311.11	\$ 602.11	\$ 891.10	\$ 1,163.83	\$ 1,427.79	\$ 1,713.21	
5 Cubic Yards	\$355.96	\$ 699.40	\$1,021.67	\$1,345.20	\$1,650.66	\$1,980.77	
5 Cubic Farus	\$379.10	\$ 744.86	\$ 1,088.08	\$ 1,432.64	\$ 1,757.95	\$ 2,109.52	
6 Cubic Yards	\$411.94	\$ 809.04	\$1,199.77	\$1,557.50	\$1,954.25	\$2,311.97	
6 Cubic Yards	\$438.72	\$ 861.63	\$ 1,277.76	\$ 1,658.74	\$ 2,081.28	\$ 2,462.26	
8 Cubic Yards	\$517.03	\$1,014.32	\$1,499.93	\$1,994.64	\$2,307.63	\$2,662.00	
o Cubic Faius	\$550.64	\$1,080.25	\$ 1,597.43	\$ 2,124.29	\$ 2,457.60	\$ 2,835.03	

A. COMPACTED CONTAINER SERVICE:

Compacted is defined as manually or mechanically compacted. When materials can be collected from a compacted container by the normal container truck, the charge will be three (3) times the loose container rate. The weight of material put into a container or drop box, whether compacted or un-compacted, shall not exceed the lifting capacity of the collector's equipment nor shall the weight put the collector over the weight limit for the loaded vehicle. Compactor containers shall be furnished by the customer and shall be compatible with the collector's equipment. Customer shall be required to maintain the container in a safe and operable condition in accordance with workers' compensation board regulations.

RECYCLING ONLY RATES:

Where a multi-family complex uses a compactor or train system for garbage collection, the following schedule will be used to charge for recycling services provided:

Recycling Ra	tes for Multi-Fam	nily Sites			
With Compactors or Train Systems					
Number of Units	Mont	hly Charg	е		
10-99	\$ 139.01	\$	148.05		
100-199	\$ 2.37	\$	2.52		
200-299	\$ 1.86	\$	1.98		
300-399	\$ 1.68	\$	1.79		
400+	\$ 1.62	\$	1.73		

Note: Customer will provide and maintain enclosure/shelter and Hauler will provide containers. Enclosure/shelter is defined as any City/Hauler-approved system to collect material. Material to be collected must be approved by the Hauler.

NOTES ON MULTI-FAMILY AND COMMERCIAL SERVICE: (1) Additional carts shall be at 100% of the first cart rate multiplied by the stops per week. (2) An occasional extra 35-gallon can for a regular customer shall be \$5.53 each occurrence. (3) An extra charge may be made for garbage which is not readily available on collection day or which needs additional janitorial service. (4) The charge for multiple units of any type shall be to the owner of the units. (5) Collection of tires, major appliances, etc., or for handling oversized, odorous, dangerous or liquid articles will be charged according to the charges referred to in Schedule A — Section 6. (6) When a stop uses the equivalent of seven or more 35-gallon carts, collector may require that the service be shifted to a container-type service. (7) Franchisee reserves the right to refuse carts to any customer where the use is not compatible with the cart. (8) All carts will be provided by franchisee.

IV. DROP BOX SERVICE:

Drop box rates shall be the following rates <u>plus 103% of disposal fees</u>. The disposal fee includes landfill or transfer center fee, disposal franchise fee, and Metro user or service fees. The rates are as follows:

Box Size		Loose	(Per	Haul)
<30 yard	-\$	114.00	\$	121.41
30 yard	\$	136.00	\$	144.84
40 yard	\$	155.00	\$	175.80
<30 yard compactor	\$	165.08	\$	175.80
30 yard compactor	\$	218.33	\$	235.52
40 yard compactor	\$	250.28	\$	266.54

A. MISCELLANEOUS ADDITIONAL DROP BOX CHARGES:

- Delivery fee of \$35.00 \$45.00 shall be charged for drop box delivery for the occasional customer or repeat customer requiring service at different locations.
 1a. An additional haul fee of \$26.00 \$28.33 will be charged to customers with covered (lids) boxes that require the box to be round-tripped.
- 2. Special disposal/diversion needs: All customers will be charged the hourly charge rate in addition to the normal haul rate whenever collected materials require disposal at a site other than the franchisee's traditional disposal site.
- 3. After 48 hours, temporary users of 10-cubic yard and larger drop boxes collecting loose materials shall be charged a rental fee (noted below):

Box Size	Loose (per day)	Per Month	Loose (per	Per Month
10-yard	\$7.36	\$81.73	\$7.84	\$87.04
20-yard	\$7.36	\$81.73	\$7.84	\$87.04
30-yard	\$7.90	\$87.18	\$8.41	\$92.85
40-yard	\$8.45	\$92.63	\$9.00	\$98.65

4. Additional rental fees of \$6.00 \$6.54 per month may be charged to customers who require custom made drop boxes or boxes with lids. Additional rental fees of \$16.00 per month will be charged for customers who have their box's hauled less than one time per month.

V. MISCELLANEOUS SERVICE RATES AND PROVISIONS:

A. Hourly hauling rates (plus cost of disposal):

1 truck and 1 driver \$ 106.84/hour \$113.78/hour 1 truck, 1 driver, and 1 helper \$ 134.96/hour \$143.73/hour

- B. Each location of carts, containers, or drop boxes will be billed as a separate account.
- C. When customers abuse or cause excessive wear or damage to a cart, container, or drop box, the cost of repair or replacement may be charged to the customer. Customers shall take appropriate actions to ensure that hazardous materials, chemicals, paint, corrosive materials, infectious waste, or hot ashes are not put into a cart, container, or drop box.
- D. The weight of material put into a container or drop box, whether compacted or uncompacted, shall not exceed the lifting capacity of the collector's equipment nor shall the weight put the collector over the weight limit for the loaded vehicle. The collector shall furnish the customer with information concerning limitations on his equipment, upon request. If the total weight of a container exceeds 500 pounds per cubic yard for 40-yard container, 600 pounds per cubic foot for a 30-yard, or 900 pounds for a 20-yard container, an additional reasonable disposal fee may be charged. Customers shall not overfill a cart or container so that the lid cannot be securely closed. If a cart or container is overfilled, an additional reasonable fee may be charged. If the contents of a container, cart, or drop box are compacted (either mechanically or manually), the compactor rate shall be charged.
- E. Customers shall provide a space for all carts, containers, or drop boxes, whether used for garbage or recycling, that has adequate and safe access for collection personnel and equipment. The space provided must also comply with the City of Tualatin Development Code.
- F. If overtime or weekend collection is required to meet the request of a customer, the hauling portion of the rate shall be increased by 50%.
- G. The collection of tires shall be charged under the hourly charge rates, plus disposal.
- H. Garbage or yard debris carts which exceed two pounds per gallon, or where lids will not properly close, will be assessed an "occasional extra" charge of \$5.43, \$5.50.

- I. Yard debris carts contaminated with garbage will be charged \$10.87 \$11.00 extra per occurrence.
- J. Franchisee may require generators of putrescible solid waste to remove waste at least every seven days, or more frequently, if necessary, to prevent a health hazard, nuisance, or pollution.
- K. When a single customer uses multiple carts, which are the equivalent of one cubic yard or more of waste per week, the franchisee may require the customer to change to a container type service.
- L. If material collected requires disposal at a site other than the franchisee's normal disposal site, the customer will be charged under the hourly charge rate, in addition to the normal haul rate.
- M. Placement of hazardous waste material, including tires, liquid waste (paint), and appliances, in a unit collected by franchisee is prohibited.
- N. All customers shall provide a space, regardless of type of unit that is adequate for the franchisee to safely collect the material. The space provided must comply with the City of Tualatin's Development Code.
- Customers requesting the temporary use of a three-cubic-yard container will be charged \$115.34\$122.84 for delivery, removal, and disposal. Containers on-site for a period in excess of 72 hours shall be charged rent at a rate of \$17.89\$19.05 per week or \$125.23_\$133.35 for an extra haul fee. Container can only be on site for a maximum of two (2) weeks.
- P. Enclosures where driver has to open gates and roll out containers will be charged

\$16.35 \$17.41 per enclosure per month.

- Q. Medical waste restrictions. Placement of any medical waste, including syringes, IV tubing with needles attached, glass tubes, and slides, in a unit collected by franchisee is strictly prohibited. Republic Services will provide <u>at-cost</u> sharps containers for medical waste disposal, (current cost is <u>\$16.35</u> \$17.41 per container). Disposal of these containers must be brought directly to their facility for exchange/disposal.
- R. Franchisee will perform special pick-ups of irregular materials charging current disposal rates plus labor. These pick-ups will be performed at Republic Service's discretion and schedule.

TUALATIN SUPPLEMENTAL SERVICE, H

TYPE OF SERVICE		RATE
Special services not listed: Hauler will charge the reasonable cost of collection and disposal. Charge to be related to a similar schedule fee where possible.		
Appliances: Large appliances that contain Freon (accessible @ curb) Large appliances without Freon (accessible @ curb, Freon removal	certificate required)	\$50.86 \$30.86
Bathtub/Sink/Toilet: Fiberglass tub/shower Toilet Sinks		\$45.19 \$22.73 \$16.98
<u>Carpets:</u> Rug		\$16.98
<u>Tires:</u> Tires with rims Tires without rims Tires - Heavy Equipment, Semi, etc. charged per ton at current dis	Passenger/Light Truck Passenger/Light Truck posal facility gate rate	\$22.73 \$16.98
Large furniture:		\$28.21
(per item: Full size couch, dining table, dresser, mirror, etc) Small furniture:		\$16.98
(per item: recliner chair, office chair, crib, coffee table, patio table, c <u>Hide-a-bed:</u> (per item)	abinets, etc.)	\$46.01
Mattresses: Twin mattress/box spring (set) Double/ queen mattress/box spring (set) King mattress/box spring (set)		\$16.98 \$33.96 \$39.44

Other:

Bicycle	\$11.50
Waterbed bag	\$16.98
Windows	\$16.98
Treadmill, door, furnace, BBQ, satellite dish,	\$28.21
lawnmower Basketball Hoop	\$45.19
Hot Water Heater (empty)	\$45.00
Hot Tub Cover	\$55.00
Entertainment Center	\$55.00
Christmas Tree less than 6'	\$10.00

E-waste Removal:

TV under 25", PC, Monitor, laptop	\$16.98
TV over 25"	\$33.96
TV console, TV Projection,	\$45.19

copiers

Customers shall not place hazardous chemicals, paints, corrosive materials, hot ashes or dirt/rocks into the carts or bins.

Damaged carts/bins due to noncompliance with the above restrictions, or unretrieved carts/bins may be replaced by the hauler at the costs listed on the service rate pages.

Return trip fee: \$25.00

Minimum Charge \$17.00

Bankruptcy and account closures for failure to pay:

Payment of service provided and two months advance payment required for residential and commercial service. Payment is due at delivery of service for industrial service.

Service interrupt fee/late fees:

A late fee of 18% per annum with a \$5.00 monthly minimum will be charged for non-payment after 45 days from invoice date for all lines of business.

Flat fee of \$25.00 will charged after 60 days of non-payment for all lines of business.

VII. ANNUAL REPORT FILING SCHEDULE FOR FRANCHISEES:

On or before March 15, franchisees shall file an annual report with the City for the year ending the previous December 31.

Republic Services of Tualatin 2018 Rates | Interim Recycling Surcharge (WA County) Effective 6/1/18

	Quantity	Current	Requested 6.5% Rate t Adjustment	Mon O	Requested New Monthly (PI Only)	Washington County Interim Surcharge
Residential Cart Rates				k		
20 gallon	253	\$ 21.79	79 1.42	69	23.21	\$ 2.00
35 gallon	3,339	\$ 25.54		69	27.20	\$ 2.00
65 gallon	1,952	\$ 33.69	69 2.19	69	35.88	\$ 2.00
90 gallon Commercial Rates		· \$A		69		\$ 2.00
35 gallon	396	\$ 23.00	00 1.50	69	24.50	4.0%
65 gallon	148	\$ 31.00	2.02	69	33.05	4.0%
90 gallon	120	\$ 38.00	2.47	69	40.47	4.0%
1.33 yard	•	53		63	٠	4.0%
1.5 yard	42	\$ 125.00	8.13	69	133.13	4.0%
2 yard	103	\$ 165.03	03 10.73	63	175.76	4.0%
3 yard	30	\$ 230.32	32 14.97	63	245.29	4.0%
4 yard	109	\$ 292.12	12 18.99	69	311.11	4.0%
6 yard	89	\$ 411.94	94 26.78	69	438.72	4.0%
8 yard	50	\$ 517.03	03 33.61	\$	550.64	4.0%
Industrial Rates						
10 yard	201	\$ 114.00	7.41	8	121.41	N/A
20 yard	988	\$ 114.00	7.41	X.	121.41	N/A
30 yard	726	\$ 136.00	8.84	69	144.84	NA
40 yard	181	\$ 155.00	10.08	63	165.08	NA



April 26, 2018

Sherilyn Lombos City Manager City of Tualatin 18880 SW Martinazzi Avenue Tualatin, OR 97062

RE: Solid Waste Collection Price Increase

Dear Ms. Lombos:

Republic Services, Inc. is requesting a 6.5 percent price increase, effective June 1, 2018. This increase will enable our company to continue providing the quality services desired by the City through its franchise with Republic. The last price increase of 5.9 percent was approved by the City two years ago, effective May 1, 2016.

The effect of this price increase for 57 percent of our residential customers using 35gallon carts would be \$1.66 per month.

Republic's operating costs are expected to increase \$1,337,737 since the last price increase effective May 1, 2016 through 2018.

- Inflation increased an aggregate 6.5 percent for the two-year period of 2016-2017 (Portland CPI-U);
- Labor and medical insurance expenses increased 31-percent following employee approval of a new four-year labor agreement, effective December 1, 2016. Republic employees collecting solid waste in Tualatin are members of Teamsters Local 305; and.
- Depreciation increased 13-percent due to the purchase of eight new vehicles fueled with Compressed Natural Gas (CNG). Total cost of these vehicles is \$3,622,455.

Republic has 14 full-time employees dedicated to serve its residential, commercial and industrial customers living and operating a business in the City of Tualatin. These employees serve as managers, collection vehicle drivers, mechanics and a recycling outreach and education coordinator. This employee count does not include our general and administrative staff, such as accounting, customer billing, customer service, etc., who provide support services for out Tualatin operation.

Republic uses 14 collection vehicles, eight are CNG trucks, serving its Tualatin residential, commercial and industrial customers. The fueling infrastructure for collection vehicles requiring natural gas fuel had been installed by Republic at its facility in Wilsonville.

It has been our pleasure to serve the City of Tualatin and we look forward to our continued partnership.

Respectfully,

Jason Jordan

General Manager

Attachment: Republic Services 2018 Rate Increase Packet

cc: Bates Russell, Information Services Director Clay Reynolds, Maintenance Service Manager Kathy Kaatz, Program Coordinator Frank Lonergan, Operations Manager Therese McLain, Municipal Manager Alison Geiger, Controller

City of Tualatin

2018 Rate Increase Packet



Republic Services of Clackamas and Washington Counties

Financial



We'll handle it from here.

Statement of Income 2018 Rate Increase

Republic Services City of Tualatin Statement of Income 2015, 2016, 2017 actuals*, and projected 2018**

	2015	2016	2017	2018 with rate increase **	2018 no rate increase **
Revenue	7,231,861	7,669,640	8,574,339	9,131,671	8,574,339
Cost of Operations	5,654,030	6,188,061	7,273,760	7,525,798	7,513,220
Gross Profit	1,577,831	1,481,579	1,300,579	1,605,873	1,061,119
Salaries, General and Administrative	1,153,843	938,935	1,039,412	1,070,594	1,070,594
Operating Income	423,988	542,644	261,167	535,279	(9,476)
Income as a Percentage of Revenue actual reported number are from the City of Tualatin DCR cial results exclude the current recycling market vaulatily	5.9%	7.1%	3.0%	5.9%	-0.1%





Expenses 2018 Rate Increase

Republic Services City of Tualatin Schedule of Direct Expenses 2015, 2016, 2017 actuals*, and projected 2018**

	2015	2016	2017	2018 with rate increase	2018 no rate increase
COST OF OPERATIONS					
Labor	970,815	1,035,445	1,507,952	1,605,969	1,605,969
Repairs and Maintenance	376,779	375,646	629,486	662,849	662,849
Vehicle Operating Costs	218,156	145,224	276,474	283,386	283,386
Facility	78,776	54,837	123,088	127,519	127,519
Insurance	296,028	78,054	131,626	134,917	134,917
Disposal	3,154,732	3,833,787	3,833,797	3,933,476	3,933,476
Franchise Fees	161,043	176,625	193,502	206,080	193,502
Other Operating Costs	24,652	13,826	33,691	34,533	34,533
Depreciation -	373,049	474,617	544,144	537,070	537,070
TOTAL COST OF OPERATIONS	5,654,030	6,188,061	7,273,760	7,525,798	7,513,220
TOTAL SALARIES, GENERAL & ADMINISTRATIVE	1,153,843	938,935	1,039,412	1,070,594	1,070,594

*All actual reported number are from the City of Tualatin DCR

Republic Services - Cost Structure, City of Tualatin 5% 2% 7% 14% 13% 24% 2015 2016 2017 2018 Disposal Dabor Fuel & Vehicle Dadmin Expenses Depreciation Facility Expenses Depreciation Facility Expenses Depreciation

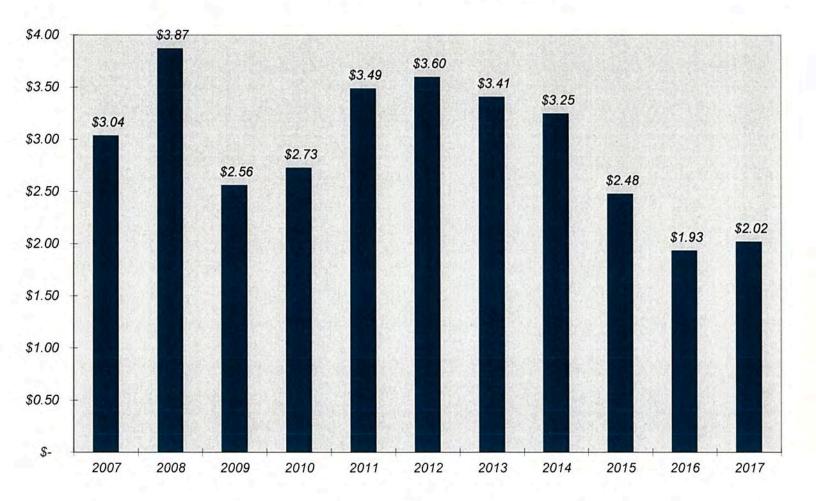




^{** 2018} financial results include the current recycling market vaulatily

Fuel Price Trend 2018 Rate Increase

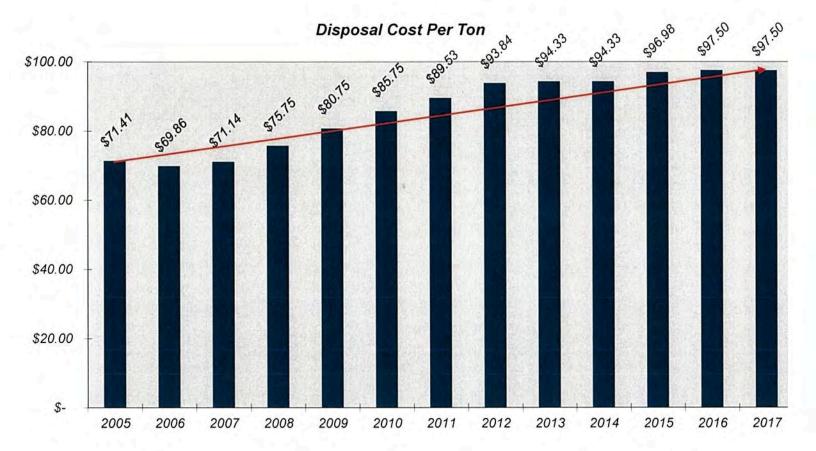
Average Diesel Fuel Price Per Gallon

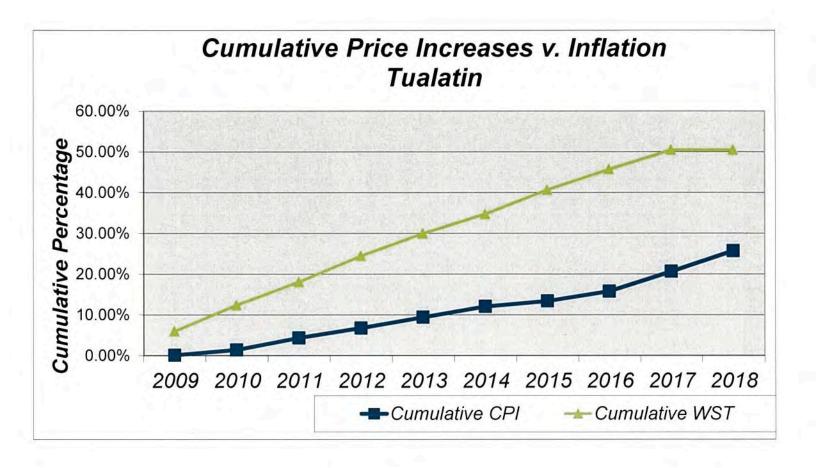






Disposal Cost Trend 2018 Rate Increase





Rates



We'll handle it from here.

Republic Services of Tualatin 2018 Rates

Effective 6/1/18

	Quantity	C	urrent	New	\$ C	hange
Residential Cart Rates						
20 gallon	553	\$	21.79	\$ 23.21	\$	1.42
35 gallon	3,339	\$	25.54	\$ 27.20	\$	1.66
65 gallon	1,952	\$	33.69	\$ 35.88	\$	2.19
90 gallon		\$		\$	\$	180
Commercial Rates		P,				
35 gallon	366	\$	23.00	\$ 24.50	\$	1.50
65 gallon	148	\$	31.00	\$ 33.02	\$	2.02
90 gallon	120	\$	38.00	\$ 40.47	\$	2.47
1.33 yard		\$	9	\$ 1.0	\$	4-2
1.5 yard	42	\$	125.00	\$ 133.13	\$	8.13
2 yard	103	\$	165.03	\$ 175.76	\$	10.73
3 yard	30	\$	230.32	\$ 245.29	\$	14.97
4 yard	109	\$	292.12	\$ 311.11	\$	18.99
6 yard	68	\$	411.94	\$ 438.72	\$	26.78
8 yard	50	\$	517.03	\$ 550.64	\$	33.61
Industrial Rates						
10 yard	201	\$	114.00	\$ 121.41	\$	7.41
20 yard	988	\$	114.00	\$ 121.41	\$	7.41
30 yard	726	\$	136.00	\$ 144.84	\$	8.84
40 yard	181	\$	155.00	\$ 165.08	\$	10.08

			Republic S	ervic	es of Tu	alat	in						
				2018 R									
			Eff	ective	6/1/18								
	C	urrent	New		LO	C	lackamas	Wa	shington	Wil	sonville	Po	rtland
				Th	ese rates	are	all as of 201	and	subject to	Price	Increases	in 20	018
Residential Cart Rates													
20 gallon	\$	21.79	\$ 23.21	\$	21.20	\$	26.20	\$	21.09	\$	20.00	\$	24.75
35 gallon	\$	25.54	\$ 27.20	\$	30.06	\$	30.05	\$	22.96	\$	26.37	\$	29.35
65 gallon	\$	33.69	\$ 35.88	\$	46.77	\$	39.40	\$	33.32	\$	34.60	\$	35.65
90 gallon	\$		\$	\$	49.21	\$	46.20	\$		\$	81	\$	42.05
Commercial Rates													
35 gallon	\$	23.00	\$ 24.50	\$	27.59	\$	26.10	\$	17.31	\$	20.00		
65 gallon	\$	31.00	\$ 33.02	\$	41.10	\$	37.35	\$	29.52	\$	31.16		
90 gallon	\$	38.00	\$ 40.47	\$	43.71	\$	40.05	\$	35.61	\$	39.25		
1.33 yard	\$		\$ - 6-	\$		\$		\$		\$			
1.5 yard	\$	125.00	\$ 133.13	\$	150.97	\$	125.55	\$	129.31	\$	134.19		
2 yard	\$	165.03	\$ 175.76	\$	169.48	\$	158.75	\$	155.67	\$	175.22		
3 yard	\$	230.32	\$ 245.29	\$	211.80	\$	215.11	\$	208.11	\$	242.70		
4 yard	\$	292.12	\$ 311.11	\$	279.85	\$	273.64	\$	260.71	\$	316.16		
6 yard	\$	411.94	\$ 438.72	\$	351.51	\$	378.96	\$	365.01	\$	441.38		
8 yard	\$	517.03	\$ 550.64	\$	475.49	\$	465.44	\$	472.13	\$	585.26		
Industrial Rates													
10 yard	\$	114.00	\$ 121.41	\$	125.14	\$	119.00	\$	141.00	\$	116.00		
20 yard	\$	114.00	\$ 121.41	\$	125.14	\$	119.00	\$	141.00	\$	116.00		
30 yard	\$	136.00	\$ 144.84	\$	146.97	\$	136.00	\$	168.00	\$	146.00		
40 yard	\$	155.00	\$ 165.08	\$	169.34	\$	153.00	\$	168.00	\$	166.00		



Residential Rate Sheet 2018 Rate Increase

TUALATIN RATE INCREASE 6/1/2018

Residential

Residential Monthly Rate (once per week service)

		New			
20 gallon		\$	23.00		
35 gallon		\$	27.00		
65 gallon		\$	36.00		
95 gallon		\$			
Up The Drive Rate	20G or 32G Carts	\$	4.00		

*Greater than 1 cart per week, use multiples of single cart fee

p The Drive Rate 20G or 32G Carts \$ 4.0 65G or 90G Carts \$ 5.5

4.00 Additional \$1.14 for every 50 ft.
5.50 Additional \$1.14 for every 50 ft.

Limited Services

	1	New
32 gallon cart monthly service	s	
65 gallon yard debris only weekly	\$	7.00
Recycling Only	\$	7.00
On-Call 35 Gallon Can Collection Per Pickup. (does not include recycling)	\$	11.00

All residential service includes weekly curbside recycling and weekly curbside 65-gallon yard debris collection. The company provides 65-gallon carts for yard debris and recycling. Customers may elect to get additional 65-gallon yard debris carts for \$7.92 per 65-gallon cart collected weekly.

Additional / Extra Services	o. J	New
Lost or Damaged Garbage Carts	s	65.00
Lost or Damaged Yard Debris Cart	s	70.00
Lost or Damaged Recycling Cart	\$	70.00
Lost or Damaged Recycling Bins	\$	11.00
Return Trip Fee - Same Day	\$	17.00
Return Trip Fee - Outside of Normal Service Day	\$	27.00
On Route Extras (cans bags, boxes)	\$	6.00
On Route Extras (Yard Debris)	\$	6.00
Yard Debris or Recycling contaminated with Garbage	\$	11.00
Gate Opening / Roll out Container (monthly)	s	1.00

Special Hauling Rate Per bag, box, can, etc

Per bag, box, can, etc



Commercial Rate Sheet 2018 Rate Increase

TUALATIN RATE INCREASE 6/1/2018

Commercial New Rates

Commercial Services

Stops Per Week

			Otopo i oi i			
Size	1 - Stop	2 - Stop	3 - Stop	4 - Stop	5 - Stop	6 - Stop
1 Yard*	\$105.01	\$200.64	\$293.72	\$0.00	\$0.00	\$0.00
1.3 Yard*	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.5 Yard	\$133.13	\$261.17	\$381.89	\$497.22	\$609.25	\$0.00
2 Yard	\$175.76	\$341.34	\$498.16	\$646.88	\$793.89	\$857.97
3 Yard	\$245.29	\$474.79	\$691.08	\$891.14	\$1,102.58	\$1,339.56
4 Yard	\$311.11	\$602.11	\$891.10	\$1,163.83	\$1,427.79	\$1,713.21
5 Yard	\$379.10	\$744.86	\$1,088.08	\$1,432.64	\$1,757.95	\$2,109.52
6 Yard	\$438.72	\$861.63	\$1,277.76	\$1,658.74	\$2,081.28	\$2,462.26
8 Yard	\$550.64	\$1,080.25	\$1,597.43	\$2,124.29	\$2,457.60	\$2,835.03

Size	Size	Addt'l container discount
1 Yard*	1 Yard	20%
1.3 Yard*	1.3 Yard	20%
1.5 Yard	1.5 Yard	20%
2 Yard	2 Yard	15%
3 Yard	3 Yard	15%
4 Yard	4 Yard	15%
5 Yard	5 Yard	10%
6 Yard	6 Yard	10%
8 Yard	8 Yard	10%

Container compactor rate is 2.2 times the regular Rate

Commercial extra container dumps(return trips) are charged at 33% of the monthly rate

Extra material beyond the capacity of the container is charged per yard

\$20.67

*As of September 1, 2015 1-yard and 1.33-yard front load containers have not been available for new service. Current customers with these containers will be allowed to continue service with them at the approved rates.

Commercial Rates / Multi-Family Rates	Current	X 2 Carts
20 gallon	\$0.00	N/A
35 gallon	\$24.50	\$48.99
65 gallon	\$33.02	\$66.03
95 gallon	\$40.47	\$80.94
32 Gallon Can Monthly	\$0.00	

(with this monthly rate a cart will be supplied and the customer is subject to up the drive rates if it applies)

More than Weekly Service

The rate for multiple weekly collections is the base weekly service rate for the size and number of cans/carts collected times the number of collections required each week

Recycling

All commercial customers have the ability to recycle all of the current materials within the recycling collection program. Commercial customers are set up based on their individual materials and volume.

Service does not include Yard Debris Collection.

Commercial customers are not provided Yard Debris collection within their basic rate. Commercial customers can subscribe to Yard Debris collection at the rate of \$25,00 per 65-gallon cart collected weekly. Contamination charge of \$25,00 may apply.

Industrial Rate Sheet 2018 Rate Increase

TUALATIN RATE INCREASE 6/1/2018 Industrial

Drop box services are provided by Republic Services of Clackamas & Washington Counties per subcontract agreement with City of Lake Oswego

Drop Box / Compactor Rates

	Delivery	New
<30 yard	\$35.00	\$ 121.41
30 yard	\$35.00	\$ 144.84
40 yard	\$35.00	\$ 165.08
<30 yard compactor	N/A	\$ 165.08
30 yard compactor	N/A	\$ 218.33
40 yard compactor	N/A	\$ 250.28

Additional Drop Box Services

New

Fee for less than 4 hauls per month	\$18.57	
Round-tripped custom or lidded box (per haul)	\$30.17	
Custom or lidded box rental (per month)	\$6.97	

Note: Drop box rates shall be the standard rates above plus disposal fees. The disposal fee includes landfill or transfer center fees, disposal franchise fees, Metro user or service fees, etc.

Rental Fee after 48 Hours	New New
Box Size	Loose (per day) Per Month
10-yard	\$7.84 \$87.04
20-yard	\$7.84 \$87.04
30-yard	\$8.41 \$92.85
40-yard	\$9.00 \$98.65

Rent charged will be the lesser of the daily or monthly rent total

Multifamily Recycling Services for Drop Box or Compactor Customers

Units	New	
5-199	\$2.52	
200-299	\$1.98	
300-399	\$1.79	
399+	\$1.73	

Before the customer acquires a compactor, the customer shall consult with the collector to make certain the compactor contemplated is compatible with the equipment of the collector or equipment the collector is willing to acquire. If the collector agrees to acquire a compactor drop box for a customer, the rental shall be the lease-purchase cost to the collector plus the reasonable cost of any repairs, and the customer shall satisfy the collector that the service will be used until the compactor is paid for.

Republic Services of Clackamas & Washington Counties 503-682-3900





Tual	atin	Miscel	laneous	Ch	arges
					2

RATES WITH INCREASE Effective 6/1/18

Type of Service New

On-Call 1 Can Collection S 12.12

Call-Back Charge (Same Day) S 17.00

Call-Back Charge (Non Route Day) S 27.00

Commercial Extra Container Dumps

Extra container dumps are charged at 33% of monthly rate

Special Hauling S 28.20 less than 4 - 32gal bags or equivalent

Truck & 1 Person (minimum 15 minutes) + disposal S 84.59 Per hour

Truck & 2 People (minimum 15 minutes) + disposal S 112.78 Per hour Disposal charge per yard S 20.67

Appliances/Furniture \$ 22.56 Minimum

With Compressor S 64.85

Tires

On Rim (18" maximum) \$ 14.94 Off Rim (18" maximum) \$ 7.33

Oversize Tires (over 18") \$ 28,20 Minimum

Clean-Up Containers

 3 Yard
 \$ 122.84

 Additional Empty
 \$ 98.18

 Rental After Four Days/Per Day
 \$ 19.05

Returned Check Fee S 29.32

Reinstatement Fee S 31.74
Service Interrupt Fee S 25.00
Roll Cart Redelivery Fee S 31.74

Late Fee The fee equals 1.5% over the past due balance or a minimum fee of \$5.00, whichever is greater.

Past due balances begin at 45 days as of the date of the invoice

For any other type of service not set out in this schedule, please refer to City of Tualatin administrative rules.





We'll handle it from here.™

Republic Services of Clackamas and Washington Counties 10295 SW Ridder Rd Wilsonville, OR 97070 503.636.3011 • republicservices.com

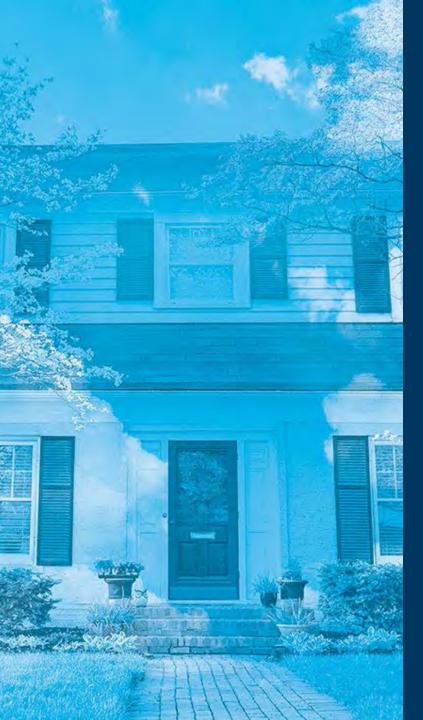
Republic Services in Tualatin

May 14, 2018

Jason Jordan, General Manager Therese McLain, Municipal Manager Frank Lonergan, Operations Manager Alison Geiger, Controller







Republic Services National Overview

- Reliable 99.9% pickup rate
- Environmental Responsibility
 over 4,400 CNG trucks
 nationwide
- Safer 42% fewer incidents than industry average



Customer Service

- Customer Resource Center (CRC)
- Strong partnership between Republic's staff and city staff
- Service issues/inquiries data



Republic Services in Tualatin

- We have 14 drivers servicing Tualatin
- Drivers are at the curbs of 5,900
 Tualatin homes each week
- There are 130,000 containers picked up every year
- We have 14 collection vehicles serving City of Tualatin
- 6 of the vehicles are fueled by CNG
- In 2016, Republic collected 36,162 tons of material for recovery and disposal:
 - Residential tons 18,485
 - Commercial tons 32,449
 - Industrial tons 22,582



Community Involvement

In 2017, our company donated close to \$20,000 to the community of Tualatin in sponsorship and in-kind services such as drop boxes.

- City of Tualatin
- Tualatin Chamber of Commerce
- Meals on Wheels Tualatin
- Tualatin Police Foundation
- Tualatin High School PackBackers
- Tualatin High School Leadership
- Ride Connection
- Two bulky waste events for the residents of Tualatin



2018 Rate Adjustment

Currently every-other year

- Why is it needed?
- What are the contributing factors?
- How does Tualatin compare to other cities?



Recycling Market Issues

- China Sword History
- Systemic impact in the market
- What are counties and other cities doing in the region?

Interim Recycling Surcharge

- What does this mean for Tualatin?
- Temporary adjustment with biannual assessment in collaboration with city

Thank You





STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager

FROM: Richard Mueller, Parks and Recreation Manager

Paul Hennon, Community Services Director

DATE: 05/14/2018

SUBJECT: Parks and Recreation Master Plan Project Update

ISSUE BEFORE THE COUNCIL:

The Council will receive a status report from staff and the project consultant on the Parks and Recreation Master Plan Update Project with a focus on the values, vision, mission, goals, objectives, and recommendations.

RECOMMENDATION:

This is an opportunity for Council to provide direction on the appropriateness of the draft values, vision, mission, goals, and objectives.

EXECUTIVE SUMMARY:

The Parks and Recreation Master Plan Update Project was initiated in July of 2017 and has now progressed through several phases. This status report will inform Council of the project schedule and focus on project goals and objectives based on community outreach findings.

Project Phases Completed To-Date and/or In-Process:

- Phase 1: Project Initiation and Planning Context (completed)
- Phase 2: System Inventory and Analysis (completed)
- Phase 3: Needs Assessment and Public Outreach (completed)
- Phase 4: ADA Assessment and Transition Plan (in-process)
- Phase 5:Goals and Recommendations (in-process)
- Phase 6: Funding and Action Plan
- Phase 7: Plan Review and Adoption

The attached document and PowerPoint presentation provides an overview of the Draft Project Values, Vision, Mission, Goals, and Objectives that the Project Advisory Committee reviewed and provided comments on at their May 8, 2018 meeting.

For summaries and detailed reports on each phase of the project, please see the project website at:

https://www.tualatinoregon.gov/recreation/webforms/parks-recreation-master-plan-update.

Next Steps:

The immediate next steps consist of preparing the Draft Recommendations and Capital Projects List, and reviewing them with the Project Advisory Committee and the City Council during the spring and summer.

Development of Preliminary Funding Alternatives and an Action Plan is expected to occur during the summer. The draft plan for public, Project Advisory Committee, and Council review is scheduled for fall with the plan adoption to be considered in winter 2018.

Attachments: Values, Vision, Goals, and Objectives

PowerPoint Presentation



PARKS & RECREATION MASTER PLAN

VALUES, VISION, GOALS & OBJECTIVES

Introduction

The values and aspirations for the City of Tualatin are the guiding forces for the Parks & Recreation Master Plan (Master Plan). Through extensive public involvement and meetings with the Project Advisory Committee, these values and aspirations were identified and integrated into our planning framework. The framework includes the following elements, which answer critical questions:

- Values: The internal beliefs and philosophy that guide our work. What characteristics or ideals inspire our community? What do we value?
- **Vision:** A desired end state or aspirations for a preferred future. *What are our aspirations?*
- **Mission:** The purpose of the organization, its business, and essential services. What type of work do we do?
- **Goals:** Directions for long-range change. *Where do we want to be in the future?*
- **Objectives:** Specific and measurable outcomes that contribute to achieving our goals. What do we want to achieve?
- Recommendations: Specific activities and initiatives that will achieve the stated goal. What steps will we take to achieve our goals?

These elements provide the foundation for the Master Plan. They are aligned with City Council's 2030 Vision, state land use goals and public outreach input. This document presents the Master Plan values, vision, mission, goals and objectives for PAC and Council review and confirmation. After refinement, strategies will be defined to provide system-wide recommendations for the park and recreation system.

Core Values

Core values are internal beliefs and qualities treasured by the community. These shared beliefs form a philosophy to guide the City's parks and recreation services.

- **Health & wellness** (mental and physical health, activity, stress reduction)
- Conservation & stewardship (sustainability, natural resource protection, asset management, green infrastructure, resource conservation)

- **Inclusiveness & equity** (social justice, fairness in resource allocation, opportunities and services for people of different ages, cultures, interests, languages and abilities)
- **Diversity** (respect for different languages, cultures and peoples, variety in recreation opportunities to respond to diverse community needs)
- **Economic vitality** (prosperity, economic vibrancy and health, accountability, fiscal responsibility, community development)
- Accessibility & connectivity (interconnected trails and pathways, close-to-home parks, walkable/bikeable neighborhoods, accessible facilities and services to people of different abilities)
- **Community engagement** (informed and engaged residents, involved residents and neighbors, volunteerism)
- **Social cohesion** (socially interconnected through community events, neighborhood programs and public gathering spaces)
- Community vibrancy & livability (sense of place/community identity, integration of arts/culture/history, attractive open space and gateways, park activation, historic preservation, civic pride)
- **Family-friendliness** (opportunities for youth development, lifelong learning, multigenerational activities)

Vision

The vision statement describes Tualatin's aspirations for parks and recreation services. This vision paints a picture of the parks and recreation system we want to achieve. Through the Master Plan process, the following vision emerged:

Tualatin is a vibrant city, with a healthy and cohesive community, connected through attractive parks, diverse facilities, trails, conservation of natural areas, recreation opportunities, and art and culture that are engaging and accessible to all.

Mission

A mission describes the approach that Parks & Recreation staff will take in providing parks, recreation facilities, trails, natural areas, events and programs for Tualatin. The mission notes the type of work done by Department staff, emphasizing staff priorities in achieving the vision for parks and recreation services. The following mission is proposed:

We actively care for our parks, connect our community through trails and programs, and protect our river, greenways and natural areas to create a beautiful, livable city.

Goals

Goals represent the City's overarching directions for the park and recreation system. Seven goals are presented:

- Goal 1: Provide accessible and inclusive parks and facilities to support community interests and recreation needs.
- **Goal 2: Create a walkable, bikeable, and interconnected City** by providing a network of regional and local trails to community destinations.
- **Goal 3: Conserve and restore natural areas** to support wildlife, promote ecological functions, and connect residents to nature and the outdoors.
- **Goal 4: Activate parks and facilities** through vibrant programs, events, and recreation opportunities for people of all ages, abilities, cultures, and interests.
- **Goal 5: Support public art through programs, parks, and public spaces** that reflects Tualatin's unique identity, heritage, history and expressive character to create a distinct sense of place.
- Goal 6: Promote Tualatin's unique identity, economic vitality, and community cohesion through parks and natural resources, historic preservation, events and programs, placemaking and tourism.
- **Goal 7: Manage and maintain quality parks, facilities, and programs** through outstanding customer service, stewardship, and sustainable practices.

Objectives

Objectives are the desired outcomes to be achieved by implementing the Master Plan. Objectives are presented below, organized and numbered by goal.

Goal 1: Provide accessible and inclusive parks and facilities to support community interests and recreation needs.

- Objective 1a. Strive to provide parks, natural areas and/or recreation resources within $\frac{1}{2}$ mile of residents to ensure walkable/bikeable access to recreation opportunities.
- Objective 1b. Provide natural areas, trails, greenways, and shared use paths to serve employees in commercial and industrial areas.
- Objective 1c. Continue to maintain the City's existing level of service for parkland to support community livability as Tualatin grows.
- Objective 1d. Address deferred maintenance projects and improve facility conditions by implementing an asset replacement plan.
- Objective 1e. Distribute a variety of recreation facilities throughout Tualatin to improve recreation opportunities and access.
- Objective 1f. Increase and diversify sports and play experiences across the city.
- Objective 1g. Ensure that the City parks, recreation, and natural areas are accessible to people of varying abilities.

Objective 1h. Design parks and facilities to respond to demographic, cultural, and neighborhood needs.

Goal 2: Create a walkable, bikeable, and interconnected city by providing a network of regional and local trails to community destinations.

- Objective 2a. Develop trails to connect Tualatin to the regional trail system.
- Objective 2b. Acquire and develop an interconnected system of on and off-street bike and pedestrian routes, trails and paths and to connect people to nature, residential, commercial, industrial and public facilities.
- Objective 2c. Connect residents to the existing Tualatin River Water Trail.
- Objective 2d. Design and develop quality trails to enhance the trail experience.

Goal 3: Conserve and restore natural areas to support wildlife, promote ecological functions, and connect residents to nature and the outdoors.

- Objective 3a. Identify and protect Tualatin's natural resources.
- Objective 3b. Maintain and steward natural resources in parklands.
- Objective 3c. Restore and enhance natural areas in parklands.
- Objective 3d. Expand opportunities to experience nature in Tualatin.

Goal 4: Activate parks and facilities through vibrant programs, events, and recreation opportunities for people of all ages, abilities, cultures, and interests.

- Objective 4a. Provide recreation and library programs in core program areas to respond to community needs.
- Objective 4b. Expand sports programs to support health and fitness.
- Objective 4c. Continue to provide unique events, social gatherings, and celebrations to foster community cohesiveness and strengthen community spirt.
- Objective 4d. Strategically increase outdoor and nature programming.
- Objective 4e. Strengthen and diversify enrichment and learning programs.
- Objective 4f. Strategically phase-in more indoor programming.

Goal 5: Support public arts through programs, parks, and public spaces that reflect Tualatin's unique identity, heritage, history, and expressive character to create a distinct sense of place.

- Objective 5a. Support the role of public art in placemaking to contribute to the sense of place, character, and identity in Tualatin.
- Objective 5b. Emphasize interactive art in parks and facilities.
- Objective 5c. Emphasize educational art displays and interpretive features that promote Tualatin and its history, culture and character.
- Objective 5d. Consider the provision of sculptures and art installation on an opportunity basis.
- Objective 5e. Diversify Arts & Culture programs and events as a core recreation service area.
- Objective 5f. Expand science, technology, engineering, arts and mathematics (STEAM) education in conjunction with the arts programming.

Objective 5g. Market, promote and fund art and art programs as part of the City's branding strategy.

Goal 6: Promote Tualatin's unique identity, economic vitality, and community cohesion through parks and natural resources, historic preservation, events and programs, placemaking and tourism.

- Objective 6a. Promote placemaking in parks and facilities.
- Objective 6b. Improve City center parks as community gathering hubs.
- Objective 6c. Emphasize and augment connections to the Tualatin River.
- Objective 6d. Brand the Department and communicate the benefits provided by Tualatin's parks, natural areas, trails, and programs.
- Objective 6e. Engage residents, employees, partners, stakeholders, and local businesses to support art and tourism.

Goal 7: Manage and maintain quality parks, facilities, and programs through outstanding customer service, stewardship, and sustainable practices.

- Objective 7a. Maintain and operate parks effectively to support quality use.
- Objective 7b. Adopt design and development guidelines to guide park and facility maintenance, management, renovation, and development.
- Objective 7c. Be fiscally and financially prudent in funding the community's park and recreation needs.
- Objective 7d. Ensure the provision of high quality, responsive customer service.

The City's values, vison, mission and goals are summarized on the next page.

Inclusiveness & equity

⊀ CORE VALUES ≽

Diversity

Conservation & stewardship

Family-

friendliness

⊀ VISION ≯

Tualatin is a vibrant city, with a healthy and cohesive community. connected through attractive parks, diverse facilities, trails, conservation of natural areas, recreation opportunities, and art and culture that are engaging and accessible to all.

Economic vitality

> **Accessibility &** connectivity

Community engagement

Social cohesion

Community vibrancy & livability

Health &

wellness



We actively care for our parks, connect our community through trails and programs, and protect our river, greenways and natural areas to create a beautiful, livable city.



- Goal 1: Provide accessible and inclusive parks and facilities
- > Goal 2: Create a walkable, bikeable, and **interconnected City** by providing a network of regional
- **> Goal 3: Conserve and restore natural areas** to



- **> Goal 4: Activate parks and facilities** through vibrant
- > Goal 5: Support public art through programs, parks, and public spaces that reflects Tualatin's
- > Goal 6: Promote Tualatin's unique identity, economic **vitality, and community cohesion** through parks and natural
- > Goal 7: Manage and maintain quality parks, facilities, and programs through outstanding customer service, stewardship.



PARKS AND RECREATION MASTER PLAN



Values, Vision, Mission, Goals, & Objectives



Project Phases

Project Phases Completed To-Date and/or In-Process

- Phase 1: Project Initiation and Planning Context (completed)
- Phase 2: System Inventory and Analysis (completed)
- Phase 3: Needs Assessment and Public Outreach (completed)
- Phase 4: ADA Assessment and Transition Plan (in-process)
- Phase 5:Goals and Recommendations (in-process)
- Phase 6: Funding and Action Plan
- Phase 7: Plan Review and Adoption



Community Outreach Themes

- Parks and recreation are important to Tualatin's quality of life.
- Trail connections and trail activities are a priority for community members.
- There is a need for improved facilities and expanded capacity for sports.



Community Outreach Themes

- A multi-use indoor facility is desired to support a variety of community interests and needs.
- Community members desire stronger, inclusive communications and marketing from the City and Community Services Department.
- A greater variety of activities and programs is needed to meet the needs and interests of people of all ages and cultures.
- Community members highly value Tualatin's natural resources and want access to natural features, especially the river, for recreation.



Inclusiveness & equity

⊀ CORE VALUES ≯

Diversity

Conservation & stewardship

⊀ VISION >>

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Economic vitality

Accessibility & connectivity

Community engagement

Social cohesion

Community vibrancy & livability

Health &

wellness

Familyfriendliness



We actively care for our parks, connect our community through trails and programs, and protect our river, greenways and natural areas to create a beautiful, livable city.



Core Values

The internal beliefs and philosophy that guide our work.
What characteristics or ideals inspire our community? What do we value?

- Health & Wellness
 mental and physical health, activity, stress reduction
- Conservation & Stewardship
 sustainability, natural resource protection, asset management, green infrastructure, resource conservation
- Inclusiveness & Equity
 social justice, fairness in resource allocation, opportunities and services for people of different ages, cultures, interests, languages
 and abilities

Core Values

Diversity

respect for different languages, cultures and peoples, variety in recreation opportunities to respond to diverse community needs

Economic vitality

prosperity, economic vibrancy and health, accountability, fiscal responsibility, community development

Accessibility & Connectivity

interconnected trails and pathways, close-to-home parks, walkable/bikeable neighborhoods, accessible facilities and services to people of different abilities



Core Values

- Community engagement informed and engaged residents, involved residents and neighbors, volunteerism
- Social cohesion socially interconnected through community events, neighborhood programs and public gathering spaces
- Community vibrancy & livability sense of place/community identity, integration of arts/culture/history, attractive open space and gateways, park activation, historic preservation, civic pride
- Family-friendliness
 opportunities for youth development, lifelong learning,
 multi-generational activities



Vision

A desired end state or aspirations for a preferred future. What are our aspirations?

 Tualatin is a vibrant city, with a healthy and cohesive community, connected through attractive parks, diverse facilities, trails, conservation of natural areas, recreation opportunities, and art and culture that are engaging and accessible to all.



Mission

The purpose of the organization, its business, and essential services. What type of work do we do?

 We actively care for our parks, connect our community through trails and programs, and protect our river, greenways and natural areas to create a beautiful, livable city.



Goals

Directions for long-range change.

Where do we want to be in the future?

Objectives

Specific and measurable outcomes that contribute to achieving our goals. What do we want to achieve?

Recommendations

Specific activities and initiatives that will achieve the stated goal. What steps will we take to achieve our goals?



GOALS >

- **> Goal 1: Provide accessible and inclusive parks and facilities** to support community interests and recreation needs.
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- Goal 7: Manage and maintain quality parks, facilities, and programs through outstanding customer service, stewardship, and sustainable practices.



Goal 1: Provide accessible and inclusive parks and facilities to support community interests and recreation needs.

- a. Strive to provide parks, natural areas and/or recreation resources within ½ mile of residents to ensure walkable/bikeable access to recreation opportunities.
- b. Provide natural areas, trails, greenways, and shared use paths to serve employees in commercial and industrial areas.
- c. Continue to maintain the City's existing level of service for parkland to support community livability as Tualatin grows.
- d. Address deferred maintenance projects and improve facility conditions by implementing an asset replacement plan.

Goal 1: Provide accessible and inclusive parks and facilities to support community interests and recreation needs.

- e. Distribute a variety of recreation facilities throughout Tualatin to improve recreation opportunities and access.
- f. Increase and diversify sports and play experiences across the city.
- g. Ensure that the City parks, recreation, and natural areas are accessible to people of varying abilities.
- h. Design parks and facilities to respond to demographic, cultural, and neighborhood needs.



Goal 2: Create a walkable, bikeable, and interconnected city by providing a network of regional and local trails to community destinations.

- a. Develop trails to connect Tualatin to the regional trail system.
- b. Acquire and develop an interconnected system of on and off-street bike and pedestrian routes, trails and paths and to connect people to nature, residential, commercial, industrial and public facilities.
- c. Connect residents to the existing Tualatin River Water Trail.
- d. Design and develop quality trails to enhance the trail experience.



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- a. Identify and protect Tualatin's natural resources.
- b. Maintain and steward natural resources in parklands.
- c. Restore and enhance natural areas in parklands.
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Goal 4: Activate parks and facilities through vibrant programs, events, and recreation opportunities for people of all ages, abilities, cultures, and interests.

- a. Provide recreation and library programs in core program areas to respond to community needs.
- b. Expand sports programs to support health and fitness.
- c. Continue to provide unique events, social gatherings, and celebrations to foster community cohesiveness and strengthen community spirt.
- d. Strategically increase outdoor and nature programming.
- e. Strengthen and diversify enrichment and learning programs.
- f. Strategically phase-in more indoor programming.



Goal 5: Support public arts through programs, parks, and public spaces that reflect Tualatin's unique identity, heritage, history, and expressive character to create a distinct sense of place.

- a. Support the role of public art in placemaking to contribute to the sense of place, character, and identity in Tualatin.
- b. Emphasize interactive art in parks and facilities.
- c. Emphasize educational art displays and interpretive features that promote Tualatin and its history, culture and character.
- d. Consider the provision of sculptures and art installation on an opportunity basis.



Goal 5: Support public arts through programs, parks, and public spaces that reflect Tualatin's unique identity, heritage, history, and expressive character to create a distinct sense of place.

- e. Diversify Arts & Culture programs and events as a core recreation service area.
- f. Expand science, technology, engineering, arts and mathematics (STEAM) education in conjunction with the arts programming.
- g. Market, promote and fund art and art programs as part of the City's branding strategy.



Goal 6: Promote Tualatin's unique identity, economic vitality, and community cohesion through parks and natural resources, historic preservation, events and programs, placemaking and tourism.

- a. Promote placemaking in parks and facilities.
- b. Improve City center parks as community gathering hubs.
- c. Emphasize and augment connections to the Tualatin River.
- d. Brand the Department and communicate the benefits provided by Tualatin's parks, natural areas, trails, and programs.
- e. Engage residents, employees, partners, stakeholders, and local businesses to support art and tourism.

Goal 7: Manage and maintain quality parks, facilities, and programs through outstanding customer service, stewardship, and sustainable practices.

- a. Maintain and operate parks effectively to support quality use.
- b. Adopt design and development guidelines to guide park and facility maintenance, management, renovation, and development.
- c. Be fiscally and financially prudent in funding the community's park and recreation needs.
- d. Ensure the provision of high quality, responsive customer service.



Next Steps

- Recommendations and Capital Projects List (phase 5), Spring & Summer
- Funding and Action Plan (phase 6), Summer
- Draft Plan Review (phase 7), Fall
- Plan Adoption Proposed, Winter



Questions & Comments

