



**ARCHITECTURAL REVIEW DECISION**  
**KBNP RADIO MICROWAVE DISH SCREENING (AR 20-0008)**  
 June 4, 2021

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Case #:	AR 20-0008
Project:	KBNP Radio Microwave Dish Screening
Location:	18925 SW 84th Avenue; Tax Lots: 2S124BC 04300 & 04400
Applicant:	Keith Lyons, KBNP Radio Inc.
Owner:	Rick Matthias LLC

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**TABLE OF CONTENTS**

I.	INTRODUCTION .....	2
A.	Applicable Criteria.....	2
B.	Site Description.....	2
C.	Proposed Project.....	2
D.	Previous Land Use Actions.....	3
E.	Surrounding Uses .....	3
F.	Exhibit List.....	3
II.	CONDITIONS OF APPROVAL.....	4
III.	FINDINGS.....	5
	Chapter 31: Compliance and Enforcement .....	5
	Chapter 32: Procedures .....	5
	Chapter 33: Applications and Approval Criteria .....	13
	Chapter 34: Special Regulations.....	13
	Chapter 53: Central Commercial (CC) Zone.....	14
	Chapter 73A: Site Design.....	15
	Chapter 73B: Landscaping Standards .....	15
	Chapter 74: Public Improvement Requirements .....	17
IV.	APPEAL.....	20

<p><i>Arrangements can be made to provide these materials in alternative formats such as large type or audio recording. Please contact the Planning Division at 503.691.3026 and allow as much lead-time as possible.</i></p>
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## I. INTRODUCTION

### A. Applicable Criteria

The following Chapters of the Tualatin Municipal Code (TMC) and the Tualatin Development Code (TDC) are applicable to the subject proposal:

- TMC 3: Utilities and Water Quality
- TDC 31: Compliance and Enforcement
- TDC 32: Procedures
- TDC 33.020: Architectural Review
- TDC 34.100: Microwave Dishes Screened
- TDC 53: Central Commercial
- TDC 70: Floodplain District
- TDC 73A: Site Design
- TDC 73B: Landscaping Standards
- TDC 74: Public Improvement Requirements

### B. Site Description

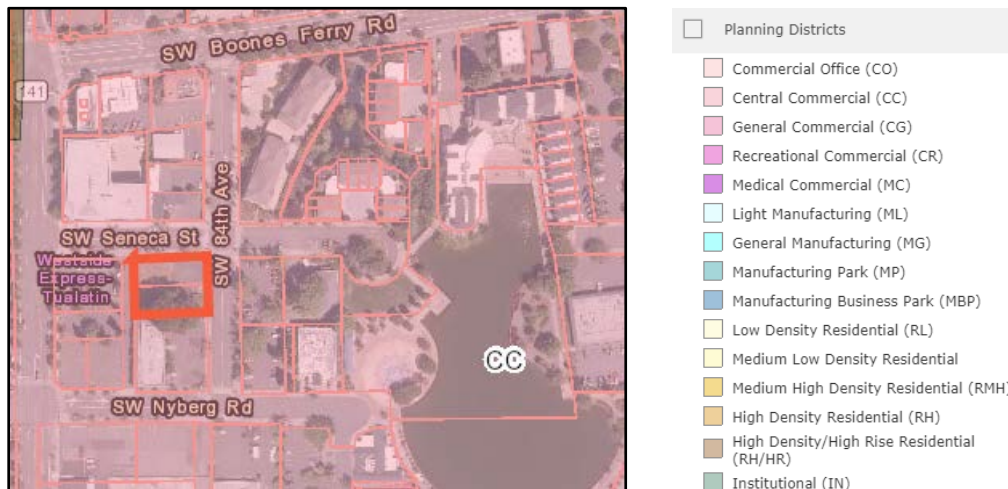


Figure 1 Aerial view of site with zoning (TualGIS)

The 0.28 acre site is comprised of two tax lots located on Block 15 of the Central Tualatin Overlay Zone within the Central Commercial (CC) zone. The property is located in downtown Tualatin, south of SW Boones Ferry Road, east of the Westside Express Transit platform, and west of the Tualatin Commons.

The site is partially developed with an office building and parking area. A small, vacant field is located west of the parking area.

### C. Proposed Project

The applicant, KBNP Radio, has submitted the subject screening proposal in reaction to a code compliance request to satisfy Tualatin Development Code Chapter 34.100 (See Exhibit B). The satellite dish was installed in 2017 without City permitting.

**D. Previous Land Use Actions**

- None on file

**E. Surrounding Uses**

Surrounding uses indicate a professional services and commercial character and include:

North: Central Commercial Planning District (CC)

- SW Seneca St
- Office building (six tenants)

East: Central Commercial Planning District (CC)

- SW 84<sup>th</sup> Ave
- City of Tualatin Yellow Lot

South: Central Commercial Planning District (CC)

- Office building (five tenants)
- SW Nyberg Rd

West: Central Commercial Planning District (CC)

- City of Tualatin Red Lot
- SW Boones Ferry Rd

**F. Exhibit List**

A: Application Materials

A1. Applicant's Narrative

A2. Landscape Plan

A3. Supporting Documents

B: Notice and Order of Code Violation, dated 3.10.20

C: Clean Water Services Memorandum

D: Vision Clearance Area Figure 73-2

## II. CONDITIONS OF APPROVAL

Based on the Findings and Conclusions presented herein, AR 20-0008 is **approved** subject to the following conditions:

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### GENERAL:

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***Submit to the Planning Division (Erin Engman, 503.691.3024 or [eenqman@tualatin.gov](mailto:eenqman@tualatin.gov)) for review and approval:***

- A1. Landscape screening and irrigation must be installed as approved and illustrated on the Landscape Plan included as Exhibit A2, and an inspection must be performed by a member of the Planning Division (503-691-3026) within 150 days from the date of final decision. At least two (2) business days' notice shall be provided prior to inspection. Violation of this condition on the 151<sup>st</sup> day from the date of final decision, will result in a civil infraction and is subject to a fine of up to \$1,000.00 for each violation, in accordance with TDC 31.111. Each violation, and each day that a violation continues, is a separate civil infraction.
- A2. The required landscape areas must be installed and maintained so that landscaping will not interfere with designated pedestrian or vehicular access and will not constitute a traffic hazard because of reduced visibility, pursuant to TDC 73B.080(1). The vision clearance area is formed by a triangular shaped area established at the intersection of SW 84<sup>th</sup> Avenue and the access driveway. The sides of the triangle shall extend 10 feet from the intersection point of the driveway and right-of-way line (see Exhibit D for illustration).
- A3. The proposed Anah Kruschke rhododendrons must be one to five gallons in size, pursuant to TDC 73B.090(4).
- A4. All landscaping improvements approved through the AR process must be continually maintained, so as to remain substantially similar to original approval through the AR process, except as permitted under TDC 33.020(7) *Modifications to Previously Approved Final Architectural Review Decisions*.

### III. FINDINGS

The Planning Division findings reference the TDC, unless otherwise noted.

#### **Chapter 31: Compliance and Enforcement**

##### **TDC 31.111. - Civil Violation.**

**(1) Any person who violates any provision of the Tualatin Development Code commits a civil infraction and is subject to a fine of up to \$1,000.00 for each violation. Each violation, and each day that a violation continues, is a separate civil infraction.**

**(2) Where a specific violation of the Tualatin Development Code specifies a different fine, the fine specific to that violation controls.**

**(3) The civil infraction procedures in Tualatin Municipal Code Chapter 7-01 apply to the prosecution of any violation of the Tualatin Development Code.**

**(4) The remedies for civil infraction are not exclusive and are in addition to any other remedies provided by law or in equity.**

##### **Finding:**

*The subject satellite dish was installed in 2017 without City permitting. AR20-0008 was submitted in reaction to the Notice and Order Code Violation Letter, included as Exhibit B. TDC 34.100 includes microwave receiving dish regulations to minimize their visual impact. The Code defines microwave receiving dish as conical or dish-shaped device or structure used for receiving [...] telecommunication signals transmitted from satellites or earth-based transmitters. All microwave receiving dishes having a diameter of more than three feet must be screened by sight-obscuring masonry walls or dense landscape buffers, as approved through the Architectural Review process, subject to the provisions of TDC 73B. The applicant is proposing an evergreen landscape screen to meet the requirement. Landscapers find that the best time to plant trees in Oregon is between September and December. With Condition of Approval A1, this standard is met.*

#### **Chapter 32: Procedures**

[...]

##### **Section 32.010 – Purpose and Applicability.**

[...]

**(2) Applicability of Review Procedures. All land use and development permit applications and decisions, will be made by using the procedures contained in this Chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or application. There are five types of permit/application procedures as described in subsections (a) through (e) below.**

**Table 32-1 lists the City’s land use and development applications and corresponding review procedure(s).**

[...]

**(b) Type II Procedure (Administrative/Staff Review with Notice). A Type II procedure is used when the standards and criteria require limited discretion, interpretation, or policy or legal judgment. Type II decisions are made by the City Manager and require public notice and an opportunity for appeal to the Planning Commission, Architectural Review Board, or City Council as shown in Table 32-1. Those Type II decisions which are “limited land use decisions” as defined in ORS 197.015 are so noted in Table 32-1.**

[...]

**(3) Determination of Review Type. Unless specified in Table 32-1, the City Manager will determine whether a permit or application is processed as Type I, II, III, IV-A or IV-B based on the descriptions above. Questions regarding the appropriate procedure will be resolved in favor of the review type providing the widest notice and opportunity to participate. An applicant may choose to elevate a Type**

I or II application to a higher numbered review type, provided the applicant pays the appropriate fee for the selected review type.

**Table 32-1 – Applications Types and Review Procedures**

Application / Action	Procedure Type	Decision Body*	Appeal Body*	Pre-Application Conference Required	Neighborhood/Developer Mtg Required	Applicable Code Chapter
<b>Architectural Review</b>						
Architectural Review (except as specified below) (limited land use)	II	CM	ARB / CC	Yes	Yes	TDC 33.020
[...]						
* City Council (CC); Planning Commission (PC); Architectural Review Board (ARB); City Manager or designee (CM); Land Use Board of Appeals (LUBA).						

**Finding:**

*The proposed Architectural Review application is classified as Type II Procedure Type according to Table 32-1. It has been processed according to the applicable code for Type II procedures. This standard is met.*

[...]

**Section 32.030 – Time to Process Applications.**

**(1) Time Limit - 120-day Rule.** The City must take final action on all Type II, Type III, and Type IV-A land use applications, as provided by ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete under TDC 32.160, unless the applicant provides written request or consent to an extension in compliance with ORS 227.178. (Note: The 120-day rule does not apply to Type IV-B (Legislative Land Use) decisions.)

[...]

**Finding:**

*The application was deemed complete on April 13, 2021. The 120<sup>th</sup> day will be August 11, 2021. The final action will take place within the 120 days unless the applicant requests an extension in compliance with ORS 227.178. This standard is met.*

**Section 32.110 – Pre-Application Conference.**

**(1) Purpose of Pre-Application Conferences.** Pre-application conferences are intended to familiarize applicants with the requirements of the TDC; to provide applicants with an opportunity discuss proposed projects in detail with City staff; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to assist applicants in navigating the land use process, but is not intended to be an exhaustive review that identifies or resolves all potential issues, and does not bind or preclude the City from enforcing any applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference.

**(2) When Mandatory.** Pre-application conferences are mandatory for all land use actions identified as requiring a pre-application conference in Table 32-1. An applicant may voluntarily request a pre-application conference for any land use action even if it is not required.

**(3) Timing of Pre-Application Conference.** A pre-application conference must be held with City staff before an applicant submits an application and before an applicant conducts a Neighborhood/Developer meeting.

**(4) Application Requirements for Pre-Application Conference.**

**(a) Application Form.** Pre-application conference requests must be made on forms provided by the City Manager.

**(b) Submittal Requirements.** Pre-application conference requests must include:

**(i)** A completed application form;

**(ii)** Payment of the application fee;

**(iii)** The information required, if any, for the specific pre-application conference sought; and

**(iv)** Any additional information the applicant deems necessary to demonstrate the nature and scope of the proposal in sufficient detail to allow City staff to review and comment.

**(5) Scheduling of Pre-Application Conference.** Upon receipt of a complete application, the City Manager will schedule the pre-application conference. The City Manager will coordinate the involvement of city departments, as appropriate, in the pre-application conference. Pre-application conferences are not open to the general public.

**(6) Validity Period for Mandatory Pre-Application Conferences; Follow-Up Conferences.** A follow-up conference is required for those mandatory pre-application conferences that have previously been held when:

**(a)** An application relating to the proposed development that was the subject of the pre-application conference has not been submitted within six (6) months of the pre-application conference;

**(b)** The proposed use, layout, and/or design of the proposal have significantly changed; or

**(c)** The owner and/or developer of a project changes after the pre-application conference and prior to application submittal.

**Finding:**

*A pre-application meeting is mandatory. The applicant participated in a pre-application meeting on November 20, 2019. The applicant has also discussed the project with staff by phone call and email in follow-up to the preapplication meeting date. These standards are met.*

**Section 32.120 – Neighborhood/Developer Meetings.**

**(1) Purpose.** The purpose of this meeting is to provide a means for the applicant and surrounding property owners to meet to review a development proposal and identify issues regarding the proposal so they can be considered prior to the application submittal. The meeting is intended to allow the developer and neighbors to share information and concerns regarding the project. The applicant may consider whether to incorporate solutions to these issues prior to application submittal.

**(2) When Mandatory.** Neighborhood/developer meetings are mandatory for all land use actions identified in Table 32-1 as requiring a neighborhood/developer meeting. An applicant may voluntarily conduct a neighborhood/developer meeting even if it is not required and may conduct more than one neighborhood/developer meeting at their election.

**(3) Timing.** A neighborhood/developer meeting must be held after a pre-application meeting with City staff, but before submittal of an application.

**(4) Time and Location.** Required neighborhood/developer meetings must be held within the city limits of the City of Tualatin at the following times:

**(a)** If scheduled on a weekday, the meeting must begin no earlier than 6:00 p.m.

**(b)** If scheduled on a weekend, the meeting must begin between 10:00 a.m. and 6:00 p.m.

**(5) Notice Requirements.**

**(a)** The applicant must provide notice of the meeting at least 14 calendar days and no more than 28 calendar days before the meeting. The notice must be by first class mail providing the date,

time, and location of the meeting, as well as a brief description of the proposal and its location. The applicant must keep a copy of the notice to be submitted with their land use application.

**(b) The applicant must mail notice of a neighborhood/developer meeting to the following persons:**

**(i) All property owners within 1,000 feet measured from the boundaries of the subject property;**

**(ii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases; and**

**(iii) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9.**

**(c) The City will provide the applicant with labels for mailing for a fee.**

**(d) Failure of a property owner to receive notice does not invalidate the neighborhood/developer meeting proceedings.**

**(6) Neighborhood/Developer Sign Posting Requirements.** The applicant must provide and post on the subject property, at least 14 calendar days before the meeting. The sign must conform to the design and placement standards established by the City for signs notifying the public of land use actions in TDC 32.150.

**(7) Neighborhood/Developer Meeting Requirements.** The applicant must have a sign-in sheet for all attendees to provide their name, address, telephone number, and email address and keep a copy of the sign-in sheet to provide with their land use application. The applicant must prepare meeting notes identifying the persons attending, those commenting and the substance of the comments expressed, and the major points that were discussed. The applicant must keep a copy of the meeting notes for submittal with their land use application.

**Finding:**

*The applicant has provided evidence that a Neighborhood/Developer meeting was held on August 27, 2020. The applicant has provided documentation of sign posting and notification in compliance with this section. Five members of the public attended the meeting. Two comments were received from the public, in reaction to the neighborhood developer meeting, and are included as Exhibit A3. These standards are met.*

**Section 32.130 – Initiation of Applications.**

**(1) Type I, Type II, Type III, and Type IV-A Applications.** Type I, Type II, Type III, and Type IV-A applications may be submitted by one or more of the following persons:

**(a) The owner of the subject property;**

**(b) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;**

**(c) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or**

**(d) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by paragraphs (a), (b) or (c) of this subsection, and accompanied by proof of the agent's authority.**

[...]

**Finding:**

*The applicant has provided a title report within Exhibit A3 showing Rick Matthias LLC to be the current owner of the subject site. The application included a signed letter of authorization from Rick Matthias. This standard is met.*



**Section 32.140 – Application Submittal.**

**(1) Submittal Requirements.** Land use applications must be submitted on forms provided by the City. A land use application may not be accepted in partial submittals. All information supplied on the application form and accompanying the application must be complete and correct as to the applicable facts. Unless otherwise specified, all of the following must be submitted to initiate completeness review under TDC 32.160:

(a) A completed application form. The application form must contain, at a minimum, the following information:

- (i) The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;
- (ii) The address or location of the subject property and its assessor's map and tax lot number;
- (iii) The size of the subject property;
- (iv) The comprehensive plan designation and zoning of the subject property;
- (v) The type of application(s);
- (vi) A brief description of the proposal; and
- (vii) Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).

(b) A written statement addressing each applicable approval criterion and standard;

(c) Any additional information required under the TDC for the specific land use action sought;

(d) Payment of the applicable application fee(s) pursuant to the most recently adopted fee schedule;

(e) Recorded deed/land sales contract with legal description.

(f) A preliminary title report or other proof of ownership.

(g) For those applications requiring a neighborhood/developer meeting:

- (i) The mailing list for the notice;
- (ii) A copy of the notice;
- (iii) An affidavit of the mailing and posting;
- (iv) The original sign-in sheet of participants; and
- (v) The meeting notes described in TDC 32.120(7).

(h) A statement as to whether any City-recognized Citizen Involvement Organizations (CIOs) whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary must include the date when contact was made, the form of the contact and who it was with (e.g. phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;

(i) Any additional information, as determined by the City Manager, that may be required by another provision, or for any other permit elsewhere, in the TDC, and any other information that may be required to adequately review and analyze the proposed development plan as to its conformance to the applicable criteria;

**(2) Application Intake.** Each application, when received, must be date-stamped with the date the application was received by the City, and designated with a receipt number and a notation of the staff person who received the application.

**(3) Administrative Standards for Applications.** The City Manager is authorized to establish administrative standards for application forms and submittals, including but not limited to plan details, information detail and specificity, number of copies, scale, and the form of submittal.

**Finding:**

*The applicant submitted an application for AR 20-0008 on October 16, 2020. The application was deemed complete on April 13, 2021. The general land use submittal requirements were included with this application. These standards are met.*

**Section 32.150 - Sign Posting.**

- (1) When Signs Posted.** Signs in conformance with these standards must be posted as follows:
  - (a)** Signs providing notice of an upcoming neighborhood/developer meeting must be posted prior to a required neighborhood/developer meeting in accordance with Section 32.120(6); and
  - (b)** Signs providing notice of a pending land use application must be posted after land use application has been submitted for Type II, III and IV-A applications.
- (2) Sign Design Requirements.** The applicant must provide and post a sign(s) that conforms to the following standards:
  - (a)** Waterproof sign materials;
  - (b)** Sign face must be no less than eighteen (18) inches by twenty-four (24) inches (18" x 24"); and
  - (c)** Sign text must be at least two (2) inch font.
- (3) On-site Placement.** The applicant must place one sign on their property along each public street frontage of the subject property. (Example: If a property adjoins four public streets, the applicant must place a sign at each of those public street frontages for a total of four signs). The applicant cannot place the sign within public right of way.
- (4) Removal.** If a sign providing notice of a pending land use application disappears prior to the final decision date of the subject land use application, the applicant must replace the sign within forty-eight (48) hours of discovery of the disappearance or of receipt of notice from the City of its disappearance, whichever occurs first. The applicant must remove the sign no later than fourteen (14) days after:
  - (a)** The meeting date, in the case of signs providing notice of an upcoming neighborhood/developer meeting; or
  - (b)** The City makes a final decision on the subject land use application, in the case of signs providing notice of a pending land use application.

**Finding:**

*The applicant provided certification within Exhibit A3 that signs in conformance with this section were placed on site in accordance with this section. These standards are met.*

**Section 32.160 – Completeness Review.**

- (1) Duration.** Except as otherwise provided under ORS 227.178, the City Manager must review an application for completeness within 30 days of its receipt.
- (2) Considerations.** Determination of completeness will be based upon receipt of the information required under TDC 32.140 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.
- (3) Complete Applications.** If an application is determined to be complete, review of the application will commence.
- (4) Incomplete Applications.** If an application is determined to be incomplete, the City Manager must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:
  - (a)** All of the missing information;
  - (b)** Some of the missing information and written notice from the applicant that no other information will be provided; or
  - (c)** Written notice from the applicant that none of the missing information will be provided.
- (5) Vesting.** If an application was complete at the time it was first submitted, or if the applicant submits additional required information within 180 days of the date the application was first

submitted, approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted.

**(6) Void Applications.** An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.

[...]

**Finding:**

*The applicant submitted an application for AR 20-0008 on October 16, 2020. The application was then deemed complete on April 13, 2021. These standards are met.*

**Section 32.220 – Type II Procedure (Administrative Review with Notice).**

Type II decisions are made by the City Manager with public notice and an opportunity for review and comment. The local appeal body for each application type is specified in Table 32-1. Type II decisions include limited land use decisions under ORS 197.195.

**(1) Submittal Requirements.** Type II applications must include the submittal information required by TDC 32.140(1).

**(2) Determination of Completeness.** After receiving an application for filing, the City Manager will review the application for completeness in accordance with TDC 32.160.

**(3) Written Notice of Application and Opportunity to Comment.** Once the application has been deemed complete, the City must mail notice of a pending Type II decision to the following individuals and agencies no fewer than 14 days before making the Type II decision to allow interested people and agencies the opportunity to submit written comments on the application before the City issues the decision.

**(a) Recipients:**

**(i) The applicant and the owners of the subject property;**

**(ii) All property owners within 1,000 feet measured from the boundaries of the subject property;**

**(iii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases;**

**(iv) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9;**

**(v) Any person who submits a written request to receive a notice;**

**(vi) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; where the project either adjoins or directly affects a state highway, the Oregon Department of Transportation; where the project site would access a County road or otherwise be subject to review by the County, then the County; Clean Water Services; Tri Met; and, ODOT Rail Division and the railroad company if a railroad-highway grade crossing provides or will provide the only access to the subject property. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code; and**

**(vii) Utility companies (as applicable).**

**(b) The mailed notice of pending Type II Decision, at a minimum, must contain all of the following information:**

**(i) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;**

- (ii) The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID;
  - (iii) The proposed site plan;
  - (iv) Statement noting if a railroad-highway grade crossing provides or will provide the only access to the subject property;
  - (v) The type of application and a concise description of the nature of the land use action;
  - (vi) A list of the approval criteria by TDC section for the decision and other ordinances or regulations that apply to the application at issue;
  - (vii) Brief summary of the local decision making process for the land use decision being made;
  - (viii) The date, place and time where comments are due and that comments are due no later than 5:00 p.m. on the 14th calendar day after the notice was mailed;
  - (ix) A statement indicating that issues which may provide the basis for an appeal to the Oregon Land Use Board of Appeals must be raised in writing prior to the expiration of the comment period and with sufficient specificity to enable the applicant and local appeal body to respond to the issue;
  - (x) Statement that after the comment period closes, the City will issue its decision and the decision will be mailed to the applicant, property owner, anyone who submitted written comments on the application, and to anyone else is otherwise legally entitled to notice;
  - (xi) A statement that comments received after the close of the public comment period will not be considered;
  - (xii) The name of a City representative to contact and the telephone number where additional information may be obtained; and
  - (xiii) Statement that the application and all documents and evidence submitted by the applicant are available for review and that copies can be obtained at a reasonable cost from the City.
- (c) Failure of a person or agency identified in TDC 32.220(3)(a) to receive the notice required in TDC 32.220(3)(b) does not invalidate any proceeding in connection with the application provided the City can demonstrate by affidavit that notice was given in accordance with this section.
- (d) Written comments must be received by the City no later than 5:00 p.m. on the 14th calendar day after the notice was mailed in order for comments to be considered.
- (4) Decision. At the conclusion of the comment period, the City Manager must review the comments received and approve, approve with conditions, or deny the application. The decision must be in writing and include a statement that:
- (a) Explains the criteria and standards considered relevant to the decision;
  - (b) States the facts relied upon in issuing the decision; and
  - (c) Explains the justification for the decision based on the criteria, standards and facts set forth.

**Finding:**

*After submittal and completeness review as required by this section, notice for the Type II application for AR 20-0008 was mailed by city staff on April 20, 2020 and contained the information required by this section. One agency comment and one division comment was received as part of the notice of application and is included as Exhibit C and D. No public comments were received. These standards are met.*

- (5) Notice of Type II Decision. Notice of the decision must be provided to the property owner, applicant, and any person who submitted written comments in accordance with TDC 32.220(3)(d). If approval is granted to remove a Heritage Tree, a copy of the decision must be sent to the chairman of the Tualatin Park Advisory Committee. The Type II Notice of Decision must contain all of the following information:

- (a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
- (b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;
- (c) A statement a statement that the complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;
- (d) The date the decision becomes final, unless an appeal is submitted; and
- (e) A statement that all person entitled to notice of the decision may appeal the decision in accordance with TDC 32.310.

(6) Appeal of a Type II Decision. Appeals may be made in accordance with TDC 32.310.

(7) Effective Date of Type II Decision. A Type II Decision becomes effective 14 days after the City mails the Notice of Decision, unless an Appeal is submitted pursuant to TDC 32.310 or unless the conditions of approval specify otherwise.

**Finding:**

*A final decision and any appeal will follow the requirements of this section. These standards will be met.*

**Chapter 33: Applications and Approval Criteria**

[...]

**Section 33.020 Architectural Review**

[...]

**(5) Approval Criteria.**

**(b) General Development.**

- (ii) Applications for General Development must comply with the applicable standards and objectives in TDC Chapter 73A through 73G.

**Finding:**

*The subject application, which is for "general development," must comply with the applicable standards and objectives in TDC 73A through 73B. These standards are met by submittal of the subject application.*

[...]

**(9) Permit Expiration.** Architectural Review decisions (including Minor Architectural Review decisions) expire two (2) years from the effective date unless the applicant has received a building, or grading permit submitted in conjunction with a building permit application, substantial construction has occurred pursuant to the building permit, and an inspection has been performed by a member of the Building Division.

**Finding:**

*Improvements under this Architectural Review decision are in reaction to the Notice and Order of Code Violation, attached as Exhibit B, and require timely remediation. With Condition of Approval A1, the code violation will be remedied.*

**Chapter 34: Special Regulations**

**TDC 34.100. - Microwave Dishes Screened.**

**(1)**The purpose of TDC 34.100 is to regulate microwave receiving dishes so as to minimize their visual impact.

**(2)**For purposes of this section, "microwave receiving dish" means any conical or dish-shaped device or structure used for receiving television or other telecommunication signals transmitted from satellites or earth-based transmitters. Microwave receiving dishes may also be known as "television receive only"

(TVRO) dishes, "satellite direct service" (SDS) dishes, "multi-distance service" (MDS) dishes, and "earth stations."

(3) All microwave receiving dishes having a diameter of more than three feet must be screened by sight-obscuring masonry walls or dense landscape buffers, as approved through the Architectural Review process, subject to the provisions of TDC 73B.

**Finding:**

The subject satellite dish was installed in 2017 without permitting, has a diameter greater than three feet, and is used to receive signals. The dish is located in downtown Tualatin along SW 84<sup>th</sup> Avenue frontage in an island between the office parking and vehicular circulation area and walkways. The satellite dish is currently unscreened; however ground cover and assorted bushes are located in the island. AR20-0008 was submitted in reaction to the Notice and Order Code Violation Letter, included as Exhibit B. The applicant is proposing a dense landscape buffer as a combination of Green Giant Arborvitae and rhododendrons along public facing frontages, north and east of the dish. The dish transmit signals to the southwest; therefore groundcover is proposed in these areas. The subject application, must comply with the applicable standards and objectives in 73B. With Conditions of Approval, these standards are met.

**Chapter 53: Central Commercial (CC) Zone**

[...]

**Section 53.200 Use Categories**

(1) Use Categories. Table 53-1 lists use categories Permitted Outright (P) or Conditionally Permitted (C) in the CC zone. Use categories may also be designated as Limited (L) and subject to the limitations listed in Table 53-1 and restrictions identified in TDC 53.210. Limitations may restrict the specific type of use, location, size, or other characteristics of the use category. Use categories which are not listed are prohibited within the zone, except for uses which are found by the City Manager or appointee to be of a similar character and to meet the purpose of this zone, as provided in TDC 31.070.

(2) Overlay Zones. Additional uses may be allowed in a particular overlay zone. See the overlay zone Chapters for additional uses.

Table 53-1: Use Categories in the CC Zone		
USE CATEGORY	STATUS	LIMITATIONS AND CODE REFERENCES
<b>COMMERCIAL USE CATEGORIES</b>		
Offices	P	--

[...]

**Finding:**

The site is within the Central Commercial (CC) Planning District, which permits offices without limitation, examples of which include television, video, radio, and internet studios and broadcasters (TDC Chapter 39). The satellite dish is accessory to the radio station use. This standard is met.

**Section 53.300 – Development Standards.**

Development standards in the CC zone are listed in Table 53-2. Additional standards may apply to some uses and situations, see TDC 53.310.

Table 53-2  
 Development Standards in the CC Zone

STANDARD	REQUIREMENT	LIMITATION OR CODE REFERENCE
Minimum Front Yard Setback	0-20 feet	Determined through Architectural Review Process [...]

Minimum Side Yard Setback	0 - 20 feet	Determined through Architectural Review Process.
Minimum Rear Yard Setback	0 - 15 feet	Determined through Architectural Review Process.
Maximum Building Height	45 ft	[...] Height bonus available in limited locations, see TDC 53.410(1).

[...]

**Finding:**

*The site is developed and there are no previous Architectural Review cases on file. The existing satellite dish is mounted up to the front and side yard lot lines, and is approximately 14 feet in height. These standards are met.*

**Chapter 73A: Site Design**

**TDC 73A.300. - Commercial Design Standards.**

The following standards are minimum requirements for commercial development in all zones, except the Mixed-Use Commercial (MCU) zone, which has its own standards:

[...]

**(5) Service, Delivery, and Screening.** Commercial development must provide service, delivery, and screening features as follows:

**(a) Above grade and on-grade electrical and mechanical equipment such as transformers, heat pumps and air conditioners must be screened with sight obscuring fences, walls or landscaping;**

[...]

**Finding:**

*As required previously in TDC 34.100, a dense evergreen landscape screen must be installed around the perimeter of the existing satellite dish. With Condition of Approval A1, this standards are met.*

**Chapter 73B: Landscaping Standards**

**Section 73B.080 – Minimum Landscaping Standards for All Zones.**

The following are minimum standards for landscaping for all zones.

<p><b>(1) Required Landscape Areas</b></p>	<ul style="list-style-type: none"> <li>• Must be designed, constructed, installed, and maintained so that within three years the ground must be covered by living grass or other plant materials.</li> <li>• The foliage crown of trees cannot be used to meet this requirement.</li> <li>• A maximum of 10% of the landscaped area may be covered with un-vegetated areas of bark chips, rock or stone.</li> <li>• Must be installed in accordance with the provisions of the American National Standards Institute ANSI A300 (Part 1) (Latest Edition).</li> <li>• Must be controlled by pruning, trimming, or otherwise so that:</li> <li>• It will not interfere with designated pedestrian or vehicular access; and</li> <li>• It will not constitute a traffic hazard because of reduced visibility.</li> </ul>
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**Finding:**

*A landscape screen around the existing satellite dish is required under TDC 34.100. As shown on Exhibit A2, a series of five rhododendron bushes are proposed along the public sidewalk. As the exhibit is not dimensioned, it is not clear if vision clearance standards will be met. With Condition of Approval A2, these standards are met.*

<b>(2) Fences</b>	<ul style="list-style-type: none"> <li>• Landscape plans that include fences must integrate any fencing into the plan to guide wild animals toward animal crossings under, over, or around transportation corridors.</li> </ul>
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**Finding:**

*The subject site is not located in a habitat area. There is no fencing is proposed. This standard is not applicable.*

<b>(3) Tree Preservation</b>	<ul style="list-style-type: none"> <li>• Trees and other plant materials to be retained must be identified on the landscape plan and grading plan.</li> <li>• During construction:</li> <li>• Must provide above and below ground protection for existing trees and plant materials identified to remain;</li> <li>• Trees and plant materials identified for preservation must be protected by chain link or other sturdy fencing placed around the tree at the drip line;</li> <li>• If it is necessary to fence within the drip line, such fencing must be specified by a qualified arborist;</li> <li>• Top soil storage and construction material storage must not be located within the drip line of trees designated to be preserved;</li> <li>• Where site conditions make necessary a grading, building, paving, trenching, boring, digging, or other similar encroachment upon a preserved tree's drip-line area, such grading, paving, trenching, boring, digging, or similar encroachment must only be permitted under the direction of a qualified arborist. Such direction must assure that the health needs of trees within the preserved area can be met; and</li> <li>• Tree root ends must not remain exposed.</li> <li>• Landscaping under preserved trees must be compatible with the retention and health of the preserved tree.</li> <li>• When it is necessary for a preserved tree to be removed in accordance with TDC 33.110 (Tree Removal Permit) the landscaped area surrounding the tree or trees must be maintained and replanted with trees that relate to the present landscape plan, or if there is no landscape plan, then trees that are complementary with existing, landscape materials. Native trees are encouraged</li> <li>• 100% of the area preserved under any tree or group of trees (Except for impervious surface areas) retained in the landscape plan must apply directly to the percentage of landscaping required for a development</li> </ul>
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**Finding:**

*No construction is proposed within the dripline of trees located on-site. These standards are not applicable.*

<b>(4) Grading</b>	<ul style="list-style-type: none"> <li>• After completion of site grading, top-soil is to be restored to exposed cut and fill areas to provide a suitable base for seeding and planting.</li> <li>• All planting areas must be graded to provide positive drainage.</li> <li>• Soil, water, plant materials, mulch, or other materials must not be allowed to wash across roadways or walkways.</li> <li>• Impervious surface drainage must be directed away from pedestrian walkways, dwelling units, buildings, outdoor private and shared areas and landscape areas except where the landscape area is a water quality facility.</li> </ul>
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**Finding:**

*The proposal does not include any grading. These standards are not applicable.*



<b>(5) Irrigation</b>	<ul style="list-style-type: none"> <li>• Landscaped areas must be irrigated with an automatic underground or drip irrigation system</li> <li>• Exceptions: Irrigation requirement does not apply to duplexes and townhouses.</li> </ul>
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**Finding:**

*Irrigation methods are illustrated on Exhibit A2. With Condition of Approval A1, this standard is met.*

<b>(6) Re-vegetation in Un-landscaped Areas</b>	<ul style="list-style-type: none"> <li>• Vegetation must be replanted in all areas where vegetation has been removed or damaged in areas not affected by the landscaping requirements and that are not to be occupied by structures or other improvements.</li> <li>• Plant materials must be watered at intervals sufficient to ensure survival and growth for a minimum of two growing seasons.</li> <li>• The use of native plant materials is encouraged to reduce irrigation and maintenance demands.</li> <li>• Disturbed soils should be amended to an original or higher level of porosity to regain infiltration and stormwater storage capacity.</li> </ul>
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**Finding:**

*There are no construction activities associated with the proposal. The applicant is proposing a landscape screen around an existing satellite dish, as required by TDC 34.100. The dish is located in an island between the site’s parking and vehicular circulation area and walkways. The island is currently landscaped with minimal ground cover and assorted bushes. The proposed landscape screen includes combination of Green Giant Arborvitae and rhododendrons. While the chosen evergreens are not native to Oregon, an automated irrigation system is required through the subject Architectural Review to ensure the proposed landscaping will be watered at intervals sufficient for survival and growth. These standards are met.*

**Section 73B.090 – Minimum Standards Trees and Plants.**

**The following minimum standards apply to the types of landscaping required to be installed for all zones.**

Standard	
<b>(3) Coniferous Trees</b>	<ul style="list-style-type: none"> <li>• Five feet in height above ground;</li> </ul>
<b>(4) Evergreen and Deciduous Shrubs</b>	<ul style="list-style-type: none"> <li>• One to five gallon size;</li> <li>• Healthy, disease-free, damage-free, well-branched stock, characteristic of the species; and</li> <li>• Side of shrub with best foliage must be oriented to public view.</li> </ul>

**Finding:**

*As shown in Exhibit A2, the applicant is proposing a landscape screen around an existing satellite dish, as required by TDC 34.100. The proposed landscape screen includes Green Giant Arborvitae at 8 feet, and rhododendrons at 30 inches. As the exhibit does not provide rhododendron sizing based on gallon increments, it is not clear if the standard will be met. With Condition of Approval A3, these standards are met.*

**Chapter 74: Public Improvement Requirements**

**TMC 3-5-050 Erosion Control Permits.**

**(1) Except as noted in subsection (3) of this section, no person shall cause any change to improved or unimproved real property that causes, will cause, or is likely to cause a temporary or permanent increase in the rate of soil erosion from the site without first obtaining a permit from the City and**

**paying prescribed fees. Such changes to land shall include, but are not limited to, grading, excavating, filling, working of land, or stripping of soil or vegetation from land.**

**(2) No construction, land development, grading, excavation, fill, or the clearing of land is allowed until the City has issued an Erosion Control Permit covering such work, or the City has determined that no such permit is required. No public agency or body shall undertake any public works project without first obtaining from the City an Erosion Control Permit covering such work, or receiving a determination from the City that none is required.**

**Finding:**

*The applicant's submittals indicate landscaping disturbance less than 500 square feet. The threshold to require an erosion control permit is not met.*

**Additional Surface Water Management Standards**

**TMC 3-5-390 Facility Permit Approval.**

**A stormwater quality control facility permit shall be approved only if the following are met:**

- (1) The plat, site plan, or permit application includes plans and a certification prepared by an Oregon registered, professional engineer that the proposed stormwater quality control facilities have been designed in accordance with criteria expected to achieve removal efficiencies for total phosphorous required by this Title III. Clean Water Services Design and Construction Standards shall be used in preparing the plan for the water quality facility; and**
- (2) The plat, site plan, or permit application shall be consistent with the areas used to determine the removal required in TMC 3-5-350; and**
- (3) A financial assurance, or equivalent security acceptable to the City, is provided by the applicant which assures that the stormwater quality control facilities are constructed according to the plans established in the plat, site plan, or permit approval. The financial assurance may be combined with our financial assurance requirements imposed by the City; and**
- (4) A stormwater facility agreement identifies who will be responsible for assuring the long term compliance with the operation and maintenance plan.**

**Section 74.650 Water Quality, Storm Water Detention and Erosion Control.**

**The applicant must comply with the water quality, storm water detention and erosion control requirements in the Surface Water Management Ordinance. If required:**

- (2) On all other development applications, prior to issuance of any building permit, the applicant must arrange to construct a permanent on-site water quality facility and storm water detention facility and submit a design and calculations indicating that the requirements of the Surface Water Management Ordinance will be met and obtain a Stormwater Connection Permit from Clean Water Services.**
- (3) For on-site private and regional non-residential public facilities, the applicant must submit a stormwater facility agreement, which will include an operation and maintenance plan provided by the City, for the water quality facility for the City's review and approval. The applicant must submit an erosion control plan prior to issuance of a Public Works Permit. No construction or disturbing of the site must occur until the erosion control plan is approved by the City and the required measures are in place and approved by the City.**

**Finding:**

*The applicant's submittals do not indicate creation or modification of impervious areas of 1,000 square feet or more. The threshold to require a water quality permit for stormwater management is not met.*

*The applicant has submitted a Clean Water Service's Service Provider Letter CWS File Number 20-003030 indicating that Sensitive Areas do not exist on the site. A CWS Memorandum was received dated May, 2021 for development on this site indicating the letter itself satisfies the requirement of a Stormwater*

*Connection Permit Authorization Letter from Clean Water Services, in accordance with TDC 74.650(2) and CWS D&CS 3.01.2(d).*

**TMC 3-5-250 – Floodplain Design Standards.**

**(1)Balanced Cut and Fill Standard.** All fill placed in a floodplain shall be balanced with an equal amount of removal of soil material. No net fill in any floodplain is allowed with two exceptions:

**(a)**When an engineering study has been conducted and approved by the City showing that the increase in water surface elevation resulting from the fill will not cause or contribute to significant damage from flooding to existing buildings or dwellings on properties upstream and downstream;

**(b)**When an area has received special protection from floodplain improvement projects which either lower the floodplain, or otherwise protect affected properties, are approved by the City, where the exceptions comply with adopted master plans, if any, and where all required permits and approvals have been obtained in compliance with other local, state, and federal laws regarding fill in floodplains, including FEMA rules.

**(2)Excavation Restricted.** Large areas may not be excavated in order to gain a small amount of fill in a floodplain. Excavation areas shall not exceed the fill areas by more than 50 percent of the square footage, unless approved by the City.

**(3)Excavation and Fill Volume Calculation.** Any excavation dug below the winter "low water" elevation shall not count towards compensating for fill, since these areas would be full of water in the winter, and not available to hold storm water following a rain. Winter "low water" elevation is defined as the water surface elevation during the winter when it has not rained for at least three days, and the flows resulting from storms have receded. This elevation may be determined from records, studies or field observation. Any fill placed above the 100 year floodplain will not count towards the fill volume.

**(4)Excavation Grade Design Standard.** The excavated area must be designed to drain if it is an area identified to be dry in the summer; for example, if it is to be used for a park, or if it is to be mowed in the summer. Excavated areas identified as to remain wet in the summer, such as a constructed wetland, shall be designed not to drain. For areas that are to drain, the lowest elevation should be at least six inches above the winter "low water" elevation, and sloped at a minimum of two percent towards the drainage way. One percent slopes will be allowed in small areas.

**(5)Excavation Location.** Excavation to balance a fill does not need to be on the same property as the fill, but shall be in the same drainage basin, within points of constriction on the conveyance system, if any, as near as practical to the fill site, and shall be constructed as a part of the same development project which placed the fill.

**Section 70.110 – Development Permit Required.**

A development permit shall be obtained before construction or development begins within any area of special flood hazard established by TDC 70.050 (Basis for Establishing the Areas of Special Flood Hazard). The permit shall be for all structures, including manufactured homes, as set forth in TDC 70.030 (Definitions), and for all other development, including fill and other activities, also as set forth in TDC 70.030 (Definitions).

**Finding:**

*The proposed landscaping does not indicate any excavation or fill, which meets requirements. No permits from the Building Division have been indicated as required. With no permits required a Flood Hazard Area Development Permit isn't required.*

**Section 74.330. - Utility Easements.**

**(1) Utility easements for water, sanitary sewer and storm drainage facilities, telephone, television cable, gas, electric lines and other public utilities must be granted to the City.**

**(4) For development applications other than subdivisions and partitions, and for both on-site and off-site easement areas, a utility easement must be granted to the City; building permits must not be issued for the development prior to acceptance of the easement by the City. The City may elect to exercise eminent domain and condemn necessary off-site public utility easements at the applicant's request and expense. The City Council must determine when condemnation proceedings are to be used.**

**(5) The width of the public utility easement must meet the requirements of the Public Works Construction Code. All subdivisions and partitions must have a 6-foot public utility easement adjacent to the street and a 5-foot public utility easement adjacent to all side and rear lot lines. Other easements may be required as determined by the City Manager.**

**Finding:**

*A previous City project for construction of SW 84<sup>th</sup> Avenue obtained a 2-foot wide public utility easement adjacent to right-of-way. No widening of this easement is required.*

*Any proposed trees must be located to cause conflict with the use of the public utility easement now or in the future. The submitted plans show proposed landscaping, but does not include trees to be near this easement, which is acceptable.*

#### **IV. APPEAL**

The Architectural Review portion of this decision will be final after 14 calendar days unless a written appeal is received by the **Community Development Department – Planning Division at 10699 SW Herman Road, Tualatin, Oregon 97062 / [planning@tualatin.gov](mailto:planning@tualatin.gov)** before 5:00 p.m., June 18, 2021. **The appeal must be submitted on the City appeal form with all the information requested provided thereon and signed by the appellant.** The plans and appeal forms are available at the Community Development Department–Planning Division offices. Appeals of a staff Architectural Features decision are reviewed by the Architectural Review Board (ARB).

Submitted by:



Erin Engman  
Associate Planner