



MEETING MINUTES
APPROVED AT THE 2/27/02 MEETING

**CITY OF NEWBERG / YAMHILL COUNTY
NEWBERG URBAN AREA MANAGEMENT COMMISSION
NEWBERG PUBLIC SAFETY BUILDING - 401 E. THIRD STREET - NEWBERG
WEDNESDAY, JANUARY 16, 2002
7:00 PM**

I. ROLL CALL

Leslie Lewis
Alan Halstead
Sally Dallas

Brett Veatch
Steve Ashby

Sid Friedman

Absent: Warren Parrish

Present:

Barton Brierley, City of Newberg Planning Division Manager
Ken Friday, Yamhill County Planning Division
Peggy Hall, City of Newberg, Recording Secretary

II. OPEN MEETING

Chair Ashby called the meeting to order.

III. CONSENT CALENDAR(items are considered routine and are not discussed unless requested by the commissioners)

1. Approval of November 28, 2001 NUAMC Meeting Minutes

Motion #1:	Halstead/Dallas to approve the November 28, 2001 meeting minutes.
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Vote on Motion #1:	The Motion carried (5 Yes/2 Absent [Parrish/Veatch]).
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Commissioner Veatch arrived at 7:05 p.m.

IV. COMMUNICATIONS FROM THE FLOOR (five minute maximum per person)

None.

V. LEGISLATIVE PUBLIC HEARING (Complete registration form to give testimony. NUAMC may limit testimony time per person.)

APPLICANT: City of Newberg

REQUEST: Make adoption recommendations to Newberg City Council and Yamhill County Board of Commissioners regarding the proposed Newberg Riverfront Master Plan.

FILE NO: GR-20-99

RESOLUTION NO.: 2001-03

Chair Ashby indicated that the matter was continued to February 27, 2002.

VI. QUASI-JUDICIAL PUBLIC HEARINGS

1. **APPLICANT:** SBA Network Services

REQUEST: Proposed conditional use and site design review application to Yamhill County to site a 150-foot high communications tower.

LOCATION: 2305 NE Alice Way

FILE NO: URA-6-01

TAX LOT NO.: 3217BA-800

OPEN FOR PUBLIC HEARING:

Chair Ashby entered ORS 197, relating to the Public Hearing process into the record, and opened the Public Hearing.

Abstentions/ex-parte contact:

Chair Ashby said that he attended a dinner with an opponent on this matter and a brief discussion took place as to the date of the hearing. However, no substantial discussion was held.

Mr. Ken Friday presented the staff report and noted that the surrounding area was mixed use. The property is not in any flood or other hazardous type zone. The property is not within the city limits of Newberg (1500 feet to the northwest). The communications tower falls under the facilities designation. The proceedings are unique because land use matters before NUAMC have dealt with actions dealing with the County and the City, generally with recommendations. Last year the County and the City discussed the handling of this matter. Now, NUAMC makes a final decision on these matters.

Objections:

Staff Report and Preliminary Staff Recommendation (Yamhill County Staff): Mr. Ken Friday presented the staff report and staff recommended, approving the proposed conditional use and site design review application to Yamhill County to site a 150-foot high communications tower.

Proponent: Steven Topp, SBA Network Services, said the tower is to provide cellular service for Newberg area services (150 ft. height for cellular carriers - coverage and capacity services). The carriers have a bank of phones licensed to do business in the area. Test reception areas were performed (prospective coverage). They tested seven sites. Mr. Topp reviewed the coverage for cellular services (1,2,3 or 4 bar capacity). Based upon the drive around, Nextel was covered and did not have to go on the site. They do see that Sprint and Voice Stream at various sites had limited coverage. When looking for a site, they visited the jurisdiction's staff and reviewed zoning requirements. Mr. Topp provided a copy of the Comprehensive Plan map involving an existing cell tower near the high school athletic field. The School District was interested at first, then later determined that they did not want to pursue it. He then contacted the City of Newberg which noted they could not have another tower located where another tower was located. The City has a buffer distance of 2,000 feet between each tower. He said they contacted the industrial property owners within the affected area. They were not interested in leasing space for a cell tower. That is what made them focus in on the Alice Way area. They contacted ADEC

who also indicated they were not interested. Some of the area was designated as not a good area (wetland, natural resource areas, etc.). Mr. Topp reviewed other areas which could service the tower. Discussion was held concerning trees blocking the adjoining views from the west (single family residences). Based upon the staff report, SBA agrees with the findings, and Mr. Topp said that it boiled that down to the opposition of the 150 ft. tower blocking views in the residential areas. Mr. Topp said it is SBA's intention to minimize impact by building it to look like a water tower or paint the tower a different color (dark brown to blend in with the trees), or something similar to the Tualatin I-5 corridor tower with "panels".

Mr. Topp said he was a certified planner in the State of Oregon. He reviewed page 4, item 6, and addressed the criteria. Discussion was held concerning the possibility of the tower falling. Mr. Topp said that if that happened, with the way it was designed, the tower would fall short of landing on anything. Mr. Topp said he would submit an appraisal study based on the sales of surrounding properties with and without the tower which are located within the proximity of the cell towers. Mr. Topp continued with page 7 adding that the Newberg Zoning Regulations were not subject to application and review. It did play a significant part on where the tower would be placed, however. They tried to limit the height which would be most feasible to allow for 3-4 carriers, but they found that they needed the 150 ft. capacity.

Mr. Ken Friday addressed issues relating to criteria for denial. Discussion was held concerning an artists rendition of a water tower design. Mr. Topp said it would be a tower with a top 30 ft. wide with a lattice structure and a 6-8 foot base.

Commissioner Halstead inquired about the lease or purchase of property. Mr. Topp said the terms are for five year periods. Discussion was held concerning technology changes. Mr. Topp said that if the tower is unused at its current capacity, SBA will remove the tower at SBA's expense (generally), but with respect to technology and times changes, there are two things to consider: land lines and land based systems and for 9-1-1 services, the carriers have a legal requirement to service the customers (such as analog service). Mr. Topp said that he does not feel the technology would change within the next five years that would dramatically change the tower's serviceability, but appropriate actions would be done in that instance.

Mr. Sid Friedman asked Mr. Topp where his photos were taken. Mr. Topp said it was along the I-5 and Tualatin corridor which was not a SBA tower. Commissioner Friedman discussed the coverage diagram presented by Mr. Topp. What is the coverage area which needs to be addressed? Mr. Topp said there are a couple of towers located within the City. A tower that gets placed at a certain location, will skip certain areas and reach out to the existing towers to provide a comprehensive coverage service: there are a lot of residential properties in the area and there is a strong reaction for complaints. When people use their cell phones in their homes, they are getting the "in-building" coverage. There is an area along Hwy. 99W that has this problem (no coverage). Discussion was held concerning new technology in order for cell phones to receive e-mails, download information from the Internet, etc. The primary focus is to provide cellular service in areas where coverage is not now available.

Discussion was held concerning allowing people in attendance to ask questions for clarification purposes of information presented and not allow further testimony and questions.

Chair Ashby asked what the difference was between the carriers? Mr. Topp reviewed frequency and transmission services: "VSMR" is used by Nextel which allows for walkie-talkie, cell service and 800 MHz levels; "PCS" is about 500-600 MHz levels but end up having a shorter distance between the towers and the signals (but are stronger and clearer services). The downside is that they have to play with height all the time, and they cannot overload an existing tower. Personal Communication Service (PCS) with email and text-messages is an up and coming service that customers want. All carriers have digital service even though some customers still have analog service. Discussion was held concerning the type of service provided by the various carriers. Mr. Topp said that a carrier will apply for a "search ring" (optimum service - 1 for Singular, 1 for Voice Stream and 1 for Nextel.) Mr. Topp reviewed the various locations tested.

Don Swan, 2210 Villa Street, Newberg, asked for clarification of the site as it pertained to his property (Villa and Mountainview). Discussion was held concerning two towers not being allowed to be placed on the same parcel. Mr. Topp said the towers must be placed apart by 2,000 feet without a conditional use permit and what the rationale was for such requirement. Mr. Barton Brierley said that when the Planning Commission and City Council considered the regulation, they wanted to avoid having farms of towers all in one location (wanted to disperse them throughout the community and strongly encourage the users to co-locate (more than one antenna on one location). Discussion was held concerning health and aesthetic purposes.

Chair Ashby asked about the aircraft warning light placement (to be lit as required by the FAA at 199 feet but not sure about 150 feet). Discussion was held concerning having conditions of approval requirements for a FAA requirement for 150 feet.

Dan Grazon, 851 SW Sixth Avenue, Suite 1500, Portland, Oregon, said that his comments will be reserved for the rebuttal portion of the testimony. He said proposed Condition No. 5 requires the tower to be removed if it became obsolete.

Tape 1 - Side 2:

Mr. Dan Scutter, 2216 Thorn Street, Newberg, property directly west of the cell tower. He agreed with the findings listed and highlighted the viewpoints:

1. The property to the west of the site has already been designated out as a greenbelt area, located in the Hess Creek stream corridor, not having to look at a cell tower during walks and views. Discussion was held concerning a permitted or characteristic use. The proposed tower hampers the stream corridor and greenbelt area.
2. Use is compatible with surrounding uses. Mr. Scutter said that this requirement has not been satisfied and that no proof has been provided to the contrary such as ADEC and other users in the area. Mr. Scutter said that he realizes the applicant wants to proceed, but he questioned who the applicant talked with concerning the matter (such as ADEC). He suggested that the applicant move the tower away from residential areas.
3. The applicant has indicated that the tower will be screened by trees. The trees noted are not located on the tower site property.
4. Adequate noise and visual buffering. This is a commercial venture which will have an impact on the residential neighborhood. Mr. Scutter said that the tower will have a substantial and extrusive impact upon the neighborhood. The tower should be moved 500 feet more toward the industrial area. The City has indicated it would not allow because the close proximity to the existing tower.

Commissioner Halstead asked for clarification of where Mr. Scutter's property was located. Discussion was held concerning the surrounding property and land set aside for development alongside the Hess Creek and greenbelt areas.

Discussion was held concerning the applicant's willingness to camouflage the design of the tower. Mr. Scutter said that he believed a red light would shine into his bedroom window.

Commissioner Friedman asked for clarification that Mr. Scutter meant the findings noted in the City Council meeting. Discussion was held concerning Mr. Scutter's photos (Bramble Court and surrounding properties).

Opponent:

Barton Brierley, City of Newberg, spoke as an opponent to the application on behalf of the City of Newberg. He said the City Council held a meeting on October 15, 2001, and the Council recommended

denial of the application and further, and that a public hearing be scheduled. The City ordinances allow telecommunication towers and the Council realized that towers would be located around the City. There are appropriate places for communication towers, and also places which are inappropriate: permitted outright, permitted conditionally or not permitted at all. The project would require a conditional use permit (which may be appropriate in some areas with certain conditions). The conditional use permit allows the applicant to make application. The particular application is for a 150 ft. tower. The light is a big issue due to the close proximity of the airport and flight path. On the other hand, as close as it is to the residential neighborhood, he would NOT want the light and tower near him. Mr. Brierley said the County conditional use permit criteria have not been met as well as the site development criteria. The current plan designation is industrial for the specific property, but the surrounding uses are residential. Discussion was held concerning buffering and comments from surrounding property owners. Mr. Brierley stated it was the City's recommendation to deny the request for a conditional use permit and site design review.

Commissioner Lewis asked how many different communication towers were located around the City? Mr. Brierley said that he believed there were three locations. Commissioner Lewis addressed the location of the other cell towers and Mr. Brierley said that the applications had very little opposition and the City's ordinances were amended after these applications were approved.

Chair Ashby asked about towers being combined with existing utility poles. Mr. Brierley said the City was looking to provide for more local service. Industrial areas have only been the areas in which the City has approved 150 ft. towers. Discussion was held concerning the City's Development Code. Mr. Brierley said the property's planned designation is industrial but it is not compatible with surrounding residential uses.

Don Swan, 2210 Thorne Street, Newberg, Oregon, said he is opposed to the tower. He agreed with Mr. Scutter's comments. Mr. Swan reviewed the Hess Creek greenway and how the trees screen the area. Mr. Swan said that the cell phone he uses allows him to operate his cell phone inside his home (Verizon). His family's concerns is for safety and health. Although the area is low density residential, there are at least 20 children under the age of 10. His concern about health and likelihood of tumors increase with the use of cell phones, especially with children. Discussion was held concerning each person having control over the use of a cell phone but questions arose concerning the tower emitting unhealthy signals.

Ms. Angela May reviewed the language in Section 11.02 (site criteria development): noise and visual buffering as it pertains to the greenbelt. There is certainly not adequate visual buffering. Discussion was held concerning the retention of natural features. The tower will disrupt the area. Many of the homes on Alice Way were built more or less with windows facing the natural setting and green space. The trees will not hide the 150 ft. cell tower. Ms. May also addressed the children in the area and the health concerns for everyone. The characteristics and adjoining uses are not compatible. Ms. May said that the location of the tower light would also cause problems for their property and living conditions.

Chair Ashby read a statement from Susan Purcell opposing the application.

Mr. Steven Topp, SBA, said the application is unique and the Telecommunications Act of 1996 supersedes local zoning authority over cell towers. (1) cannot prohibit cell towers and 2) cannot consider health concerns in conditions of denial. Mr. Topp said he did not want to downplay the concerns of the residents, but wanted to bring the matter to the attention of the Commission. He said the tower would not be hidden from all sides, but by placing it in the mix of the trees, it would provide for more buffering. Discussion was held concerning providing communications tower coverage. There is a landscape plan in the application which shows planting cedar trees and arborvitae and would be more visually blocked where needed. They are open to landscaping to help screen but would not be able to screen the 150 ft. cell tower. The property is intended to be included in the industrial inventory later on. The City does not have a current height restriction in the industrial zoned areas. Mr. Topp reviewed other conditional use applications which would be allowed in the area. Mr. Topp said the top of the tower has a 12"-18" diameter plate between the plate and the light. The light does not shine down in anyone's window. It is a steady red light. Discussion was held concerning additional shielding. He disagreed with Mr. Brierley about the CUP application requirements for the City.

Tape 2 - Side 1:

Mr. Topp addressed aesthetics complaints, site plan review, noise and visual buffering. Mr. Topp said that some air conditioners are required for various users. The visual buffering will be handled through landscaping. Comments or recommendations made to modify or to better fit the situation would be allowed for consideration but the City and County cannot just deny the application.

Mr. Grazon, attorney for SBA, addressed the Telecommunications Act. He said that from the written and oral comments and testimony presented, it is the aesthetic concern that is the general complaint. Beyond that, there does not seem to be a lot of criticism about the tower. The Act requires substantial evidence in the record to deny the cell tower. The Act does not allow for an application to be denied due to health concerns (read by Mr. Grazon). The FCC has already made allowances and guidelines for such towers. The tower has to be above the existing vegetation. FAA requires lighting. In reviewing the record, there does not appear anything other than aesthetics that would affect the community as a whole not just the immediate residents and property owners. However, the Act does not allow for such condition for denial with the intent of advancing telecommunications services (data transmission, etc.). Mr. Grazon reviewed cases where the cell towers were held to be in compliance. The objections by the immediate property owners do not represent the entire community (substantial evidence). Federal Courts have dismissed "not in my back yard" complaints.

Chair Ashby asked why Mr. Grazon felt that opposition from the project has not come from the community as a whole. The City Council has voiced opposition to this. Mr. Grazon reviewed the resolution that was adopted which cites "obtrusive" appearance language.

Mr. Ken Friday, asked for the cases Mr. Grazon cited:

Cellular Telephone Company, v. Town of Oyster Bay, 166 F3d, 490 2nd Cir. 1999;
Airtouch Cellular v. City of El Cajon, 83 Fed. Supp. 2nd, 1158 Central District of California (2000);
Western PCS Corporation, v. Town of Steilacoom, West District of Washington (Tacoma), 1999 USDC Lexis 9068.

Commissioner Halstead asked what was ADEC's input. Mr. Topp said the site acquisition person at ADEC, Sue Allen, said they were not interested.

Mr. Dan Scutter, asked Mr. Brierley that since Bramble Creek had a 100 ft. easement for the greenway, was the industrial property adjacent to that development, would be required to have the same kind of buffer zone along Hess Creek same as Bramble Creek. The greenbelt property goes to the bottom of the creek and does not go up the other side. The City intended that stream corridor as a greenbelt and secured the western half of it when Bramble Creek was developed as it should go east as it was developed. Mr. Brierley said the City's Comprehensive Plan delineates a stream corridor (in the UGB but outside the city limits). He said the tower is sited outside the stream corridor.

Chair Ashby asked about industrial zoning designations if they were placed inside the city (M-1, M-2 or M-3). Discussion was held concerning the property owners asking for a residential designation rather than an industrial designation.

Mr. Brierley said they had meetings with the neighbors to discuss annexation. He said the big hurdle was the street was not paved, no water or sewer and there was a significant expense to get them done and placed in the area. Part of the criteria for annexation, urban facilities need to be present (within 3 years). Generally, it will take some outside funding to make that happen: improvement to Mountainview Drive would relieve the particular burden from the property owners. The City could assist in other funding mechanisms.

Commissioner Lewis addressed changing Comprehensive Plan designation from industrial to residential and how it affects the City's supply of industrial property. If it were changed, Mr. Brierley said that some rezoning would have to take place in another place for other industrial land, which is not significant.

Hearing Closed.

Chair Ashby called for a break at 8:52 p.m. The meeting reconvened at 9:00 p.m.

Staff Recommendation: **Mr. Ken Friday** said he agreed that the Government cannot deny the application due to aesthetics. He found there was visual buffering on the site. The long term plan for the site is for industrial use. Based on that, staff recommends approval with conditions noted on the application. Mr. Friday stated that in the County minutes Commissioner McCree stated FAA and the minutes reflected FCC. He also said to add paragraph 6 which requires compliance with FAA regulations.

Commission Deliberation:

Commissioner Sid Friedman said that he read the application and application is to be judged under fairly narrow criteria - the conditional use permit application and site design criteria as existed in the County Code. When he looks at this, whether there is no coverage in other areas, it is not relevant but it is not a criteria. Discussion was held concerning other applicable industrial property, reasonable people can disagree with different conclusions. He does not feel the applicant has met the burden of proof under the County Code and Oregon Codes (burden of proof is placed on the applicant).

Commissioner Friedman further stated:

Criteria C -has not been met. He agreed with Ken Friday's staff report; however, the staff report does not address one section (location) and he has not been convinced that the proposed location is suitable.

Criteria D - addressed by the City of Newberg

Criteria F - addressed by the neighbors.

Commissioner Friedman further added that the resolution adopted by the City of Newberg denying the applicant has much weight. He feels that the applicant has to prove that it will not substantially impair the surrounding property. The County criteria speaks for the permitted uses at the underlying zoning district which is residential and not industrial. The City's Development Code does not speak with the underlying planning issues. Whether the use is compatible in the area, the applicant has indicated that it will not be compatible. The residents of Alice Way have indicated that no screening is between the subject parcel and the property along Alice Way. For those reasons, the applicant has not demonstrated the conditional use permit criteria and should not consider the site design review criteria.

Commissioner Lewis said she felt the same as Commissioner Friedman involving the conditional use permit criteria, but she questioned the City and would it be possible when the property was annexed, will the current comprehensive plan designation is not germane? The conditional use criteria shows that the applicant has not proven otherwise that it will not impair the surrounding properties (specifically Alice Way). Commissioner Lewis asked if the County's conditional use criteria was consistent with the Telecommunications Act of 1996. Discussion was held concerning Oregon and federal law basing decisions on compatibility. She questioned if the Commission would be in violation with the Act.

Commissioner Friedman, said that without legal counsel as to the interpretation of the Act, he said that the denial needs to be based upon substantial evidence in the record. He believed that the substantial evidence was that the use will be compatible with the code provisions. The Commission needs to rely upon what is in the Code and the applicant can appeal the decision. Discussion was held concerning past approvals for other existing cell towers in the area and how the Commission has to rely upon the County and City codes and zoning. Commissioner Lewis concurred with Commissioner Friedman, said that if appealed with County Commission, the legal staff will review the matter and its compliance with the Act.

Commissioner Sally Dallas agreed that without legal counsel, she felt it was not compatible with the

surrounding use (residential) and that she would vote for denial.

Commissioner Halstead said he disagreed with Commissioners Friedman and Lewis because the applicant has indicated that other than a separate conditional use permit, this is one of the few locations that will fit their needs within the diameters of the area they are to be in. Criteria D words "substantially" impacting - to what degree? "Substantially" leaves too much room for variance. Criteria "F" compatible uses does not mean 100% compatible. He has mixed feelings, but right now, it appears to be a suitable site, but there are issues relating to "substantially".

Commissioner Veatch said that he will error on the side of the surrounding community indicating that it is not compatible.

Motion #2 :	Halstead/ to approve w/conditions 1-6 with changes as indicated by staff.
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Vote on Motion #2 :	The motion failed for a lack of a second.
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Commissioner Lewis said that the County Board may eventually hear the application. She may have to vote differently if county council gives different advise.

Motion #3 :	Lewis/Halstead to deny the application based on the fact that the applicant has not meet the criteria outlined in C, D and F in Section 12.02 in County Zone Ordinance.
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Chair Ashby said that he substantially agreed that the cell tower is not properly buffered and the surrounding neighbors would not enjoy the peaceful enjoyment of their property. Discussion was held concerning appropriate other sites.

Commissioner Halstead called for the question.

Vote on Motion #3 :	The motion carried (6 Yes/1 Absent [Parrish]).
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Mr. Ken Friday reviewed the procedures for an appeal.

VII. ITEMS FROM STAFF

1. Future Meetings: January 23, 2002
2. Meeting on February 27, 2002

VIII. ADJOURNMENT

The meeting was adjourned at approximately 9:35 p.m.

Passed by the Newberg Urban Area Management Commission this 27 day of February, 2002.

AYES: 5 NO: 0 ABSTAIN: ABSENT: 1 Vacant: 1
(list names) (veatch) (Parrish)

ATTEST:

Peggy R. Hall Peggy R. Hall 2-27-02
Recording Secretary Signature Print Name Date

**INFORMATION RECEIVED INTO THE RECORD
AT THE JANUARY 16, 2002 NUAMC MEETING.**

**THIS INFORMATION IS ON FILE AT THE COMMUNITY DEVELOPMENT OFFICE
ATTACHED TO THE MINUTES OF THE MEETING AND IN THE PROJECT FILE IT
PERTAINS TO.**

LABELS FROM THE 1/16/02
NUAMC MEETING FROM
THOSE WHO GAVE PUBLIC
TESTIMONY/ REGISTRATION

CARD
*Be sure to add file number by
name* on each label

C-10-01/SDR-22-01
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Portland, OR 97232

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