

GLADSTONE PLANNING COMMISSION MEETING MINUTES of February 17, 2015

Meeting was called to order at 7:04 PM.

ROLL CALL:

The following city officials answered roll call: Commissioner Malachi de AElfweald; Commissioner Kevin Johnson; Commissioner Les Poole; and Chairperson Tammy Stempel

ABSENT:

Commissioner Kirk Stempel; Commissioner Michele Kremers

STAFF:

Jolene Morishita, Assistant City Administrator; David Doughman, City Attorney; Clay Glasgow

SWEARING IN OF NEW PLANNING COMMISSIONER:

Assistant City Administrator Jolene Morishita administered the Oath of Office to Planning Commissioner Elliott Veazey. He did so swear. Commissioner Veazey was seated on the panel.

Chairperson Stempel read and reviewed the Duties of the Planning Commission. Based on the number of calls and emails we received about Z0435-14-PDR I think it prudent to have a brief discussion on what bias means. I don't plan on addressing each of the concerns in the emails at this meeting but if staff feels it important then we shall. David Doughman, City Attorney will you please go over what bias means.

David Doughman, City Attorney – Certainly. A couple of points before we begin the continuation hearing tonight I want to lay out a few points. Planning commission, according to the minutes, I was out of town at the last meeting, closed the public hearing and normally when that would happen that would be setting up the stage for deliberation amongst the planning commissioners at that point and any questions you have for staff or myself and you would deliberate and come to a decision. It's pretty clear from the minutes, after that motion had been approved, there was some continued discussion between the members of the commission, the applicant, members of the audience, etc. Certain items were requested from the applicant, so it seems pretty clear to me that despite the fact that the commission chose to close the public hearing, I think the expectation was that you would hear more from the applicant tonight and potentially get more evidence from the applicant, and whenever that happens the people in the land use process they have an opportunity to comment and react to it. So for tonight's purposes I would suggest you treat this as a continued hearing, allow for testimony, not only from the applicant but also from the public, and go from there. You can set time limits on testimony, that is certainly well within your right to do that and I'll defer to the chair and the commission if they so choose.

With respect to the questions that have been raised about bias and conflict of interest under Oregon law, and I also want to address and question about any ex parte contact. There are three separate points there. With respect to bias, a planning commissioner, anyone acting in a quasi-judicial role as you are tonight, have to be free of bias. What does that mean? It doesn't mean you can't have an opinion about a topic, it doesn't mean you can't hold strong opinions about a

topic, it does mean that when you come here and you review and judge an application that you put aside those feelings and look to what the law is and the facts are. And apply those facts to law in an impartial way, in a way that to the best of one's ability, put aside ones beliefs and opinions. If one is not able to do that, then one cannot participate in a quasi-judicial role and must step down. But that is something the Oregon law leaves to every individual commissioner and it's up to you to determine whether or not the opinion you may have, however it's formed, would lead you to not impartially review the application.

From what I've seen in terms of communications, there's been some allegations made against Chair Stempel in that regard so I would ask her before we continue with the hearing to discuss why she feels she is or is not biased. Two other related points, one of them that all of you should address and if any of you feel you need to address the second then you should do that as well.

The first one is ex parte contact and ex parte contact almost 90 percent of the time is going to be a conversation with somebody about the application that takes place outside of the hearing. It can also be reading a newspaper article or an opinion piece. Any of those can be ex parte contacts. So if you've had any between last month's meeting and tonight on this application, no matter how innocuous it may seem, even if you've said I'm sorry I can't speak about this, I'd ask you to put that conversation on the record, and in Oregon if you do that, then they're not prohibited per se, you can have ex parte contacts. But the law imposes a duty on you to put the subject matter of the contact on the record. Then the third point is a concept called conflicts of interest. Conflicts of interest are different than bias, insofar as they relate to financial gain or financial loss. So if an application comes before you that will financially benefit you or be to your financial detriment, we know for a fact that it will, then you may not participate, you have to declare it and then you have to step down.

An associated concept is called potential conflict of interest. Where the facts are that it could be to your financial benefit or detriment, but not necessarily would or will. So in those cases, much like ex parte contact, the duty of the public official put that on the record and say "hey I don't think this will affect me financially, but in the right set of facts could, and I want to put that out on the record of the proceeding". So I hope that's answered your questions in that regard. And obviously if people have any questions for me please ask.

City Attorney Doughman –

Commissioner Les Poole have you had any ex parte contacts? No I have not. Thank you. Commissioner Elliott Veazey? No I have not. I have visited the site both virtually and in person. Thank you.

Commissioner Kevin Johnson? I have probably had four or five people ask me about and I gave no specifics. As I said last time I have visited the site. Also I did not say last time that the company I work for and the cell phone they provide me is a Verizon phone. Don't know if that's a benefit, Verizon probably thinks it is. I don't know. City Attorney Doughman – And that's a really good example of a very, very, no matter how weak the connection may be, a possible conflict of interest. The test there is, is there anything that might happen here tonight, one way or another that you know that somehow you are going to get a better deal from Verizon out of it? I

think that we can all agree that where we sit on this issue that is highly unlikely, so that is perfectly sufficient how you raised it. Thank you.

Commissioner Malachi de AElfweald? There were quite a few emails that were sent to us, regarding the bias question, and I had replied to the commission as a whole regarding, the one that requested that anybody who is related to the telecommunications industry to step down and I questioned how broad that is. Is someone writing software on cell phones related to the telecommunications industry? Or is someone who works for Verizon? So I sent an email to the commission as a whole asking how broad that is in relation to the emails we were receiving. City Attorney Doughman – So a quick answer to that, by in large a relationship to the telecommunications industry you could potentially fall into the biased category and potentially fall into the conflicts category. As far as the bias goes each commissioner would have to say they feel so strongly about it one way or the other, and that they feel so strongly about cell phone towers or they think they are the worst things in the world, that they would not be able to review what's in front of them objectively and come to a conclusion based on the facts and the law. So if any of you feel that way, and I know that Chair Stempel is going to address that issue for herself, but if any of the rest of you feel that way then now would be the time to say, no I think I'm biased. And if you had a direct financial interest in the outcome of this matter again that would be something that would require you to step down. Absent the direct financial interest, at most you're dealing with the potential of conflict of interest that should be declared but that's not required you to recuse yourself.

Commission Chair Tammy Stempel – My ex parte contact was with the emails that we received from folks, I'm sure some of you are here. As well as a conversation I had at McDonalds when I stopped by to see some of my friends and I was asked what SHPO was so I explained that SHPO was State Historic Preservation Office. I also had four rather nasty phone calls at my place of employment today so I consider that ex parte contact. I also received a letter to my home, which I assume other people did as well, about the cell tower. But I guess the biggest question is whether I'm biased or have a conflict of interest on this matter. So I want to let you know that the company I work for, I am not the company but the company I happen to work for does not do any work for Virtual Site Walk, the applicant and we are not doing any work on this tower. This is considered a co-location and we rarely do work on co-location towers in this area. I will benefit absolutely in zero way on this project. The work we do in the telecom industry is mainly for the raw land new site builds, these are the towers that are on raw land. And those currently, right now are doing geo-technical engineering, which I am not a geo tech engineer and do not do anything related to that at all.

The 2013 cell tower incident was brought up in one of the emails and I want to make it clear that is a completely different situation than this one. At that time we were in the middle of a huge AT&T build out, not Verizon. Cascadia PM who was the applicants was one of our larger clients and there was a potential that we may do some type of service on that particular tower, though we had not been hired at that point but there was a potential. I personally could have been unbiased because as I said in my opening statement, I firmly believe that we are here to make decisions based on our codes and ordinances only and our personal beliefs and opinions are not to be brought into it. The perception was clearly otherwise so I stepped down, I voluntarily stepped down, and I was not asked to. Not only did I step down but I believe I even left the

building so that I wouldn't even be in the audience so people could see my facial expressions, I left the building. This time it is different, our cell work, the company I work for, not my company, the company I work for is doing about 10% telecommunications work, mostly it's in Washington, not even here. The other part of the work we do is private development, we do ODOT work, we do municipality work, we do energy work, so just about every sector I could possibly plan up here on planning commission we have done at some time for somebody. Also so you know I'm very involved in the Portland Avenue redevelopment plan and that's been brought up that this is a big detriment to that. While I was a big part of putting that together I continue to work on it and I'm currently working with staff identifying and writing grants to get that funded. So I guess you can say I am biased because I believe in our Portland Avenue redevelopment plan and the vision that we have.

What I do for Adapt Engineering, I do not work in the telecommunications industry. I am sustainability, I work in their green buildings department. I do not do telecommunications, the closest thing I have ever done to telecommunications work was a fiber optic project in Bend where I wrote the air quality greenhouse gas emission report, that's the closest I've done. Are there any questions from the commissioners? None asked.

City Attorney Doughman stated that absent any questions from the commission, he would say if there is anybody here who believes there is evidence or any other information that you have that would contradict any of the declarations that you've heard tonight, you would have an opportunity to say so this evening.

Glenda Scherer, 1525 Columbia Avenue, Gladstone, Oregon 97027 – *Thank you for your explanation of what the ex parte communication you had. One that you had failed to mention was your comments on Next Source, which is a social networking site, and I feel that it is important.* Commission Chair Tammy Stempel asked you mean that I mentioned that at the time I believed it was closed and that I would appreciate you submitting something in writing. *Glenda Scherer – But that is something that needs to be mentioned.* Commission Chair Tammy Stempel apologized, I did do that so people would be allowed and encouraged to submit by emails and letters. *Glenda Scherer – Ok, so no other comments?* Commission Chair Tammy Stempel said no I did not, other than to recommend the spelling of my name. *Glenda Scherer – Yes, and I appreciate that. Did you go back and were you able to check the 8/11/13, the name was misspelled in there as well.* Commission Chair Tammy Stempel answered no I didn't. I'm sorry I didn't report that ex parte contact. *Glenda Scherer – I do find that interesting in terms of being able to, that you didn't read the comments because the comment I had made was specifically about cell phone towers.* Commission Chair Tammy Stempel said I didn't, I emailed Assistant City Administrator, Jolene Morishita and asked if it was appropriate for me to let people know that they could still submit letters and emails and that was my only intention. *Glenda Scherer – It was at the bottom of the thread so that's why I'm trying to figure out how you could go from the top of the thread to the bottom of the thread without having read the thread.* Commission Chair Tammy Stempel said because a lot of those times the conversations are all condensed and not all showing. *Glenda Scherer – Ok, that's all I have, Thank you very much.*

Peter Scherer, 1525 Columbia Avenue, Gladstone, Oregon 97027 – *In the 2013 meeting, I thought I remembered you making a statement that approximately 80% of your work was on cell*

phone towers. Commission Chair Tammy Stempel answered it was at that time, like I said we were in a big AT&T build out so a big chunk of our work happened to be AT&T. But that is not the case now, at all. *Peter Scherer – That's not the case now, oh okay. The other thing is, maybe I don't know, has the nature of your company's work changed because when I went online and looked at your company it said that it was the go-to company for the telecommunications industry. Meaning if like Verizon or other companies like AT&T or Sprint or whatever wanted to put a cell tower up they would go see the company you're working for engineering help and green studies and environmental health.* Commission Chair Tammy Stempel explained that is how they created their niche originally but they have diversified substantially since then and that's part of why I was brought on staff was for that diversification, we didn't do sustainability or energy work prior to me coming on and now we do. The cell, telecommunications market has come to a screeching halt so there just isn't a lot out there right now. And again, that's not where my focus is anyway. *Peter Scherer – Okay I have one more question, I don't know if this is a little bit of a stretch, please forgive me, but have you considered the fact that whatever your ruling is in favor of this and Verizon gets the tower up and this gives AT&T, Sprint, I don't know how many companies there are but all of them putting up cell towers, either that or putting their antennas on the same pole they are putting up and thus making a giant mass of antennas? I didn't know if you considered that in the discussion, I may be way off track.* City Attorney Doughman – Do you mean that is relative to issues that are particular to her or do you mean that as a general matter about the application? Commission Chair Tammy Stempel – It is a general matter and we can bring that up during public testimony section, but right now we're just talking about the ex parte, bias and conflict of interest issues. *Peter Scherer – Okay, that's all I had thank you.* Commission Chair Tammy Stempel – Thank you.

Eileen Garlington, 7000 Debbie Court, Gladstone, Oregon 97027 – *My questions are a little more direct. Has the company you work for done work for, and thereby received payments from Verizon?* Chair Stempel said yes. *Eileen Garlington – And in the future will they continue to do work for Verizon and receive payments from Verizon?* Chair Stempel said I'm sure they will. *Eileen Garlington – So Verizon will pay your company at some point in time and you will receive payments from your company as part of that work?* Chair Stempel replied I do work for Adapt Engineering, yes. *Eileen Garlington – So a direct payment line of you receiving your salary from your company who is also receiving financial compensation from Verizon.* Chair Stempel answered one of many, many, many people who hire us to do work, yes. *Eileen Garlington – But there is still a direct financial link?* Chair Stempel said you could call it that, sure. *Eileen Garlington – That's my question.* Chair Stempel questioned that creates a bias? *Eileen Garlington – According to the Gladstone Municipal Code, a direct link is a bias.* City Attorney Doughman asked what the code section is. Chair Stempel asked City Attorney Doughman a question. Basically since we work in all industries then I should not even be up here for anything because then we can't... City Attorney Doughman stopped her and wanted to see the language because he doesn't think it's a direct, he thinks that means, again in the context of the way the conflict of interest laws in Oregon are that you personally would have to have some financial benefit or detriment that you would, not that you might, and this is more of a might. But anyway. *Eileen Garlington – Its 2.2A.110 Conflict of Interest. I can read it. Eileen read the code.* City Attorney Doughman stated again, it's an arrogant use of language here. But "direct" in this case, he interprets it to mean actual conflict of interest, and does not see the facts as you presented them to be an actual conflict of interest. There is nothing about the outcome of this application

that we know for a fact that any of us in this room, that Miss Stempel will do better financially or do worse financially as a result of this outcome of this application. He said direct substantial interest as he interprets it means an actual conflict of interest. He doesn't believe under these facts that she has one. *Eileen Garlington – Okay and yours is the final say so?* City Attorney Doughman answered no, we're building a record here and that is why we have you guys up and speaking into the mic. We want the public to know that's part of the process. You could take that further if you want to but his opinion to the commission is that it does not rise to the level of an actual conflict. *Eileen Garlington – Okay thank you.*

Wayne Winterbottom, 224E Gloucester Street Gladstone, Oregon – *This is the 2013 agenda minutes. "City Attorney David Doughman feels this is a potential conflict of interest, this is based on the AT&T tower that you were directly involved in, were talking today about the Verizon tower that you are apparently involved with, I'll just jump through this. Other commissioners may question the Chair and can challenge whether this is something that is appropriate. Bias is a separate issue that deals with your intimate knowledge or relationship with your employer and the applicant that you feel you can review the application without favoritism. So I would like to ask you one question. Can you review this application without favoritism?* Chair Stempel – Absolutely. *Wayne Winterbottom – Then Chair Tamara Stempel stated that 90% of the work she does is related to telecommunication towers, she could be objective on this one.* Chair Stempel – I could have on that one as well. *Wayne Winterbottom – I'm not asking you, I'm sorry. You can be objective on this tower Verizon tower on Portland Avenue?* Chair Stempel – Yes, absolutely. Absolutely 100%.

City Attorney Doughman – Any further questions for the commission? Okay, we'll proceed then. I guess the staff report and picking up where we left off is appropriate.

Commission Chair Tammy Stempel stated that they needed to do the consent agenda first.

CORRESPONDENCE:

None

CONSENT AGENDA:

1. Minutes of September 16, 2014 - Commission Chair Tammy Stempel – Next is the consent agenda. Does anyone have any questions or concerns?

Commissioner Malachi de AElfweald said he has a couple. Assistant City Administrator, Jolene Morishita I already spoke with you about the name change, my name was misspelled. On the first page, the previous minutes were not approved unanimously, he had actually abstained because he was not at the previous meeting. The other one is on page 15, second paragraph about 4 sentences down, where it says "It comes from my background" that was actually Clay Glasgow, City Planner speaking. Chair Stempel asked if they have a new person typing the minutes. Assistant City Administrator, Jolene Morishita answered yes. Chair Stempel stated it was really hard to read and follow. She asked how the rest of the commission felt about that. Commission members agreed. It was hard to figure out who was saying what. Assistant City Administrator Morishita

thanked them. Chair Stempel asked if there was anything else. Would anyone like to make a motion to accept the consent agenda with the said changes?

Commissioner Malachi de AElfweald made the motion to approve the minutes from January 20, 2015. Commissioner Kevin Johnson seconded the motion. Motion passed unanimously.

Regular Agenda:

2. Public Hearing: Z0435-14-PDR. Co-Locate Wireless Communication Antenna On Existing PGE Utility Pole in the Right-of-Way for Portland Avenue (Extend Pole Height From 60' to 80'.) Ground-Mounted Equipment Boxes to be Located on Adjacent Private Property. The Subject Property is at and in Front of 725 Portland Avenue.

Commission Chair Tammy Stempel stated they had asked the applicant to bring us some additional information. She invited him to come forward and go over the information.

Clay Glasgow, City Planner gave a brief overview of the proposal for clarification purposes so that those who were not at last month's meeting would understand exactly what the proposal is, as well as describing some of the communications he has received at work as well as home. This application is not a large new cell towers people are used to seeing, it is a co-locate tower which is a dual purpose tower. The tower will actually be put on an existing PGE power pole, the current pole is 60 feet tall and will be replaced by an 80 foot pole and the antenna will be added to that pole. Co-location is required for any cell towers in Gladstone. The pole will look just like all of the other power poles, including the power lines, except it will be new. He also went over the codes in Gladstone that apply to this application. The co-locate tower is allowed outright in the underlying code which is commercial. The ground mounted equipment will be on private property, the antenna will be installed on the power pole that is in the right of way of Portland Avenue which is owned by the city of Gladstone. No matter what decision is reached here either tonight or at some point in the future, that decision can always be appealed which would first go to the city council. The council decision can be appealed which would likely go to Land Use Board of Appeals (LUBA) which is the state appeals board. Then it can go beyond that, this can be appealed. Commissioner Malachi de AElfweald added that this tower will only have antenna for Verizon customers only, PGE doesn't not allow more than one carrier per tower.

Commission Chair Tammy Stempel stated that her understanding was that this matter didn't have to go before the commission and asked why it was brought before them? What made this application unique that it needed to come before the commission?

Clay Glasgow, City Planner stated that he has been doing this for 30 years and this application needed a public forum because people are concerned about it and needed the opportunity to comment on it. They could have easily just put it through with just staff and then there would have been no notifications to anyone until after the fact. It still

could have still been appealed but he wanted to start this in the public venue to be transparent and public.

Chair Stempel stated that some of the people who responded felt that everyone in the city should have been notified, not just those who were close by, but that's not true.

City Planner Glasgow stated that you would have to pay for postage for that and that code only required those within 250 feet be notified. He also stated that he works for Clackamas County and last Thursday they had an issue that had a "Measure 56 Notice" that had to mail out to every land owner in the county and it cost them a little over \$63,000 in stamps. It would be less than that in Gladstone but Gladstone has 9,100 people, he doesn't know how many land owners there are in Gladstone but it would be a lot of stamps. He said notifying everyone within 250 feet, he immediately started getting calls and said it wasn't like it was being swept under the rug. He immediately brought it to the public.

Jacob Hamilton, Verizon Representative brought the information requested by the commission including photo simulations, generator specs with noise level as well as the new location for the generator, and additional screening. It is being passed around through the audience.

Commissioner Kevin Johnson asked how often and how long the generator would run. Jacob Hamilton said it will run once a week for a half hour at a time.

Commissioner Elliott Veazey had a few questions for Jacob Hamilton. What necessitated the additional seven feet? Jacob Hamilton stated the code requires seven feet above the antenna array. He also stated that the code allows it to be twice as tall as the original 60 foot pole, they aren't planning on actually going that high with the current tower being applied for but if they needed to add to this tower they wouldn't have to turn around and replace the pole again and would also keep them from having to put in a second tower if needed in the future. Commissioner Veazey asked Attorney Doughman if Verizon did need to upgrade in the future if it would have to come back through the commission and he answered it would have to go through a process but it may only go through staff and not back to the commission.

Will there be any lighting at the top and Jacob answered no.

What will the base diameter of the new pole be? Jacob answered that once they've done a full comprehensive zoning and construction drawings and the hearing is complete and approved, then PGE hires an engineering firm to design the pole. He stated that the ones he has seen completed aren't much different in diameter than the wood poles because the steel is so strong.

He asked about the decibel level on the generator which the paperwork presented tonight states that it is 65 decibel (dBA) at 23 feet and Jacob says it equates to a normal

conversation. Commissioner Veazey states the specs are a little higher, equal to a hair dryer or a diesel truck at 50 feet away.

Is it possible to order a scrubber as an accessory to negate the fumes? Jacob will check into it to see what can be done.

Commissioner Malachi de AElfweald has a few questions for Jacob Hamilton. The specs say the exhaust is 720 degrees Fahrenheit, he asked where the exhaust was being exhausted to and at what height? Jacob stated that it will exhaust on the Portland Avenue side to the east away from the residences and believes it's on the west side of the generator. He didn't know the answer for how high but he stated that they are on a stand at least a couple of feet high and the exhaust is at the bottom.

Addressing Clay Glasgow, City Planner, referring to municipal code 8.12.60, he asked whether the houses behind the applicant property were considered "Noise Sensitive" or "Commercial" and City Planner Glasgow answered the two properties behind are commercial. Commissioner de AElfweald noted that if there was a power outage that the 66 dBA listed in the generator specs would be just above the allowable limit, which is 65 dBA at night. Jacob stated that the commission could make that and their thoughts on the generator a condition of approval. It was stated that from the generator to the wall is 16 feet and where the exhaust is another eight feet.

Chair Stempel also noted that the substantial vegetative screening which will be on three sides of the generator in its new location, and would make a big difference in the noise level and that needs to be considered into it.

Commissioner Les Poole stated that he had brought up the noise issue previously because it is a big concern for the neighboring homes so he asked how far away it is in its new location. Jacob estimated 20 feet or so.

Commission Chair Tammy Stempel thanked Jacob for the simulations and expressed how pleased she was that its appearance is much smaller than imagined as compared to traditional cell towers. She asked if it would be painted brown and would look similar to a real power pole and Jacob answered yes.

Chair Stempel asked if the issue of the 115,000 high voltage power lines had been considered or addressed and stated that was a big concern for the fire department. Jacob stated that they were in compliance with the PGE requirements in feed and distance.

Commission Chair Tammy Stempel stated that because of the number of people wanting to testify that a three minute time limit would be given for testimony and requested that the testimonies address the codes and ordinances because that is what the hearing is about. She asked for redundant testimony be kept to a minimum, and stated that they understand and appreciate the passion felt on the issue.

Melinda Garlington, 7000 Debbie Court, Gladstone, Oregon 97027. 1. States that her concern with using vegetation as screening comes from a past experience when it was promised on a previous project and never installed, and if it is installed, who is responsible for maintaining it? 2. Her daughter feels there is plenty of Verizon coverage already. 3. Who is benefiting from all of this, is Gladstone benefiting? 4. In a conversation with Mike Funk, Fire Marshal, he had stated that if a fire occurred at the tower location the fire department would stand back and not engage until the power was shut off. How long does it take to turn the power off?

Chair Stempel asked if the email from Fire Marshal Funk got sent out to the commission.

Kathy Stapleton, 695 E. Clarendon Street, Gladstone, Oregon. Thank you for letting people know. 1. Kathy asked for clarification on the process, the decision is based on the legalities? Chair Stempel confirmed. City Attorney Doughman stated that the commission makes a decision, but an appeal can be filed within 12 days. If none are filed the decision is final. 2. Is the exhaust or emission going to be going toward the neighboring property? 3. There are three other towers in Gladstone, what is the need or draw to have one downtown?

Wayne Winterbottom, 224E Gloucester Street, Gladstone, Oregon. He feels that the public should have access to the simulations as well as the specs and technical information for a period of time so the public can do its own research on the equipment, etc. Also believes from Clay Glasgow, City Planners comments at last month's meeting that he may be biased. He further stated that when he watched the video and listened to the audio of last month's meeting that City Planner Glasgow said that this is a new thing for Gladstone and he clearly was mistaken because there are several cell towers in the area and that when Chair Stempel replied saying yes right away she was also mistaken for the same reason. Chair Stempel stated that they were referring to co-location towers being new yet he still felt they were mistaken because of numerous towers in the area.

Glenda Scherer, 1525 Columbia Avenue, Gladstone, Oregon 97027. 1. Stated she wasn't at the previous meeting but had watched it online and was concerned that the SHPO results had not been completed and asked the commission to take their time and not make a hasty decision because once a decision is made, if done without all of the facts and information, it can't be taken back. 2. Showed concern about a National Environmental Policy Act (NEPA) assessment not having been filed. 3. Very concerned about the heat from the exhaust, especially in time of an ice storm.

Justin Stewart, 257 W. Dartmouth Street, Gladstone, Oregon 97027. 1. Stated he has been in the utility industry for 12 years and had worked with several cell phone carriers. 2. Voiced his concern with radio waves and their safety as well as kids being that close to a tower.

Peter Scherer, 1525 Columbia Avenue, Gladstone, Oregon 97027. 1. Feels it's unnecessary. 2. 80 feet is going to stand above everything else. 3. Feels this is a new facility not a co-locate. 4. Code 17.6.1.0201 voicing concern over the potential of the

tower falling during an earthquake or ice building up on it and falling and injuring someone or something. 5. Concerned that if Verizon gets this tower other carriers will want them too.

Levi Manselle, 129 E. Fairfield Street, Gladstone, Oregon. Lives directly across the street from the proposed tower location. 1. Does Gladstone have a specific municipal code regarding utility carrier cabinets or do you default to Clackamas County? If it does default to Clackamas County would 830-01 in terms of size with 200 cubic feet as a maximum? City Planner Glasgow answered the 830-01 doesn't apply to Gladstone or any other incorporated city in the county. 2. Does the code that umbrellas urban renewal or urban development district apply? City Attorney Doughman answered with, none of Clackamas County codes apply to Gladstone.

Mark Beutler, no sign in sheet entry located. Commended commission and staff on their ability to listen and understand. 1. What height is allowed for a co-location? City Planner Glasgow answered with 20 feet above the existing tower or co-located facility. 2. How high will the antenna be? Jacob answered with 73 feet. 3. Is there a build out on top of that, and what is the configuration of that?

Chair Stempel stated it is time for rebuttal and invited Jacob to come forward please.

Jacob Hamilton, Verizon Representative

A. *Regarding the vegetation and who takes care of that.* That is Verizon's responsibility. There are conditions generally when these are approved stating that the vegetation has to be kept alive and in good condition and it will naturally grow. They will usually use a slow growing hedge so they don't get out of control.

Commissioner de AElfweald asked as far as the upkeep on the vegetation, is that agreement renewed on a regular basis or is it indefinite? Jacob answered that usually when it's a conditional use permit they come back and renew every five to 10 years, depending on the jurisdiction requirements. City Attorney Doughman stated that as far as the upkeep and maintenance, including the vegetation is an indefinite agreement as long as the tower is still in existence whether it stays a Verizon tower or their successor. To the matter that they don't, then that becomes a matter that the city can enforce.

B. *The concern of need for the coverage and tower.* There are many ways to answer but it basically comes down to capacity. Verizon has many well paying subscribers who have cell phone plans and the way the data usage and needs are growing, to say it's exponential would be an understatement. The amount of data being used now is 100 times more than it was just a few years ago. It has been difficult at best to keep up with enough capacity for sufficient coverage. Each time the technology upgrades there is a huge wave of upgrading the towers just to try and keep even. So this tower is just adding capacity to keep up with the data usage.

- C. *Why there, why downtown.* 1. It's a C2, or a commercial zone which is favored by the code. 2. It's a co-location which is also favored by the code. And utility poles fall under the co-location standards. 3. You have a height limit which is allowed by the code by right. 4. Just for aesthetics, there is a large deciduous tree behind there as well that helps. You can't tell now because the leaves are gone for the winter. 5. The design is extremely thin so it blends much better. It's half the amount of a traditional tower. Much smaller and much closer to the pole to be more visually subordinate. There is a place for the equipment, need and the location is available. 6. There is a four block search area where there are lots of people and not enough capacity to provide good coverage. It's the data that has grown and is so important now days. Lots of social networking, internet usage, etc. and that takes a lot of data capacity. This tower will ensure not only good coverage when it's needed now but also into the future.
- D. *There is a lot of concern over the radio waves.* I've done this for a lot of years. Of course that's a concern and I get that. People don't like it but the 96 Telecom act is a federal act that controls the emission levels and we've submitted the near non ionized emission report that shows clear compliance with those standards. Breaking it down a little more technically, I'm not an ARC engineer, don't play one, don't ever act like one, but I can say they are pointed horizontally, more so than downward. So the signal is propagating more sideways, not as if it is shooting towards the ground.
- E. *Color of the pole.* The code does not dictate the color but we are going to paint it brown. The feedback was that people want it to look like the existing wood poles so we are painting it brown. A good solid brown color on a steel pole which will match, as best as possible, the wood poles.
- F. *There is a lot of concern over the generator.* That area is not accessible to the public. There is a six foot chain link fence and landscaping surrounding the generator and it's a locked gate. You would have to scale a six foot fence, landscaping and inside the compound while the generator is working. I don't have the answers for the exhaust and the heat, I will get it though. You would be trespassing on private property to get to it. Chair Stempel added that it is also set back off the street. It's at the back of the property.
- G. *There is concern for the residence at the back of the property.* It is true there is a residence there but it is zoned C2. Some codes differentiate between commercial or residential use but your code does not. It is clearly marked as C2 and that whole area is C2.
- H. *The last gentlemen asked about going through the general process and how we do this as a "for your information" (FYI).* Essentially how it works is a radio frequency engineer puts out a search ring. The search ring has parameters, either a square or a circle. Generally that simple and they say this is the area where we need the site because of capacity or coverage concerns. Then what we do is as acquisition consultants we look at the zoning code and look for property owners. Once we look at

the zoning codes we look at what is most favorable. I never come into a hearing usually going straight with a new tower when the code clearly favors a co-location. If it favors a co-location then I have to do everything within my power to find a co-location. In fact you generally have to do a fairly detailed analysis of why you're not co-locating. If in fact I was putting in a new tower that was a conditional use permit then I am required to show why I'm not using an existing pole and not using the stealth antenna instead of a new tower. There's a common sense element there as well. That's pretty much the process right there.

- I. *There was a utility question regarding being close to the antenna.* There are rooftop facilities that when people are working on them in a man lift or a basket in front of the antennas there are certain limitations about how close they can be for how long, when they are directly in front of the antenna, but that is purely for people who are in a defined space and generally on rooftop facilities.
- J. *There were questions about the exhaust temperature and fumes, is there any way to mitigate that?* Commissioner Kevin Johnson stated that if you look at the model it's in a cabinet and there are mitigation measures already in place. It is in a metal enclosure and also has anti vibration mechanisms.
- K. *There was a question regarding the SHPO and NEPA report.* We always have to start fairly quickly because the NEPA and SHPO timelines are pretty extravagant sometimes. We usually start once we have a solid site and it complies with code and looks like we're going to move forward. As far as those go the SHPO is a state process and NEPA is a national process. We do have to do them and we do one on every single site and we're in compliance on every site. We do a phase I, and phase II if we need to. But that's not something we generally share with local jurisdictions because it's a state and federal process. Commissioner de AElfweald asked for clarification for the audience, if something came up in one of the two reports that was a problem for you, at what stage in the process would it affect you and how is it mitigated? Jacob said they hire a regulatory firm who then files all of the appropriate paperwork for SHPO. They will get a response from the state from SHPO office and they will notify us of any concerns and asks how we will mitigate the issue. And often times they will flat out say no. I've done sites in San Francisco when SHPO had concerns on a particular site and it ended up not moving forward.

Commissioner de AElfweald asked if that were to happen would that just stop the project before it moves forward. Jacob answered it has, it can. If there is no way to mitigate the issue then it can stop the project.

Chair Stempel asked for clarification on the NEPA and SHPO, those are both Federal Communications Commission (FCC) requirements right, it's not put on you by Gladstone or the state? Jacob explained that NEPA is federal but they propagate, for lack of a better term, rules that the states have to adopt that match or exceed NEPA. Our state mandates are that we match NEPA.

Chair Stempel asked what NEPA covers? Jacob explained that NEPA basically covers ground disturbance. It can cover contaminants in the soil. Chair Stempel suggested that they also cover flood plain, habitat, and all of the environmental. Jason also added archeological is also covered by NEPA. Chair Stempel asked if Jacob knew that Gladstone is a big Grand Ronde and Native American territory. He was not aware of it.

City Attorney Doughman added a point on that that should be helpful for folks. It's one that comes up a lot with various projects. One thing that is key to understand is that there are a lot of regulatory agencies and there are plenty of people who are in this room tonight that feel there is far too much regulation. Talk to any developer and they will tell you how many they have to go to get certain things approved. The city has its silo of things to look at. It doesn't mean that there aren't a number of other agencies that have jurisdiction over this project. To the point that was made about SHPO and NEPA, they are valid concerns it's just that the city doesn't have anything to do with it. It's not a part of what it looks at when it approves or denies, depending on the facts of the case, a cell tower co-location. What the code says is what the criteria are.

Commissioner Elliott Veazey asked Attorney Doughman if they have any way of verifying that information. Attorney Doughman replied that we get to ask if it complies with all of that but we are not in a position to say, I think that standard is too low.

Chair Stempel told Commissioner Veazey that the reports were in their packet and done by Hatfield and Dawson. Jacob also stated that they are in compliance with all of them.

Commissioner Veazey asked for clarification about SHPO in respect to if Gladstone gives approval but Verizon doesn't have approval from SHPO yet, does Verizon wait until they have all of their approvals prior to starting the building process. Jacob replied that they absolutely wait till all approvals have been received, they have too much at stake not to.

Commissioner Veazey asked how often towers burn down. Jacob stated he couldn't answer that. However he did say that the tower is constructed, built and installed by PGE with all of their strict regulations and standards including geotechnical. He added that he had never heard of a PGE pole co-location ever burning down.

Chair Stempel mentioned the email to Mindy from Fire Marshal Funk about the fire concern. Jacob explained that in regard to lightning there are heavy duty surge protectors and technology used that, in the case of a massive lightning strike that can cause fires as it tries to go backward through the line, protects it and keeps that from happening to keep fires from happening.

Chair Stempel summarized Fire Marshal Funk's email stating that the fire department usually stands back because those types of fires burn out pretty quickly and also said that PGE responds very quickly to shut the power off and the fires go out very quickly once it's shut off so it shouldn't be an issue.

City Attorney Doughman brought up another question that was asked during public testimony regarding any money or who may benefit from this if it goes through. He stated that the only money received by the city or anyone was the application fee from Verizon. That is a fee that every applicant would pay. Jacob added that they have to pay PGE for the license to put Verizon's antenna on one of their poles and they also have a private lease to the landlord to place the equipment.

Chair Stempel repeated the question asking if there were any franchise fees associated with this and the answer was no.

Jacob Hamilton, Verizon Representative stated that site rental agreements, for a predetermined amount, can come into play if the tower is on city land or if there are multiple towers on city land.

Jacob Hamilton, Verizon Representative brought up another concern from the audience which was the site not being appropriate for the location or area. He stated it is always a big concern.

Commissioner Malachi de AElfweald asked if it is possible that a battery backup could be installed instead of the generator and that would eliminate many of the issues. Jacob responded that he couldn't commit to that but it may be a big possibility and he will check on that.

City Attorney Doughman stated that the commission could condition that as well. Chair Stempel asked if they could require it and Attorney Doughman suggested that they could strongly request it but it may not even be possible.

Jacob Hamilton, Verizon Representative reiterated that the generator is there for time of emergency with no power and in a large natural disaster event it could be the difference of having or not having any communication available. Citing Sandy and Katrina and other large scale disasters.

Commissioner Kevin Johnson asked if it would have a 911 locator on it. Jacob replied that they will do an E911 testing on it. To make sure it can be located on 911.

Commissioner Kevin Johnson asked if it had a separate antenna, other carriers have it and it's more for GPS locate in an emergency. Jacob said they used to but he can't answer on how Verizon does that. I know that AT&T used to integrate it with their Global System for Mobile communications (GSM), which is why they had to keep some of their older technology for so long because of the 911.

Commissioner Kevin Johnson stated that it would be wise to remember that when that's going to kick on it's going to be in an emergency and we do want to consider some capability there. It's one thing to take out a generator but it's a whole other one to leave people high and dry in the event in a real emergency.

Commissioner Malachi de AElfweald stated that he does understand the real emergency case but what was also pointed out at the last meeting was that would be with any black out or brown outs and that happens a lot here.

Question from unknown audience member – So is this a design of experiments to locate a tower? You use a series of signals to cover an area and do an analysis based on that to define that area or is it desktop modeling? Jacob answered with I would like to answer that but don't feel I can accurately.

Chair Stempel time out please. When people have questions we need them to come up to the mic. The reason we do this the way we do is because we record the proceedings so that our transcriptionist can accurately record the meeting and if people are talking from elsewhere she will be unable to do the transcription.

City Attorney Doughman we are in rebuttal right now and you are well within your rights if you want to open it back up for questions following the rebuttal.

Commission Chair Tammy Stempel: I will entertain a motion from you guys.

Commissioner Kevin Johnson asked Attorney Doughman if he had looked it over and if everything is in order to be able to make a decision.

City Attorney Doughman stated that yes he had looked it over previously and again today and it's in order. He mentioned a comment that had been made about City Planner Glasgow making a comment that our codes were waiting for this type of application. He understands how that could be upsetting to someone making it sound somewhat provocative, however he was right and your codes do pretty much invite this type of co-location and most codes are written that way. I don't mean that to sound flippant but there is a definite preference to instead of building a new big tower, to put it on an existing pole and make it a much smaller profile. It's outright permitted in the zone. The co-location standard specifically talks about rebuilding an existing structure. So the fact that it will take down a pole and replace it still qualifies as a co-location under your code. I don't mean this to sound dismissive, because I get it, I understand people's concerns about cell towers but this is a pretty straight forward application relative to your criteria.

Commissioner Kevin Johnson asked if the commission was going to make a list of conditions prior to making a motion and Chair Stempel said yes that they can.

Commission Chair Tammy Stempel suggested someone make a motion to close the public testimony so the commission could deliberate and make a recommendation.

Commissioner Les Poole made the motion to close the public testimony. Commissioner Kevin Johnson seconded the motion. Motion passed unanimously.

Commission Chair Tammy Stempel suggested they start with the things they decided on at the last meeting.

Commissioner Kevin Johnson made the motion to approve Public Hearing: Z0435-14-PDR with the following conditions:

- 1) Additional vegetative screening to buffer the equipment that must be maintained indefinitely per code. A planting plan reviewed and approved by staff*
- 2) Paint the pole brown to match the existing wood poles as much as possible*
- 3) Cyclone fence required with slats*
- 4) Replace diesel generator with electric battery backup if technologically feasible*
- 5) The sound level must be in compliance with city code*
- 6) Make sure current Verizon emergency and administrative contact information is registered with the city at all times.*

Commissioner Les Poole seconded the motion. Motion passed unanimously with conditions.

Clay Glasgow, City Planner stated that this decision will be put in written form and it will go out once that happens and once Chair Stempel signs it. I would expect, since this is a short week, it may be Monday of next week before it gets mailed. Then there is a 12 day appeal period from the date of mailing, in which anybody who has been party can appeal it to the city council.

City Attorney Doughman stated that if you testified you're going to get notice of the decision, that's why it's important to put your name and address on the sign in sheet.

Questions from unknown audience member.

Where do we get the paperwork? Attorney Doughman city hall I would assume.

And the handouts? It would be wise to have copies of those too. City Planner Glasgow stated you can get those from city hall or himself at the county.

Commissioner Malachi de AElfweald asked if they would be posted on the website. City Planner Glasgow stated he didn't know if they would be on the site.

Commission Chair Tammy Stempel called for a short break. Work session is next and I need to get Councilor Kim Sieckmann here so he can give us their recommendations on what we're supposed to do.

City Attorney Doughman educated the commission on codes relating to medical marijuana. Basically what the city did last year was adopt, what virtually every other city in the state did, which was a one year moratorium on the medical marijuana facilities and that expires on May 1st. You had started a process to make some amendments to your zoning code, location, and other things. As far as I could tell, the brakes were put on that once the moratorium was permitted. Commissioner Kevin Johnson said he thought they were also waiting for the November election as well. Attorney Doughman agreed because of the vote taking place about making marijuana sales and legal use, and stated that it was similar but separate from the medical marijuana side.

Commissioner de AElfweald brought up a conversation from the budget committee meeting about that, saying that they had discussed whether or not they would be allowed to put a tax on it like cigarettes. Attorney Doughman said he thought they had passed a tax on it but doesn't know if the legislature will or won't allow it or if it's unclear it will be litigated. He stated that someone will attempt to impose it and someone will say I don't think you can and the court will decide. Let's put it this way, the people who drafted it didn't intend to allow cities to do what they did by imposing a tax before it was effective but many did. It's written in such a way that we think a fairly comfortable thing in terms of a city's authority to do that.

City Attorney Doughman said that what he wanted to get from you tonight is if you want to see something and if so we should be doing that at the next meeting. With this you would be making a recommendation to the council and the council will take it up. Chair Stempel asked if the council wants them to look at it. Attorney Doughman stated he would defer to Councilor Sieckmann on that. Attorney Doughman explained that there are two ways to go with this. You could do nothing and let the state law control, and what that is there are a number of criteria that are placed on the owner and place of business in terms of security and things like that. Chair Stempel asked if they can refine it and Attorney Doughman replied that you can refine it, from a land use point of view, is that it can't be within 1,000 feet of a school. Chair Stempel asked if they had broadened that to include daycare and others. Attorney Doughman informed her that they haven't but that the city can. And right now, meeting state law would mean they will be allowed in any commercial and industrial area as of May 1. Chair Stempel suggested maybe limiting it to light industrial.

Commissioner Poole stated that he didn't know if it was Clackamas County that did this or if it was the law but asked about not having them within 300 feet of each other so you don't have a situation like Hayden Island with casino row so to speak. I was involved with the counties effort and I strongly feel we need to do something, and obviously sooner than later because one part of Gladstone is the old Portland Avenue and then the other part is a completely different world on McLoughlin and if we're not real specific and engaged it's going to come back and bite us. City Attorney Doughman stated that was his thought as well, and his gut said at least on Portland Avenue.

Chair Stempel asked if it should be rolled into a work session. Attorney Doughman said the only difficulty was that timing wasn't on their side and we/somebody had to get this out to the state saying hey we're going to be doing this. And you would have to have a hearing and you would have to forward something to the council, ideally before May so they could get something passed. Chair Stempel asked if he could have something for the next meeting and he said he would.

Commissioner Les Poole stated that City Planner Glasgow would likely need to be involved because Commissioner Poole didn't know if City Planner Glasgow had been directly involved with what the county had done but they've already laid a template for them. Not that he believed they want to automatically adopt what the county does but some ground work has already been done that they can look at and draw from.

Commissioner Elliott Veazey asked if they would reach out nationally to see what is working in other areas. Chair Stempel suggested there isn't enough time for that. Commissioner Poole stated that they did some of that last year and that Oregon laws are more restrictive than Colorado laws which seemed to be more like a free for all. When he looked at our laws they seemed to at least address time, place and manner rather than just default and ignore the issue.

City Attorney Doughman stated that they also expressly allow for local concerns to be played out through the time, place and manner in their regulations. I think it will be a good idea, I do regret that we are going to be doing it pretty quickly. To me, the foremost thing you would want to think about, at least initially, not to say you couldn't add things or do something different down the road, but at least start thinking about places you don't want to see it. Chair Stempel asked, and see how we can work that into their code.

City Planner Glasgow asked if they were only talking about the medical marijuana and stated that they are still waiting for a lot of information on measure 91.

Attorney Doughman said that measure 91 will go through a separate process and said that with any luck, at some point there would be some legislative wisdom about trying to get these two systems in line.

Commissioner de AElfweald stated that he didn't think that their code had to differentiate right, if their code said "by law" then that would allow for either, whatever the state law was. Attorney Doughman said that was a good point and said there were some subtle differences in the authority to regulate between 91 and the medical marijuana program but that by in large that was true. He stated that they don't have to worry about 91 right now and to the extent there would eventually be regulation in that regard and that the city probably would do, and it is probably going to mimic a lot of what you do for the medical stuff. Attorney Doughman stated they would bring something and it will likely be what you left off with 14 months ago.

Commissioner Elliott Veazey asked if that defined dispensary. Attorney Doughman said state law calls it a medical marijuana facility but, yes it does. Commissioner Veazey asked if it was all the way down to a vending machine. Attorney Doughman stated he didn't believe vending machines count, he doesn't think they are allowed in Oregon.

Commissioner Les Poole said that if you look at the law they've got camera requirements for everyone that comes in and out of there, lighting requirements, and stated that it was pretty extensive, given the law gives more latitude locally. I think we're going to be able to get some good info from you, in short order as you said.

Commission Chair Tammy Stempel speaking to City Attorney Doughman stated she had been on the commission for close to 12 years and this is the first time she had personally been attacked on an issue. She asked how to deal with that because it is a very concerning issue when someone is calling her at her place of employment and threatening her and

getting a letter to her home, personally addressed. She stated she's not comfortable with that and she needs to put some things in place because she doesn't want to go through this again. She doesn't want phone calls telling her she needs to be fired from her job, and that it affects her family. City Planner Glasgow also got calls.

City Attorney Doughman asked if she had traced the calls. Chair Stempel stated that she didn't even think of it because she was in shock to have gotten it. One okay, but four. Attorney Doughman stated that he thinks it's not okay and it's off limits at home and work and said you're volunteers up here. I can give you the pat answer and you should file police reports and said she shouldn't be shy about that. He stated he doesn't know what was said, he wasn't privy to the call, but that if she is feeling threatened he would encourage her to do it.

Chair Stempel stated that she was totally surprised and thought everyone could be adult about it but it was crazy.

Commissioner Malachi de AElfweald asked that if she did file a police report would she then need to report it as an ex parte contact.

City Attorney Doughman said she probably wouldn't, the issue with ex parte usually has to do with the merits of an application or code criteria, specifically with what's being proposed from a land use point of view.

Chair Stempel questioned that when people are trying to influence her regarding a topic the commission is discussing.

City Attorney Doughman stated that with ex parte stuff he always says the more the merrier simply because you can create a procedural issue by not disclosing it and land use issues should not be decided on procedural stuff. I don't think talking to the police is ex parte.

Commissioner Malachi de AElfweald questioned that the call threatening her would be the ex parte contact.

City Attorney Doughman said that is, and as she did tonight saying she got four phone calls. That should be because ostensibly that is a phone call to her in her official capacity about this application. But the part about her calling the police to report it wouldn't need to be.

Chair Stempel stated that this didn't need to go further tonight but that after all of the years she has been involved in this, she was so disappointed in this process to this particular point, it was ridiculous.

Commissioner Elliott Veazey stated that was out of line and asked if they identified themselves.

Chair Stempel answered no and added that today she got a letter that they didn't put a return address on. She requested they move on to the work session.

3. Gladstone Code Review Final 12-18-2013

Commission Chair Tammy Stempel brought the new commissioners up to date on the code review. She stated that many months ago they were charged by city council to start looking at the codes and ordinances because most of them haven't been updated since the 70's or 80's. The commission wanted to see what could be done to encourage development. The two that were most important to the council were the clear vision code and nuisance code and they have already looked at those. They are about to start the zones.

Title 17 Zoning & Development, Division 2 Zoning Districts -- Commercial is our number one. Chair Stempel put a hold on the process because they have a new mayor and a few new councilors so she invited Councilor Kim Sieckmann to come and give the commission an idea of what the new council would like to see, what their priorities are and how they would like the commission to proceed.

Councilor Kim Sieckmann and appointed liaison to the planning commission. He stated that he would be at their meetings as often as they would like him to or not to be there. He educated them on ex parte and let them know that anything they do in official capacity can be appealed and if it is it goes to city council. That is why I wasn't at the meeting tonight, though I would have loved to be, because it creates an issue for me if it is appealed.

Chair Stempel questioned that, she had thought that the council would have the planning commission transcriptions as a part of their packet so they would know what was going on. If that were the case she felt it wouldn't be an issue because he would already know what was going on so should be able to attend.

Councilor Sieckmann stated that they had not been getting them in the past but they should be getting them in the future.

City Attorney Doughman recommendation is that it is a communication outside of a hearing. Theoretically if you get a set of minutes and it's a part of the appeal there will be a packet of information which will include minutes, application, as well as other things that will become the basis for the appeal, so he doesn't have an issue with that because it will be mixed with a lot of stuff. It is something the public also has. The whole thing with ex parte, which we could and probably should have a training on, they aren't prohibited per se, but if they happen it is critical you remember to declare them. Like what happened tonight, it can create procedural errors. He feels that if you don't have the contact you don't have to worry about it.

Chair Stempel said she feels better just knowing that the council will be getting the minutes in their packets so they will at least know what's going on with the commission and the issues they are working with or on. Our decisions are not taken or done lightly.

Councilor Sieckmann asked Attorney Doughman if the state has prohibited the cities from outright banning marijuana. Attorney Doughman said that there is a case that is going through the court of appeals right now that with any luck will answer that question.

Councilor Sieckmann stated that they need to be prepared and asked Attorney Doughman to go back about a year because he thought that the moratorium was longer than a year. Attorney Doughman said the moratorium was definitely one year. Councilor Sieckmann thought that prior to the moratorium, the council had passed an outright ban that was indefinite. Attorney Doughman agreed that they had and what was said in that ordinance of the outright ban was that the ban would only be lifted if, essentially if you repealed that ordinance. It's a very good question, however the way the law is written that grants cities and counties the authority to place reasonable regulations on a medical marijuana facility/dispensaries, it's unclear in the way it was drafted whether it preempts local jurisdiction under state law from banning them or if it allows it. And for a matter of state law, the court of appeals is going to answer that one. He doesn't think it will be answered before May 1. So you're in a position to make sure you have something, if in fact that you can't rely on federal law to prohibit it. Councilor Sieckmann added that he thought they had taken the word medical out of it and just said dispensaries.

Councilor Sieckmann stated that he had spent 13 years as a planning commissioner. He told them that they probably won't see anything like what happened tonight again or at least rarely, and that he had only seen something as contentious as this come up three times in 13 years so asked them not to bail on them. His position as liaison gives them a direct link to the council. It's new, there are no job descriptions and they don't know how this will work. He will work with them and will only be there as often or as much as they want him to be. He will likely be there for work sessions or at the beginning of meetings before the hearings start, just have communication if we need to. He can sit by his phone till you finish your meeting and then you can call and say we're ready for you.

Councilor Sieckmann will give the commission an update on the Tigard, Lake Oswego water intake pump station at the end of Portland Avenue, all or most of you are aware of it. City council looked at it closely and had some work sessions about it and at the end of the work session it is no longer executive material so it can be discussed. There will be a press release to let everyone know where it stands because there was a lot of interest in it. He felt the commission should know what the press release was going to say prior to the public getting it and he didn't want them to be blindsided. It has often felt like the newspaper knew more about what was going on in his town than he did as a commissioner or a councilor so he will try to keep them abreast of what is going on. "The building design and location of the equipment boxes are not what the planning commission approved nor what the citizens expected. What we were informed in our meeting February 10th is our city planner who is contracted through Clackamas County approved the changes and existing structure was approved by him. There was no wrong doing on the part of Lake

Oswego, Tigard partnership. Since the planner works on behalf of the city there is no recourse to require changes. This is brought to the surface a problem that needs immediate attention. Our city does not have policies, procedures or contractual language in place to address the root problem. This may explain some of our other developmental concerns in the past. City council has instructed the city administrator to move quickly to find a solution so this type of thing doesn't happen again. We will be looking at several new options in the very near future to make a decision on the best plan of action and move forward with it." That's where we are with that project. They are hoping that something similar to this will go out, to at least the local media pages in the next few days.

Councilor Sieckmann stated that Chair Stempel sent a letter to city council asking if the new council wanted to proceed with the code review. The council consensus was yes to proceed. One request from the council was for the commission to come up with a timeline of when the commission expects to either have the entire review complete or when different chapters will be completed so the progress can be tracked and they know what to expect. You can break it down or proceed in whatever manner you choose to tackle the project.

Two things the council would like the commission to look into. One of which were curb and sidewalk requirements. Right now they are only looked at with new land development. They are not looked at with a redevelopment such as when a house burns down and needs to be rebuilt. Or maybe with major remodels .There is nothing allowing it to be looked at or considered. We are hoping you can come up with something to fix that problem.

The second one is the time between your decision and certificate of occupancy to find the missing piece and see what's going on there. Based on the information the council received for their meeting on the 10th that may have been found and city administrator will be addressing that so you don't need to address that. So the second item from the council is now off your plate.

Councilor Sieckmann said that one other thing was brought to his attention during the Lake Oswego, Tigard water partnership was our design review standards. They don't appear to have the force of law. If they were contested in court they would not likely hold up. Chair Stempel asked what they need to do and Councilor Sieckmann answered with I don't know. She feels like they can work on stuff extensively yet if it's not done correctly there is no way to hold them accountable. Councilor Sieckmann stated that is the piece City Administrator Boyce is working on.

City Attorney Doughman stated that what it boils down to is there isn't enough criteria against which to review a design.

Chair Stempel said that was their "grey" area where they have a little more leeway, but she feels that there recommendations should hold up.

City Planner Glasgow stated that they had gone through that with the county not long ago. When a design review comes before you, basically you are trying to decide if something is pretty and does it fit in, but it's very vague and arbitrary. Some of the criteria that you have and the county has hold up better than you think. That said, your criteria needs work.

Commissioner Malachi de AElfweald asked if there any specific areas that you noticed were specifically susceptible to this. Councilor Sieckmann answered no.

Councilor Sieckmann said he felt the same way Chair Stempel does, here is the design review, they were approved, everyone signed off on it, it's a done deal. He had been told at the meeting on the Lake Oswego, Tigard water project, may not be so he wanted to pass that along to the commission. He suggested that when they are in design review, that would be a good time to ask staff, will these changes be strong enough to be upheld, or are there other parts of the review process we should be looking at strengthen too so it will hold up.

Chair Stempel said the problem is there is no enforcement, no way to hold them accountable.

Councilor Sieckmann stated that there is no particular issue, it's just a blanket statement on design review that if it gets appealed over and over and over again it may not hold up. He also added that council has not weighed in on the discussion on design review. He believes it falls within their parameters of their code review if they chose to take it on. If you would like definite direction I can certainly take this back to council, inform them of this and ask them specifically, do you want them to review this.

Commissioner Kevin Johnson asked if the city of Portland has standards and exactly what they say, do we not have the standards or just no way to enforce it.

City Attorney Doughman stated that their standards could be modernized. It's a balancing act between being rigid with everything being dictated to them. Like Sandy Oregon with their "Sandy style," every little detail being mandated, down to the pitch of the roof, eaves, color, etc., and giving them the opportunity to build with their own style and tastes. Yet you do want some control. So it's coming up with something somewhere.

Councilor Sieckmann feels it's within your scope of work and if you feel that is something you would like to work on he will take that to the council and let them know you would like to do that.

Chair Stempel said they would love to look at design standards and feels it is something that they should look at and asked Councilor Sieckmann to take that to the council asking if they can please work on design review. Councilor Sieckmann said he would do that.

City Planner Glasgow wants to address the sidewalk issue when a house burns down. He stated that the way the county deals with putting a sidewalk in such a case is they add a

fee, called a fee “in lieu of”, rather than this person building a small sidewalk 50 feet wide and this person having the only sidewalk within five blocks, we take a fee that is the amount that sidewalk would cost and put it into a kitty so that when the county is going to put in a sidewalk in that area we will have the money to build it. Chair Stempel said the commission recently did that on one but they gave the money back because the sidewalk was never build. She also asked if they can do the same thing and put it in a kitty. City Planner Glasgow said yes, they have a number of kitties broken down to type of project. They pay the fee and don’t build it so they can build areas of sidewalk. Yes but within a very narrow area.

Councilor Sieckmann stated that City Planner Glasgow may have missed his point. His understanding is that they don’t look at sidewalks and curbs unless it is a development. If a house burned down that didn’t already have a sidewalk, they can’t even look at that as a possibility when rebuilding on the same location. Right now we don’t have the criteria allowing us to even look at sidewalks or curbs.

Chair Stempel asked if they could add it as a system development charge. She asked Councilor Sieckmann if that is what he was thinking and he said he wasn’t thinking anything. They would just like to be able to look at adding a sidewalk or curb for a rebuild or even possibly a major remodel. They would like to have that option or capability.

Councilor Sieckmann said they aren’t recommending anything other than any possible deficiencies, in our code or in our process that could make things work better while you are going through the project.

Chair Stempel is trying to come up with a game plan of what they will start with next meeting.

Commissioner Kevin Johnson asked about Roman numeral 14. After what happened tonight, and I’m pretty sure no one wants to see a cell tower every four blocks. Is there anything the commission can do to keep that from happening? Attorney Doughman answered no. Commissioner Johnson asked if theoretically someone could file 10 applications for co-locate towers between tonight and the next meeting, and asked if there is anything they can do stop that. Attorney Doughman answered theoretically they can file numerous applications, there is nothing in your code that would prevent it, at least co-locations. Chair Stempel asked why they can’t put a moratorium on that until they look at that title. Attorney Doughman said it doesn’t allow you to do it. Moratoriums are basically for sewer, water, of critical infrastructure stuff, it doesn’t permit it for anything else. Federal law would also have a hard time with that tool. Commissioner Johnson asked if they can make any kind of regulations. Attorney Doughman stated that his office has a lawyer who is an expert in telecommunications, she deals with nothing but telecommunication and it truly is a beast of its own and it’s mostly federal law. The thrust of amendments to the telecom act were to get cell phones everywhere and even more places. Local communities have very little weight left in terms of what they can do with federal law with respect to zoning and telecommunications, specifically a cell tower. he

stated that they still have the authority to apply local land use regulations but even that is being whittled down. He said he can get back to them on it in the work session next month. Commissioner Johnson stated that anything they can do to prevent more of them that is what they want to do. Attorney Doughman said that would be his assumption as well.

Chair Stempel said they would move that up to first priority. She also said that the Portland Avenue redevelopment plan is very difficult to find on the website. She asked if they can limit the way the tower looks because of a design standard they have for their main street. Can we say it has to be completely stealth, like incorporated into the side of a building? Attorney Doughman said that he is not the best resource but the other person in his office would be. He feels that with respect to co-locations you, like he said the federal law wants cell coverage everywhere and wants us all to have YouTube anywhere we want, and they want to stress co-locations over traditional towers. The federal government makes it harder to Zone co-locations out of existence. I have seen them, for new poles, require a tree.

Commissioner Poole stated that he has seen some things in Portland that were aesthetically unacceptable and not well mitigated. It's a double edge sword, everybody wants a cell phone and wants them working well, if it's not we scream about it. Everybody wants the service but it's like the garbage dump, everybody wants them to take the garbage but no one wants to live next to the garbage dump.

City Attorney Doughman said that with this issue, he will leave them with this and he will get back to them with better answers, I think we can shove them into co-location and doing things that aren't big structures but if the industry can show that, wait a minute we've got a gap in coverage here or we need to do this to keep up with the market, and they can bury you in paperwork. A blanket prohibition, forget it that's a fact, not going to happen. It's more a matter of how close can we get to that. I think you can get there but there is still a decent amount of buffer there.

Councilor Sieckmann has one more question on that for his own information. Is there a requirement that cell phone towers have to have backup generators? Commissioner Poole has a friend who does that and at least four years ago the answer was an absolute yes because they were considered part of the civil defense system, 911 alert.

Commissioner de AElfweald said that co-locating the antenna is preferred per code but asked if they can also add a sentence to require a co-locate on the generator and equipment as well, the law won't let us mandate it but can we say that if it is possible to do it that they must. Attorney Doughman said perhaps. His office did a comprehensive telecommunications facility ordinance for the city of Salem, believed to have been done within the last two years, the FCC is constantly changing things but it probably hasn't changed that much so that may a good template to start with to figure out what you want to with it.

Councilor Sieckmann asked if the commission had any more questions for him. Chair Stempel said no and then stated they will start with their goals at the next meeting. With the next packet she will send out the commercial codes and ordinances next month. So you guys can go over section 7 and then they will have more information from the design review process and if you want us to pull that in. Then they will start moving forward. Councilor Sieckmann asked if she would like that in an email form and she said email was fine. We would also like you at the next meeting. She doesn't think they will be able to put a timeline together until they get into it with the new commission and see how it goes. Then she can go to the council meeting for the next one and give a more formal presentation for what their plan of action will be.

Commissioner Elliott Veazey asked confirmation they are good with the medical marijuana. Attorney Doughman answered to make the May 1, you need to be prepared to make a recommendation at your next meeting.

Commissioner Malachi de AElfweald asked if there is a specific section of the code that will affect. Attorney Doughman said that at last go around it would be conditional use and light industrial and that will be toward the top of the next meeting.

Commissioner Les Poole questioned the process would be an agenda item and they will discuss it and make a recommendation to the council. Attorney Doughman confirmed.

Commissioner Poole then asked when their work session would be. Chair Stempel answered that her plan was to have a work session at every planning meeting and that they need to carve out some time at the end to do that.

Commissioner Johnson asked if they know if the commission has anything else for next month's meeting. City Planner Glasgow stated that one of the car dealerships wants to explain why they feel they don't need to go through the design review because City Planner Glasgow told them they did. So there may be a lot of people there asking about that.

Chair Stempel stated that even if there are no land use issues the commission still needs to meet for work sessions on the code review because they are so antiquated and they really need to get through this.

Councilor Sieckmann stated that there was one other issue the council discussed and approved if you would like to. If you would like to add a work session for the code review as an additional meeting, the council already approved that for you.

Chair Stempel said they can see how it goes at the next meeting to decide if they feel they should do that to get through them.

Commissioner de AElfweald stated that he believed that the commission had just gone through section six just prior to him coming on board. He suggested that, in regard to the question he had asked earlier in the evening about the noise levels in the different zoning

codes, it might make it clearer if they renamed the sections to better match the zones. His thinking is that if the zones are named to better describe what they are it may produce less questions, confusion, and more understanding of what their noise requirements are.

Chair Stempel agreed and suggested there are some better and easier ways to do this. There may be different ways to format the code that will make it easier to read and follow. If all of the ancillary issues were brought right into commercial, she agreed that it would be much easier. That's a discussion they need to have.

ADJOURN:

Commissioner Kevin Johnson moved to adjourn the meeting. Commissioner de AElfweald seconded. Motion was passed and the meeting was adjourned at 10:15 pm.

Minutes approved by the Planning Commission this 17TH day of MARCH, 2015, 2015.



Tamara Stempel, Chair