

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Nemlowill, Herzig, Warr, Price, Mayor LaMear

Councilors Excused: None

Staff Present: City Manager Estes, Police Chief Johnston, Community Development Director Cronin, Planner Ferber, Special Projects Planner Johnson, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Ames, Library Director Tucker, Public Works Director Cook, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

REPORTS OF COUNCILORS

Item 3(a): Mayoral Boards and Commissions Appointments

Mayor LaMear announced the following new appointments and reappointments:

- Budget Committee Richard Hurley
- Design Review Committee Leanne Hensley
- Historic Landmarks Commission Paul Caruana, Jack Osterberg
- Hospital Authority Celia Davis, Nicole Williams
- Parks and Recreation Board Josie Ballenger, Aaron Crockett, Jim Holen, Jessica Schleif
- Planning Commission McLaren Innes, Frank Spence
- 3R Committee Bob Goldberg, McLaren Innes, Eric Noguerra

Prior to making the appointments, Mayor LaMear stated she had sought input from City Council and Department Directors, noting she did not make appointments in a vacuum. Those reappointed are doing a great job and she welcomed new members. She thanked all of the commission and committee members for their service.

Item 3(b): Councilor Warr reported that City Council held a work session to discuss Heritage Square; he attended a Maritime Memorial Committee meeting on Wednesday, January 13th to discuss expansion of the memorial, a Columbia Pacific Economic Development (Col-Pac) meeting, and a Northwest Area Commission on Transportation (NACT) meeting. The NACT meeting included an extensive report by cities and counties about the damage that occurred during storms in December. Clatsop County and Astoria were very lucky, but Tillamook County suffered about \$8 million in damage and Columbia County had over \$3 million in damage. The usual practice of cutting trees back from highways has saved the County a lot of money in high wind events and storms and allows people to remain mobile.

Item 3(c): Councilor Price reported she had many opportunities over the last couple of weeks to meet with constituents and residents. She thanked those who attended her meet and greet on Saturday, January 16th to discuss the library.

Item 3(d): Councilor Herzig reported that the Astoria Warming Center has been open for 44 nights this winter. It is likely the warming center will be open again January 21 – 23. While it is not especially cold, rainy nights leave their guests soaked to the bone. So far we have had 95 overnight stays, which indicates there is definitely a need for the warming center. The warming center may just be a band-aid, but it is keeping people alive and gives people hope that they can get into other programs or permanent housing. The 5th Annual Martin Luther King Jr. Day Candlelight Walk and Supper had a small, but dedicated crowd. The supper was hosted by Peace Lutheran Church and the Northcoast Food Web.

Item 3(e): Councilor Nemlowill reported that she has enjoyed learning about the Heritage Square site from all angles. Earlier that day, she and Councilor Price toured the underground portion of the elevated parking lot at Heritage Square, which contained a pile of automobile scraps, a power transformer substation, and a pile

of contaminated soil. Jeff Daly, who also attended the tour, believed the scraps were from 30s or 40s era automobiles. The substation, referred to as The Vault, used to power all of the lights in Downtown Astoria. The soil still needs to be removed, but the vast majority of the work under the parking lot is complete.

Item 3(f): Mayor LaMear reported that she was honored to serve on the Clatsop Community College Presidential Search Committee. The committee has received 34 applications, all from outstanding applicants. It is amazing that all of these people have applied to come to Astoria because the college is not large and Astoria only has about 10,000 people. The committee will select 12 applicants to be interviewed on January 21st and 22nd. An open house will be scheduled so the public can meet the candidates.

CHANGES TO AGENDA

There were none.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 5(a) City Council Minutes of 12/21/15
- 5(b) Department Project Status Reports
 - (1) Community Development
 - (2) Finance Department
 - (3) Library
 - (4) Parks and Recreation
 - (5) Police Department
 - (6) Public Works
- 5(c) Pump Station No. 1 Upgrades – Progressive Design Build Contract Amendment for Equipment Procurement (Public Works)
- 5(d) OR202 Sidewalk Project – Local Agency Agreement (Public Works)
- 5(e) 23rd Street Closure – Local Agency Agreement (Public Works)
- 5(f) Astoria Senior Center Renovation – Construction Contract Amendment No. 4 (Public Work)
- 5(g) Loan Agreement R17794 Amendment (Finance)
- 5(h) 16th Street CSO Separation Project – Pay Adjustment No. 5

Councilor Herzig noted the items on the Consent Calendar indicated the incredible amount of work staff has done on many projects and staff deserves a lot of credit.

City Council Action: Motion made by Councilor Warr, seconded by Councilor Nemlowill, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

REGULAR AGENDA ITEMS

Item 6(a): Ordinance Readopting Oregon Revised Statutes – Code Section 1.047 (2nd reading & adoption) (City Attorney)

This ordinance received its first reading at the January 4, 2016 Council meeting. The 2015 legislation passed by the Oregon Legislature, for the most part, became effective on January 1, 2016. Many of our City ordinances refer to or incorporate State statutes. Every year, the City routinely re-adopts all referenced ORS sections to pick up any changes made by the legislature. This is done by a "global re-adoption," which was the technique recommended by the League of Oregon Cities. The City is legally unable to prospectively adopt Oregon legislative changes, that is, we cannot adopt a State statute "as it now exists and is from time to time amended." The proposed ordinance has been reviewed and approved by the City Attorney. It is recommended that Council conduct the second reading and adopt the proposed ordinance.

Director Cronin conducted the second reading of the ordinance.

City Council Action: Mayor LaMear called for a vote without a motion or second. City Council unanimously consented to adopt the ordinance readopting Oregon Revised Statutes (Code Section 1.047). Ayes: Councilors Price, Warr, Herzig, Nemlowill, and Mayor LaMear; Nays: None.

Item 6(b): Public Hearings – Appeals by Ron Zilli (Community Development)

- (1) AP15-01 – New Construction Permit NC15-03 for Verizon Wireless**
- (2) AP15-02 – Variance V15-03 for Verizon Wireless**
- (3) AP15-03 – Wireless Communications Facility Permit WCF15-03 for Verizon Wireless**

On August 3, 2015, Verizon Wireless LLC applied for a New Construction permit (NC15-03) to the Historic Landmarks Commission (HLC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park. On September 15, 2015, the HLC held a public hearing and approved the request with conditions. A Notice of Appeal (AP15-01) on the HLC decision was submitted by Ron Zilli on September 30, 2015. On August 3, 2015, Verizon Wireless LLC applied for a Variance permit (V15-03) to the Astoria Planning Commission (APC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park with a height of 150-feet which exceeds the 45' maximum height. On September 16, 2015, the APC held a public hearing and approved the request with conditions. A Notice of Appeal (AP15-02) on the APC decision was submitted by Ron Zilli on September 30, 2015. On August 3, 2015, Verizon Wireless LLC applied for a Wireless Communications Facility permit (WCF15-03) to the Astoria Planning Commission (APC) to construct a new wireless communication facility at 1580 Shively Park Road within Shively Park. On September 16, 2015, the APC held a public hearing and approved the request with conditions. A Notice of Appeal (AP15-03) on the APC decision was submitted by Ron Zilli on September 30, 2015.

The Notice of Appeal, which details the appellant's concerns, can be found on the attached Record on each of the permits. A complete record of each of the requests has been compiled. A public hearing on the Appeal was advertised and scheduled for the November 16, 2015 City Council meeting. At the November 16, 2015 meeting, the Council continued the public hearing to December 7, 2015 at the request of Verizon. At its December 7, 2015 meeting, the Council continued the public hearing to the January 4, 2016 meeting due to the holidays to allow for greater public participation in the hearing. At its December 17, 2015 meeting, the City Council continued the public hearing to the January 19, 2016 meeting at the request of Verizon.

The appellant asserts that the NC15-03, V15-03, and WCF15-03 permits for the proposed 150-foot tall, metal wireless communications facility tower should be denied. The specific issues for denial on each of the permits appealed by Mr. Zilli are summarized on an attachment to the Council memo. Staff and the attorney for the applicant, Verizon Communications, have submitted additional Findings of Fact to address the issues raised by the appellant. Verizon has also submitted revised photo simulations and documents addressing the concerns raised in the appeals.

Due to the fact that the three appeals are related to the same facility and site, it is recommended that Council hold a combined public hearing on the three appeals; however, the Council decision on each appeal will need to be done with separate motions. It is recommended City Council hold the public hearing on the appeals and consider whether to uphold or reverse the Historic Landmarks Commission decision and the Planning Commission decisions to approve the Requests with conditions. If the Council upholds the decisions, the Council needs to adopt the HLC and/or APC Findings of Fact and Supplemental Findings of Fact. If the Council reverses the decision, staff will prepare revised Findings of Fact for consideration at the February 1, 2016 meeting.

Special Projects Planner Johnson distributed documents at the dais that were inadvertently omitted from the Record packet. She reviewed the three sets of Findings of Fact highlighting the key issues that were appealed. She displayed the revised photo simulations and described the details of each photo. Correspondence, made available to City Council, included an email from Dan Stephens, a letter from Dwight Caswell, and a presentation by Ron Zilli.

Mayor LaMear asked staff to explain the difference between the National Historic designation of the Column and the Local Historic designation of Shively Park. Special Projects Planner Johnson said each community decides how to govern the National and Local historic designations. Astoria's Historic Properties Ordinance states the two designations are equal, so code restrictions are the same for both Local and National Historic Landmarks; however, the Nationally designated properties are eligible for grants, special assessments, and other funding programs that the Local Landmarks are not.

Councilor Nemlowill asked if separating Shively Park from the Column is justified considering the co-location of the tower. Special Projects Planner Johnson explained that co-location is required on all existing and new facilities to accommodate future facility locations. The existing tower on Coxcomb Hill cannot accommodate upgrades, so City Council decided to remove the tower. The tower at Shively Park is not contingent upon the removal of the tower at Coxcomb. Verizon determined that the tower site at Shively Park gives the south area of Astoria the best coverage. Co-location of other facilities on the tower would only be considered in the future for new facilities that are reviewed and approved through the permit processes. She explained that the condition of approval regarding the removal of the tower at the Column was included because the facilities on the tower are being relocated and staff wanted to make sure an inactive tower was not left at the Column.

Councilor Herzig confirmed the proposed tower at Shively Park would not be used as part of the City's emergency communications. Special Projects Planner Johnson noted the emergency communication facilities would be located on the tower proposed for the reservoir site at the east end of Astoria. She understood there were also other emergency communication facilities in various places around town.

Councilor Herzig said he wanted to see a photograph showing the height of the tower because the tower will extend above the tree line. Special Projects Planner Johnson stated she had requested this from Verizon, but was told that both companies who developed photo simulations for Verizon found it impossible to achieve the angle necessary to photograph such a view. She confirmed that use of a drone was discussed.

Councilor Price stated she would ask her questions later because she wanted to hear testimonies first.

Mayor LaMear asked staff to define the Institutional Zone. Special Projects Planner Johnson explained that government owned properties that have no other uses are located in Institutional Zones. Examples of these properties include Shively Park, Clatsop Community College, and some of the School District properties. Smaller parks are located in residential zones, but the larger parks are generally in the Institutional Zone, which limits the use to government uses, utilities, and park uses.

Councilor Nemlowill asked how the Park's historic designation applied to the section of the Development Code regarding the criteria for assessing appropriate scale of the project. She believed the HLC found it difficult to define the word "structure." Special Projects Planner Johnson said the Development Code allows any site, appurtenance, or structure to be designated as historic. The language in the Code regarding new construction only uses the word structure because it is the most common. In this situation, Shively Hall is the structure and Shively Park is the site. She confirmed that staff struggled with how to apply the criteria to the "site", but because the site is designated as historic, the criterion does apply.

Mayor LaMear opened the public hearing for AP15-01, AP15-02, and AP15-03 at 7:35 pm and asked if anyone objected to the jurisdiction of the City Council to hear these matters at this time.

Ron Zilli, 1444 16th Street, Astoria, stated he had requested a change of venue, which was denied. He was concerned that this project had been closely linked with projects previously considered by Verizon, Friends of the Astoria Column, and Converge Communications. The City has heavily invested in removing the tower from the Column site, the construction of the new tower where the emergency communication facilities would be installed, and reimbursing the Friends of the Column for their contract with Converge. Verizon does not want to move their facilities from the Column site and have only agreed to move because they will benefit. If Verizon does not get Shively Park, the entire deal is off. He believed the City's investment in this project would prevent City Council from considering the appeals objectively.

Mayor LaMear asked if any member of the City Council had a conflict of interest or ex parte contact to declare.

Councilor Nemlowill stated that she would consider the appeals objectively. She declared that she had read two articles in the *Daily Astorian* and one Facebook post by Andrea Mazzarella about the appeals, which were publicly available. The Facebook post included a link to one of the newspaper articles and stated, "Hey Astoria, remember when I was posting about the monopole going up at Shively and the \$70,000 Astoria spent on consulting fees and how that whole thing didn't sit well? Well, I guess I'm not the only one."

Councilor Herzig declared an ex parte contact. Upon staff's advice, he visited Shively Park and learned there was a road leading to a private residence adjacent to the southwest side of the Park. City Council received copies of the letter from Mr. Stevens and he received emails from Mr. Stevens and Dwight Caswell. He also read an article in the *Daily Astorian* after Councilor Price posted a link to the article on Facebook. He also received a link to some images from a constituent. The images were of monopoles decorated to look like cacti and pine trees and had been presented to City Council about a year ago. He believed he could still make an unbiased decision.

Councilor Price declared that she first heard about the appeals during a conversation with Mr. Zilli in September 2015 before the appeal was filed. Since then, she has thanked many constituents and residents for their input and told them that this issue is complex; however, she has not discussed the appeals with these people. She is very active on social media and has read and researched everything that has been posted on Facebook, Astoria Forum, and in the *Daily Astorian*. She visits Shively Park semi-regularly and visited recently to get an idea of where the tower would be located. She considered this a natural way to proceed in this situation and believed she could make an unbiased decision.

Councilor Warr declared that he had received correspondence, but never responded. He believed he could be unbiased. He understood that the City Attorney indicated there was no legal basis for a change of venue and that City Council had jurisdiction over these appeals.

City Attorney Henningsgaard confirmed that City Council is the governing body that has the jurisdiction to make a decision on these appeals. No other governing body has such jurisdiction. Even if a hearings officer or the Planning Commission conducted the fact-finding, City Council would still be obliged to make the decisions.

Mayor LaMear explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from staff. Due to the fact that all three appeals are related to the same facility and site, staff recommended City Council conduct a combined hearing on all three appeals; however, City Council's decision on each appeal would be made in separate motions. She called for a presentation by the Appellant.

Mr. Zilli stated that Astoria Development Code Section 9.030.D.6 required the City Council allow the public record to remain open for seven days after the public hearing if requested.

City Attorney Henningsgaard responded that this is an appeal, not the initial hearing. There is no requirement to keep the public record open; however City Council does have the option to do so. If Council chooses to keep the public record open for seven days, the procedure for doing so could be discussed after the hearing has closed.

Mr. Zilli disagreed with Planner Johnson's statement that no additional information other than the Development Code that was originally appealed could be heard. He believed that the City Code allowed City Council to hear other information as long as it was discretionary. He gave a PowerPoint presentation with the following comments:

- Key points regarding the background information and history of the project:
 - The project to relocate the tower and wireless communications facility from Coxcomb Hill to the site at the reservoir has received a lot of public exposure and discussion; however, the site and facility at Shively Park has not because this component of the project was only revealed during the summer of 2015. As a citizen, he was concerned that much of the work had been done behind closed doors.
 - He referred to the Executive Summary portion of the information packet he had made available to staff and City Council. The summary contained highlighted sentences in a report from the Friends of the Column, which indicated the City and Converge Communications executed non-disclosure agreements with Verizon Wireless in September 2013.
 - In the public record, he was unable to find statements indicating the Friends informed Council of their intent to publish Requests for Proposals (RFP) and there is no record of City Council passing a motion to authorize the Friends to enter into a contract with Converge, on behalf of and in partnership with the City; however, he did find City Council's motion to approve the RFP process for work on the caretaker's house at the Column. The Police Chief and City Manager served on the selection committee that reviewed the proposals requested by the Friends and administered the contract with Converge.

- He believed the non-disclosure agreement has resulted in a lack of information about site consideration and other aspects of the project; however, the site and type of pole was decided upon. He was not contesting compliance with the legal process, but believed the process was designed to minimize exposure.
- As part of a public information request, he received information that had been redacted because of the non-disclosure agreement. Therefore, he was unable to obtain information about Verizon's current network and future network expansion plans. He was not sure it was legal to withhold this information according to public records laws. Once the City reimbursed the Friends for that body of evidence, it became public domain in its entirety.
- Testimony supporting his appeal of NC15-03 approved by the HLC:
 - Development Code 6.070.B.1 states the design of the proposed structure is not compatible with the adjacent historic structure's scale, style, and height, architectural details, or materials. It has been stated, and he concurred, that the appropriate scale to assess this project is the entire site of Shively Park and the appropriate context is separate from everything going on at the Column, on Reservoir Road, and the City's emergency communications.
 - All of the adjacent structures at the historic landmark site are low profile wooden structures that fit nicely into the landscape. The proposed 150-foot tall, metal cell tower and associated equipment enclosures are out of character with the scenic, natural, and historic resources, including the existing buildings, structures, and features within the historically designated site.
 - He noted that he has listened to the audio recordings and read the staff reports of all of the hearings that led to the approval of the permit applications he has appealed.
 - In the staff report presented to the HLC on September 15, 2015, Planner Johnson stated that when looking at compatibility with a historic structure, it is impossible to have a wireless communication facility that will be compatible with the height, scale, and material of the structure, based on the nature of the project because this is a park that has been designated as historic. She had explained that staff considered the best ways to buffer the view of the tower and stated Shively Park was the ideal location for Verizon given the service area.
 - Since the tower is so blatantly non-conforming to the Development Code, Planner Johnson was reduced to evaluating the best available buffering for the trees from the clearing by the picnic area to demonstrate conformity to applicable sections of the Code. Her statements demonstrated this criterion was not met.
 - He believed Planner Johnson showed bias and favor towards the Applicant by attempting to find a way to make the tower fit into the Code and indicated she had helped with the siting choice. Basing her perspective of impacts to the Park on users from the picnic area was an inappropriate measure of how the majority of Park users experience the Park and would be impacted.
 - He lives near the Park and has visited the Park for about 20 years. He has almost never seen anyone in the picnic structure, but all of the pictures were taken from the picnic area.
 - The HLC was biased by statements from Chief Johnston at that meeting when he said the permit was part of a deal that would lead to approved emergency communications for the City. Chief Johnston also stated that the site is not critical to the City's emergency communications improvements except that it allows the deal to get done and move primary communications facilities to the reservoir site. This was also part of a whole systems upgrade for Verizon that allows both the City and Verizon to meet their needs. The two sites are so closely tied together that they are as one.
 - The proposed location is in a portion of the Park that has a very natural setting. It is his experience that this area receives more frequent low intensity recreational use than the community hall or picnic area. Using the expected and previously underestimated visual impact from the picnic area as criteria for compatibility indicates that staff did not consider how citizens use the Park.
 - The Applicant has failed to produce photo simulations showing the entire height of the tower from within the Park or depict the full impact of the monopole with all of the equipment contained in the application from any vantage point. Verizon claims these images were not possible, which he found curious considering the images he submitted with his appeal and images contained in the staff report did show the full height. Therefore, he concludes Verizon intentionally omitted the views because they would be detrimental to the determination of significant adverse impacts.
 - The mock up images provided by Verizon do not include the microwave antennas that will be installed on the tower or were included in their current application. Everything that will be on the tower must be included in order to consider visual impact. The antennas will be approximately six inches in diameter.

- The lease agreement with Verizon requires that they allow other providers to co-locate on the facility, which is a historic landmark site. He understood the necessity to eliminate a proliferation of towers via co-location; however, the additional co-location equipment on the tower has not been depicted and the HLC and APC had no opportunity to review the impact of this equipment.
- A depiction of the tower fully occupied should be represented because City Council cannot determine compatibility without all of the facts.
- Development Code 6.070.B.2 says the location and orientation of the structure is to be aligned with a location and orientation of adjacent structures within the Park. In this case, a 150-foot tower is to be placed in a scenic area with low intensity uses. The adjacent structures all have low profiles. The Supplemental Findings of Fact that justify and demonstrate alignment with this specific criteria state that utility poles are generally located within the right-of-way and are highly visible. He displayed images of the utility poles referred to in the staff report. One is approximately 20 feet tall and the other two are approximately 28 feet tall.
 - The very short poles do not provide any rational comparison that a reasonable person would use to demonstrate that a 150-foot tall tower would have less impact than a cell tower of this size that is required to be appropriately screened.
- Development Code 15.065.B.2 states wireless communications facilities shall not create a substantial adverse impact on the view from any public park, natural scenic vista, historic property, locally designated or nationally registered, major scenic view, view corridor, or residential area. The proposed facility will create a substantial adverse impact on the views within Shively Park from several locations. The updated photo mock up images fail to show the view of the completed tower from within the Park and address adjacent properties. The tower would also be visible from the adjacent reservoir site, which is a popular tourist area.
 - At the HLC meeting of September 15, 2015, Director Cosby said the tower would not be visible from the parking area. He did not believe this would be true. He believed the tower would be visible from the Shively Park parking lot near the community hall. Director Cosby's statement at that meeting was misleading and was likely due to the small depiction of the tower impact supplied by Verizon. Nonetheless, the HLC did not have the opportunity to review legitimate information about what the impacts would be.
 - The wireless communication facility will have a substantial impact on the views from several residential areas as well. Despite new photo simulations revealing the tower will be visible from 13 out of 18 locations, staff concluded the tower would not be highly visible. This Finding of Fact was determined on a subjective assessment by the author of the report. He did not believe the report was accurate; the tower would have a significant adverse impact on several residential areas.
- There is substantial evidence that New Construction Permit NC15-03 does not conform to the Development Code and should be denied.
- Testimony in support of his appeal of V15-03 approved by the APC:
 - Development Code 15.065.B.2 states that a wireless communication facility shall not create an adverse impact on the view from any public park, natural scenic vista, historic property, locally designated or nationally registered, major scenic view, view corridor, or residential area. Shively Park and the adjacent reservoir site are both designated as historic. Two individual sites would be impacted relevant to this Development Code criterion.
 - At the APC meeting of September 16, 2015, staff stated the tower would not be visible from the parking area. He believed the statement was in error and the additional evidence led him to believe the tower would be visible from the parking area.
 - The tower will have a substantial adverse impact on the views from several residential areas. Despite new photo simulations revealing the tower will be visible from 13 out of 18 locations; staff concluded the tower would not be highly visible. He believed these Findings of Fact were in error and were subjectively determined to be in favor with bias to the Applicant. He displayed photos of the views from the 18 locations, noting which locations would allow a view of the tower. At that same APC meeting, Planner Johnson stated the tower would not be visible from any major spots in residential areas. This is not true.
 - The Supplemental Findings of Fact acknowledge that the original photo simulations were in error, and then attempted to mitigate the error with photo simulations by restating why the tower needs to be 150 feet tall. The Applicant resubmitted a letter stating the tower must be 150 feet tall because there are 145-foot tall trees in the area. An additional condition of approval limits the tower to 150 feet.

- The tower does not need to be 150 feet tall to meet Verizon's current needs. He only found one tree on the site survey that is 145 feet tall. The average height of the trees in the vicinity of the tower site is between 100 and 105 feet. The trees slope away from the tower site.
- The network system Verizon is trying to establish with the triad of sites, the Astor Hotel site, the Reservoir site, and the Shively Park site, will not be significantly impacted by the area to the north of the tower site that contains the 145-foot tall tree.
- On July 20, 2015, Verizon submitted a statement of compliance that included documents showing a tower extending above tree level that has been designed for at least two additional carriers. Verizon needs the tower to be 150-feet tall so it can accommodate the additional carriers lower on the tower while allowing Verizon to put its facilities on the best portion of the tower. The tower could be lower.
- He showed photographs of antennas and dishes that have been authorized by Verizon and could be placed on the tower. They should be considered for visual impact. He also showed a photograph depicting how the tower would look with full occupancy.
- He believed the proposed height was a result of the work completed by Converge, who scoped backbone infrastructure for the next 40 or 50 years.
- He did not believe the HLC or APC would have approved any of the permits if Sprint had been the Applicant.
- Information regarding future co-locators that was included in the application has not been fully considered. Chief Johnston had told the HLC that it was highly anticipated co-locators would come to Astoria soon. He believed Verizon had already begun to advertize spaces for lease on the tower. Filling leases as soon as the tower is built will help offset costs and is good business. This is why the tower will not be better camouflaged.
- Development Code 15.065.B.3 says location, siting, and design require the use of concealment technology and all wireless communications facilities shall utilize concealment technology so as to blend in with the surrounding natural environment in such a matter as to either be reasonably difficult for the naked eye to detect or made part of an enclosed feature. To this end, wireless communication facilities shall be designed so as to be camouflaged to the greatest extent possible.
 - In this case, the bottom portion of the tower would need to be painted brown. The rest of the tower will look like an Erector Set. There are many good and bad examples of camouflaged towers; however, if the tower needs to be camouflaged, it is possible to find a better way. It would be inconvenient to reconfigure the look of the facilities on the tower, but the full impact of the co-locators has not been considered thus far in the process. This is why Verizon has only agreed to paint the bottom half brown and leave the top half metal.
 - He displayed three images, two of which were included in the staff report. One shows Verizon's current service from Coxcomb Hill and one showed the coverage area after the facilities are removed from Coxcomb Hill. Comparing these two photos with the third is the only way to get a true depiction of coverage because Verizon has claimed the Shively Park site is necessary to increase the current level of coverage; however, Astoria is not obligated to bear this burden because Verizon could put another tower out in the countryside to increase coverage. The triad of towers will serve a great deal of Verizon customers that do not reside within the City of Astoria.
 - It has been demonstrated that the tower could be as much as 34 feet lower, but the tower will have co-locators. He was not debating the service was not needed, but basing the height of the tower on the height of the trees is not justifiable.
- Development Code 12.030.A.1 and 2 says the granting authority may grant a variance if on the basis of the application, investigation, and evidence submitted by the Applicant, all four of the applicable Findings are made. The request must be necessary to prevent a hardship. The variance for the height of the pole is not necessary because it does not prevent a hardship. If the pole were 30 feet lower, the coverage may not be as good, but coverage would still exist and the visual impact would be minimized. Additionally, the images shown previously show the substantial visual impact to the nearby neighborhoods would be different from what was originally stated.
- Development Code 12.030.B.2 states that in evaluating whether a particular request is to be granted, the granting authority shall consider the following together with any other relevant facts or circumstances: The physical impacts the development will have on the visual, noise, traffic of the affected area, and the incremental impacts occurring as a result of the proposed variance.
 - The staff report indicates Planner Johnson stated considering co-location equipment was not within the scope of the review criteria; however, the co-location equipment is necessary. The application indicates the tower is being designed to accommodate at least two other co-locators, but none of

that information was ever shared with the HLC or APC. This omission is very relevant to making a determination.

- He showed a photograph of the view from 15th and Niagara and indicated where the additional carriers would be visible.
- Development Code 9.020.A.1 requires the name of the Applicant be published on the notice, but the Applicant's name did not appear on that notice. The notice also stated the hearing was for NC15-01 instead of NC15-03.
- There is substantial evidence that Variance V15-03 and Wireless Communications Facility Permit WCF15-03 do not conform to the Development Code and should be denied.

Councilor Herzig said it was obvious that the construction of the tower would be somewhat disruptive to the people who live nearby. Future disruptions would also occur when new facilities are installed on the tower.

Mr. Zilli agreed and said he considered disruption to Park users to be less substantial because he believed most of the Park would remain accessible during construction. It does take a significant amount of time to erect a wireless communication facility.

Mayor LaMear confirmed that Mr. Zilli believed Verizon's claim that the trees are 145 feet tall was incorrect. Mr. Zilli noted the revised images show about 50 feet of equipment space above the trees. The tower will be placed at a high point on the end of a ridge because it is designed to serve the South Slope, Young's Bay, and Cooper's Slough Valley. The trees in the general vicinity are barely over 100 feet tall. The document overstates the height of the trees. He has visited the site to confirm there are no deciduous trees that are 120 feet tall. There is one 145-foot tree that Verizon has used as its benchmark, but this tree is not near the service area; it is behind the service area to the north, but Verizon is using it as justification. Verizon is selling space on the tower, which is just business; however, it is a fact that Verizon has intentionally designed the tower to accommodate two co-locators.

Mayor LaMear explained that while it is reasonable to anticipate co-location, currently there is no way of knowing for sure. Mr. Zilli reiterated that the tower was designed to accommodate co-location. Verizon's application dated July 20, 2015 included a statement of compliance that clearly stated the tower would be 150 feet tall to provide for at least two additional carriers. Verizon's reason for this is legitimate; however, the HLC and APC did not consider this information.

Mayor LaMear confirmed this statement was in the second paragraph of Page 53 of the agenda packet. Mr. Zilli added that Verizon's original application contained microwave antennas that have not been depicted in any of the photo simulations. The HLC and APC should have considered the visual impact of these antennas.

Councilor Herzig asked if a tower in the flat area of Young's Bay could provide similar coverage. Mr. Zilli replied that location would provide reduced coverage because of the natural topography and the height of the tower. Shively Park is a good location because the coverage extends out over the steep area, the Cooper's Slough area, the south mountain, Young's Bay, and the South Slope; however, the permits were not considered appropriately.

Mayor LaMear asked if Mr. Zilli would be satisfied if the tower were shorter and better concealed. Mr. Zilli said the design would need to be reviewed against the criteria. There are good and bad examples of camouflaged cell phone towers. One example is the tower across from Camp Rilea on Highway 101 that was installed a few months ago and designed to look like a tree and it blends in well. The proposed tower will be located in a park, so its ability to blend in well is a big component of this project. Weddings are held in the Park because it so beautiful, picturesque, remote, and unobstructed by society. The Park is a historic site and people use the knoll a lot during the summer. The criteria simply have not been met. Verizon has tried to stuff a square peg in a round hole to broker a deal. He does not discount the legitimacy of any other aspects of the deal, but Verizon could have submitted a better packet of information. This deal protects the interest of the City and the Column, but not the citizens because the public had no visibility of the discussions with Converge. When the Friends asked the City for a reimbursement, Shively Park was never mentioned. The request to vacate a portion of Nile Street included the first mention of Shively Park only because it was necessary. This began the legal administrative process. He recalled that some of the Councilors were very concerned about this and asked questions that led to the August 3rd Work Session; however, the citizens and the Parks Board had very little visibility and were

shown poor mock up images. None of the governing bodies appointed by City Council have had an opportunity to weigh and consider the facts.

Councilor Warr said Mr. Zilli had done a marvelous job on his presentation; however, some aspects of the Code are very subjective in his opinion. He asked Mr. Zilli to explain his definition of substantial adverse impact, who would be impacted, and what some of the negative effects of the adverse impact would be. Mr. Zilli noted Shively Park is a very forested area and people go there for the tranquility. It is the only place within the City limits that provides views that are free of any development. Putting a tower at that site will result in a significant change that will impact the people who use that are for special events. The whole character of the Park will change. The Parks and Recreation master planning process is not park specific and factors in all of the parks. He went on the Parks tour and learned the department does a great job with a limited staff and budget. Installing a tower at Shively Park will impact the future of the park. Making a decision now is premature relative to how the Park factors into the long-term aesthetics of Astoria. He understood the Park was not used as much as the Column; however, most of the Column users are visitors while Shively Park is primarily used by Astoria residents. The visual impact will be situational to residents. A few residents will have a clear view of the tower, which could be significant. He agreed there were some benefits to the project, but the tower's design does not comply with the Development Code, which characterizes the adverse impacts.

Councilor Warr understood the variance criteria required the tower to minimize as much as possible the adverse impacts. The tower is for utilities. All of the transmission towers going up the hill and telephone poles throughout the City can easily be seen and they definitely have an adverse visual impact; however, he did not believe anyone wanted to remove the towers or poles. Mr. Zilli responded that people go to parks to get away from the views of those towers and poles.

Mayor LaMear called for testimony in favor of the appeals, noting that favoring the appeals opposed the permits granted by the HLC and APC.

Shel Cantor, 1189 Jerome, Astoria, commended Mr. Zilli for devoting his time, energy, and money into researching, filing, and supporting the appeals. He supported the appeals because the HLC and APC did not have access to photo simulations of the height of the tower and the year round visual impact of the completed tower after the trees had been removed when they reviewed Verizon's applications. The facilities appearance is crucial to the evaluation criteria relevant to reviewing Verizon's applications, notably any criteria that addresses potential impacts, such as City Code 6.070. The City Code warrants at least remanding the applications and requires more realistic depictions. At the August 3rd City Council meeting, Councilor Nemlowill questioned whether the goals and outcome would have been different had Converge been on contract with City Council from the beginning of the negotiations. Upon voting against the lease agreements at that same meeting, Councilor Herzig recounted that other locations had been considered for this tower and stated the City could have worked harder to get the tower out of a public park. He did not doubt staff's participation in the negotiations represented the best interests of Astoria; however, different people with the same motivation can still have different priorities when evaluating competing factors, like weighing monetary benefits versus an aesthetic detriment. Reviewing something with different perspectives and questions might trigger other ideas that could lead to a previously overlooked outcome that would be better. Mr. Zilli demonstrated that humans can miss things, even experts despite their best intentions. The Supplemental Findings of Fact list five alternate locations considered and eliminated during negotiations. He did not believe City Council had reviewed the evaluation of those five sites, nor have they explored other ideas. He believed Council should do both.

Jan Nybakke, 1320 15th Street, Astoria, said she visits Shively Park at least four times each week. She objected to unnatural constructions in parks in an attempt to protect the parks sense of place, which she valued. She also objected to constructions that do not further or enhance the purposes or interpretations of those spaces. Shively Park is the Pacific of Astoria's Parks and Recreation natural areas. The recent Parks Master Plan Survey asked what park offerings people valued most. Her property offers a stellar, uninterrupted, southern view of Shively Park, as well as opportunities to walk in the Park, on Williamsport Road, and James Street. She asked that her view remain unobstructed. She described Venus's position in the sky at night in December, noting it can be viewed above the trees in Shively Park. Uninterrupted spaces offer opportunities to observe plants, moons, stars, and constellations. The almanac encourages people to pay attention to eye-catching events in the night sky. Construction in Shively Park will result in soil disturbances that threaten ground stability. Equipment for construction, repairs, and monitoring going in and out will destroy plants nearby. Offering to camouflage the tower indicates it is not natural to the area. She was offended by the suggestion that a color chart be used to

select the color of the blight. Many of the reasons people defend a place cannot be reduced or written in reports. There are powers in parks that can easily be destroyed by poor planning. Astoria is located in one of five counties in the U.S. chosen to participate in Way to Wellness, which is being launched for a second year. The program encourages doctors to prescribe physical activities by issuing vouchers to go to Astoria's parks for free. Astoria Parks and Recreation is very committed to the program. She thanked Parks employees and citizens who participated in Sunday's Citizen's Helping Improve Parks (CHIP-in) at Shively Park. She cleaned up litter in the park and parking area and cleaned the gated road around the park. A new resident asked her about the Chip-In. The tagged, ribboned, marked, spray painted plants and trees were visible and looked like vandalism. She questioned what would come next, like wind turbines and solar farms. Introducing anything unnatural would destroy the natural art of the Park.

Joe Di Bartolomeo, 1525 16th Street, Astoria, said his physical address is inside Shively Park. He has lived there for 23 years and his property abuts the Park, Evergreen Field, and the reservoir. He believed the tower would cast a dominant shadow on his yard that he would be able to see from his front steps. This is important to note with regard to adverse impacts. He received a notice about the proposal and called the City to request a map and mock up photographs. The documents were sent to him via email. He did not like the photographs and did not believe the tower would be appropriate; however, instead of opposing a cell phone tower, he tended to other things going on in his life. Mr. Zilli is a forester who knows about the height of trees. When Mr. Zilli pointed out the mistakes in the mock ups and all of the other issues, he felt as if he had been unintentionally misled. He understood many of the zoning codes were subjective and involved weighing relative interests; however, the code provision that deals with concealment says the Applicant must employ the best possible technology to conceal the tower. Grey and dark colored paint is not the best possible technology, but it might comply with other environmental land use regulations that talk about best practical measures. He did not believe employment of the best possible technology to conceal the tower had been shown. He believed City Council should be aware of the consideration of incremental change. The revised photographs are inaccurate because they do not include microwave towers and the hardware of other carriers. He understood there may be some evidence that people do not like, but the staff reports do not consider incremental change. Once a project like this starts, other similar projects will follow. The impact of this must be evaluated to some degree, but the staff report does not. The 150-foot tree is on the border of his property and he looks at it every day. It is definitely the tallest tree in the area and it sits behind the tower. The motives for a 150-foot tower are to allow additional carriers and expand coverage; however, the Code requires only what is necessary to maintain current coverage. He was concerned that so much of this process was done outside of the public eye. He read several references to memorandums written to the Friends of the Column, which indicated discussions about sites visits, alternatives, and Shively Park; however, the first public disclosure was in July.

Chris Farrar, 3023 Harrison Avenue, Astoria, said he opposed the permits when he originally heard about them and stated his opposition at a City Council meeting. He opposed putting a large unnatural structure in Astoria's most natural park. The River Trail offers trails, but those trails are a different experience from the trails at Shively Park. He goes to Shively Park frequently and has seen the orange paint. He did not understand why the paint had to be there because he believed it was unnecessary. There is disrespect for the Park, which is a special place. If Astoria allows special places to be degraded, visitors will begin to learn that Astoria is not so wonderful. He was appalled by the lack of honesty during this process and the fact that the public was kept out of the initial conversations. The public could have set a much better direction for staff and Council. He was sorry so much time has been spent and hoped Council would deny the permits and direct staff to rethink the entire project. He believed staff should start by looking at the real photos of the top half of the tower because that really matters. He could not believe Verizon had the gall to send revised photos that just show a pole. He wanted to see the antennas on the top and a view from a 45 degree angle. The tower is large and takes up the whole space. The Park will be an industrial site, not a natural park. At least at the Column, the view is of the Column, Young's Bay, or towards the bridge.

Doug Thompson, P.O. Box 411, Astoria, said he was speaking as a representative of the Lower Columbia Preservation Society (LCPS). He recently joined LCPS as a board member and has been directed by the Board to speak in favor of the appeals. Shively Park is on Astoria's local historic inventory as a historic landmark and is among the very first historic landmarks that were designated in about 1983. LCPS believes the proposed project violates the public trust in terms of appropriateness of Shively Park as a park and the Shively Park site as a historic landmark. This does not mean improvements can never be made to historic landmarks, but those improvements must be of proper scale and must fit the site and context of the neighborhood. This proposal for a 150-foot ordinary, everyday, run of the mill, cell tower violates all of that. City Council is being asked to approve

the diminishing of a local, public, historic asset for the sole benefit of a private, large, industrial, corporate entity. There is not a broad public purpose to that Verizon tower. The tower is part of a linked deal and the rest of the towers may not stand alone, but this tower diminishes a public asset for private gain. He was a City Councilor over a decade ago and believed Council had three choices, 1) deny the appeal, 2) remand the permits, sending them back to the HLC and APC, or 3) vote in favor of the appeal. Too often, the City's default process is to start with City-owned properties when considering non-commercial new development. The City has made monetary and political investments in this project. Political capital will be spent if City Council approves the permits. This project will be known as this Council's legacy.

Dan Stephens, 1690 James Street, Astoria, said he lived close to the reservoir and the Park, which he uses weekly. The view of the tower will affect a lot of people because it can be seen from both sides of the trail that goes around the roadway. No one has mentioned the sound of the station. The station at the tower makes a buzzing and humming sound. Shively Park is a quiet and beautiful spot and the community does not need the tower. The Park is for the City of Astoria, not Verizon.

Mayor LaMear called for testimony opposed to the appeals, noting that opposing the appeals would be in favor of the permits granted by the HLC and APC. Seeing none, she called for a recess at 8:53 pm. The City Council meeting reconvened at 9:00 pm.

Mayor LaMear called for a presentation by the Applicant.

Councilor Price suggested Council discuss the possibility of postponing the ADC meeting because the appeals hearing was still ongoing, but many people had attended to speak about Heritage Square. Mayor LaMear confirmed that members of the audience who attended to speak about Heritage Square did not oppose postponing the ADC meeting and she agreed the City Council would run late.

Councilor Herzig believed people who spoke in favor of the appeals indicated on the sign-up sheet that they would be speaking in opposition to the appeals; however, he believed these people meant to indicate they opposed the cell phone tower. He was not sure how this would affect the public record.

Mike Connors, 520 SW Yamhill, Suite 235, Portland, Hathaway Kobak Connors Law Firm, said Flexcom was the consultant working on this project and a PowerPoint presentation with these comments:

- It is absolutely appropriate for City Council to consider the background of this project because it is part of the full context. The application must be judged based on approval criteria. As the governing body, City Council's duty is to look out for the public benefit, but other elements to the project are also important to consider. The decision cannot be based solely on public benefit. City Council is not obligated, nor did he believe it would be wise for City Council to completely disregard public benefit and make a decision in a vacuum. Therefore, he would present the background information he believed was relevant and should be considered by City Council.
 - The existing lattice tower at the Column holds equipment owned by Verizon, the City's emergency services equipment, and equipment owned by other users. In order for Verizon to provide 4G service, the tower needs to be upgraded so it can accommodate the necessary facilities, as well as the City's emergency services equipment. The Column site is exposed. The City's emergency services were completely out after a storm several years ago. There is no way to add any additional equipment to the tower, so a new lattice tower would need to be significantly taller than the existing tower.
 - Verizon did not initiate the idea that a site other than the Column be considered for the new tower. The City and Friends of the Column initiated this idea and approached Verizon about exploring other sites. His client's initial reaction was not very favorable because they understood this would take a lot of time, effort, and money to replace the Column site with multiple sites; however, in an attempt to be good stewards, good members of the community, and part of the solution, his client decided it would be beneficial to explore other sites. Verizon knew that moving forward with this process would add significant expenses because Verizon is paying for the construction of each site.
 - Verizon began working with the City and the Friends to evaluate the alternative sites, which included a new tower at the Column. In addition to Verizon's technical consultants, Converge Communications also consulted on the project after being retained by the Friends and the City, acting as the City's expert consultant on this issue. An extensive alternative sites analysis identified potential sites that could accommodate various towers that could serve the coverage needs. The analysis was done using actual

drive studies in which a pole at the necessary height was erected at each site to determine whether the site and height of the pole provided the necessary coverage.

- This is typically done by Verizon prior to making a presentation to City Council to be evaluated as part of the public process; however, in this case, Converge, acting as a consultant on behalf of the City, was directly involved in that process. Converge helped identify alternative sites, evaluate the sites, rule out inappropriate sites, and determine the sites that had the potential to work.
- Since the original permit hearings, Verizon has provided additional evidence as part of the alternative sites analysis.
- Four sites were identified, the Reservoir Ridge site, Shively Park, Astor Hotel, and the Slavebolt {ed. Located off Youngs River Road near Tucker Creek Road} sites. Shively Park was evaluated again in more detail, working with City staff, Converge, and Friends of the Column to determine which location within the Park would be the most appropriate for this particular facility. There was a consensus among the group that the site chosen is the best site in the Park.
 - He displayed a map showing the existing Astoria HD site which is the Column site, the reservoir, the City park, and the Astor Hotel site. He also showed a close up photograph of the particular location within Shively Park proposed for the facility. The location is in the secluded area in the south western part of the Park.
- It is important to understand that at many of these hearings, there is an assumption that coverage only benefits the carrier; however, as the governing body of the City of Astoria, it is important that City Council ensure that their constituents have adequate cell phone coverage. The number of people using wireless and the uses for wireless are increasing. The various uses are an important part of today's modern world and City Council will want to ensure that Astoria's citizens have adequate coverage.
 - He displayed graphics showing current coverage provided by the Column site and coverage that will remain once the Column site is decommissioned. Simply removing the tower at the Column results in a significant difference in coverage, leaving virtually no coverage in portions of the City.
 - He displayed a graphic showing coverage that would be provided by the Shively Park site. The main purpose for this site will be to provide coverage to the southern part of the City, which will be shadowed from the coverage provided by the reservoir site due to the topography of the area.
 - He displayed a graphic of the network integration, showing the four sites and the coverage that will be provided once all four sites are operational. The result will be a significant upgrade to overall coverage of the city.
 - Mr. Zilli had stated increasing coverage was the only reason Verizon has proposed this project. This is not true. He reminded that the City and the Friends of the Column approached Verizon with this idea. Verizon is driving this idea because multiple sites are necessary to replace the Column site in order to provide comparable coverage for the entire City.
- He showed a map of the Park and indicated the location of the tower and access to the tower. The predominant use of this secluded area of the Park is Community Hall, which is further to the north. Verizon has tried to locate the tower as far from the historic structure as possible.
- Verizon has proposed that the tower be 150 feet tall because that is the minimum height necessary to provide coverage. The tower will be a monopole, not a lattice tower. Verizon is open to painting the pole any color City Council prefers; however, staff had proposed and Verizon agreed that the lower portion should be brown to blend in with the tree trunks surrounding the tower and the top portion should be grey to blend in with the sky.
 - One of the key reasons for selecting this site was the large number of mature trees in the immediate surrounding area that are between 120 and 145 feet tall. Verizon provided a tree survey. The surveyor visited the site, surveyed all of the significant trees, provided a survey, and then as part of the appeal, the surveyor revisited the site and confirmed that the survey was in fact accurate. Mr. Zilli has claimed the stated height of the trees is inaccurate, but he has not provided any evidence of this. City Council must make a decision based on evidence, not speculation.
 - He showed a photograph of the equipment area and tower and noted the entire leased area will be about 18 feet by 40 feet. The six-foot chain link fence surrounding the area will include painted slats. Staff has recommended the slats be dark green to blend in with surrounding area. A landscape buffer will be installed around the fencing to provide additional visual buffering. A small number of trees will be removed, but none are significant. The ground equipment will be painted as well.
 - To mitigate the visual impact, Verizon decided to use a monopole tower because a lattice tower has more of a visual impact. Also, the tower will be at the minimum height necessary to achieve Verizon's

coverage objective. He noted that one of the critical elements necessary to consider when evaluating a site is the height of the tower. In this case, Verizon used the drive test method, which is much more sophisticated than methods typically used for this type of application. He described the drive test method again and reminded that the test was done in conjunction with Converge.

- As part of the application, Verizon has provided a letter from the Engineer and supporting documentation that explains why Verizon needs this particular height. The height is necessary because of the height of the trees and the topography. Converge concurred with the engineer's analysis. Two radio frequency experts from two companies have provided evidence substantiated with explanations. Mr. Zilli has only referred to speculations. City Council must weigh these appeals against the evidence.
- The height of this tower is not being driven by the need for co-location. Verizon does not want co-location and Verizon is not a tower company. He understood the perception that other carriers on the tower would bring in additional revenue; however, that is more of a hassle than a benefit when the business is not a tower company. Verizon is providing for co-location because the Code requires it and this is typical. This minimizes the opportunity for each company to build a new tower for each facility. Other carriers have completely different networks and Verizon does not know what other networks need. There is no evidence to suggest Verizon needs a specific height to accommodate co-location, nor is there any benefit to Verizon from co-location.
 - Verizon must evaluate the structure of the tower to make sure it will accommodate other antennas. Co-locations affect the size of the base of the pole, not the height.
- He understood that the original photo simulations that Verizon provided included simulations within the Park, close ups, and outside the Park. There were no issues with the photo simulations of outside the Park. Verizon has provided a letter from the contractor that created the original simulations, which indicated it was very difficult for them to provide simulations showing the entire tower because of the density of trees and topography. Photo simulations are done from the perspective of pedestrians looking up and the contractor could not find an area where the entire tower would be visible. This resulted in a skewed photo simulation that made the tower look shorter than the trees.
 - The new photo simulations do not show the entire tower because the tower extends above the tree canopy. The height of the tower at 150 feet and the fact that the tower would extend above the trees was made absolutely clear at the APC and HLC hearings. He agreed the original photo simulations were inaccurate representations.
 - Verizon spoke with staff about providing new photo simulations so that the same issue would not occur again. The new perspectives were taken from angles recommended by staff, both within and outside the Park. He displayed the new photo simulations on the screen and described the details of each one. The simulations included a variety of colors to make it easy for City Council to choose which colors would be most appropriate; however, Verizon agreed with the colors recommended by staff.
- He responded to specific issues mentioned in the appeals, as follows:
 - Lack of transparency, bias, and failure to comply with Code
 - He understood that some people had opinions that were different from staff's opinions; however, disagreeing with recommendations or approaches does not warrant the assumption that bias occurred. Staff was simply doing their job. It might be reasonable to question the appropriateness of Shively Park as a stand-alone location; however, staff was taking direction from Council by evaluating the broad context of trying to provide a solution to the existing facility at the Column.
 - He did not understand the claim that there has been a lack of transparency and public involvement. Typically, all of the work building up to these hearings is done by staff, working out design issues and putting a proposal together. The public hearing process is the public's opportunity to comment. In this case, a series of public meetings and discussions about this process occurred in advance of the public hearings, where people had the ability to learn about what was going on, get involved, and have a voice in the process. In this case, there has been more public process than is typical.
 - There is no evidence of bias, which is the inability of a person to be objective when evaluating a particular situation. Staff recommending approval is an indication that staff believes the Applicant satisfied the criteria, not an indication of bias. There is no basis for bias by the City Council either. Council must judge the applications against policies and look out for the best interests of the City as a whole. City Council is simply evaluating the options to determine which option is in the best interest of the public overall.
 - City Attorney Henningsgaard did a good job of addressing conflict of interest and ex parte contact.

- The City had its own technical consultant working on this from the very beginning, which is not typical. Converge has confirmed Verizon's position. The consensus among the experts should give City Council additional comfort that this process was completed objectively and has been thoroughly evaluated. This is not an indication of bias.
- Historic design review
 - The standards apply to historic structures, not the Park as a whole. The only historic structure in the Park is the community hall. Verizon chose a site within the Park as far from the hall as possible, so the tower will not be visible from the structure. The tower will be 550 feet from the community hall.
 - Verizon understood the picnic area, which is not a historic structure, had significance. The tower will be 175 feet from the picnic area and not in a direct line of site.
 - In this case, the tower will have no impact on the historic structure. Even if the standards applied to the Park as a whole, the compatibility of the design must be consistent with the orientation of the structures. The area is a series of mature trees of a height and width similar to the monopole. Therefore, the design of the tower is consistent with the location and orientation of the surrounding trees.
- Visual impacts
 - He repeated the methods used by Verizon to mitigate against the visual impact of the tower and noted that several camouflage methods were evaluated, including alternative designs like faux trees and mono-pines.
 - Usually, faux trees are not as high as 150 feet. A steel pole with steel branches with equipment on top presents major structural challenges. The width of such a pole will be significantly wider than a monopole in order to bear the extra weight. The concrete footing would be massive. The faux tree branches coming off of the tower would require a substantial amount of tree trimming around the tower, both when the pole is constructed and when it is maintained. The entire area would have to be fenced off to comply with safety standards and prevent injuries should the steel branches fall.
 - The monopole has a slimmer profile, blends in with the existing trees, and requires a much smaller base and fenced off area. Stealth designs can blend in from afar, but one will know the tower is not a tree when standing in the Park or next to the facility.
 - The standard considers whether the tower creates a substantial adverse impact, not just a visual or adverse impact. The tower will be visible to a certain degree, but visibility of the tower will not create a substantial adverse impact because of the location in the Park, surrounding trees, and colors that will blend in.
 - The tower is a utility facility, so it is not possible to completely conceal the tower; however, the Applicant has taken steps to mitigate against the visual impact. The standard for concealing camouflage is to blend in with the surrounding natural and human made environment, which has been proposed. It will be reasonably difficult for the naked eye to detect the feature enclosing the area because it will be enclosed by mature trees. The Code specifically calls for the use of compatible building materials, colors, vegetation, or structural or topographic screening, which has been proposed.
 - Verizon has done as much as possible to comply with the Code and mitigate against visual impacts.
- Issues with the Variance to the maximum height limit
 - The Code allows Applicants to propose facilities higher than the limits allowed in the zoning district if various criteria are satisfied. The maximum height allowed in the zone of the proposed location is 45 feet. There are not many, if any, wireless communication towers that are 45-feet tall. Therefore, in almost every case, a variance will be necessary.
 - Standards require the use of concealment technology and demonstration that a higher height would provide the necessary service. He addressed both of these standards earlier in his presentation. The concealment methods Verizon is using are expressly recognized in the Code. Additionally, Verizon has provided extensive evidence, based on the drive test, to verify the height proposed is truly the minimum height necessary to satisfy Verizon's coverage objective. He understood these proposals create controversy, so Verizon would have proposed a lower height if it had been possible.
 - He reiterated that co-location is not driving the proposed height of the tower. Verizon has no basis for knowing what height the co-locators would need.

- He concluded that Verizon supports and agrees with the staff report and most of the recommended conditions of approval. Verizon believes Condition 5, the request to provide new photo simulations to the State Historic Preservation Office (SHPO), is unnecessary because SHPO did not review the original photo simulations. Therefore, providing the new simulations would not add or change anything that they reviewed before. Verizon was also concerned with Condition 4, which requires Verizon to maintain and replace all trees within the picnic area. The picnic area is outside of Verizon's site control. Verizon would take responsibility for a significant tree that fell. If a 50-foot tree were to be destroyed, it would not be possible to replace it with a similar height tree; however, Verizon would consider replacing fallen trees with trees that would grow over time.

Councilor Price wanted to know the width of the monopole.

Yogi Sandstrom, Verizon Construction Manager, 1510 SE Solomon Loop, Vancouver WA, said the width is determined by the ice load per the State of Oregon. In most cases, a 150-foot tower will have a base more than six feet in diameter; however, the width depends on the weight of the equipment on the tower and the foundation of the soil. Engineering of the site has not been done yet, so he could not confirm how much wider than six feet the base might be. Once the permits are approved, the engineering study can be done on the soil tests.

Councilor Herzig asked if there were any trees in Shively Park with a diameter of six feet. Mr. Sandstrom noted he was not the arborist, so he did not know. Mr. Connors added that the significant trees, like the 145-foot tall tree, had diameters close to six feet; however, he had not done actual measurements.

Councilor Price asked how large and deep the footing would be, noting Mr. Sandstrom believed a 38-foot deep core sample was taken at the site recently. He reminded he was not the engineer and the tower has not been designed yet; however, the footings are typically about eight feet deep, depending on the height of the tower. The smallest tower has a six foot deep footing. He confirmed the footing would be within the leased area.

Councilor Price asked Mr. Sandstrom if he was ever asked to provide schematics or drawings of the associated shed, generator, small building, and fencing. She also wanted to know if staff, the APC, or HLC ever saw such drawings. Mr. Sandstrom believed the fence would be wooden and the equipment would sit on a pad foundation. The equipment will include a backup generator and cabinets that support the antennas. Mr. Connors noted all of the information was submitted in the application. Councilor Herzig believed the schematic was shown during the Applicant's testimony.

Councilor Price asked that Slide 16.2 be displayed on the screen, which shows the pole at the edge of the pad; however, the slide did not show the fencing, foundation, any associated buildings, or a generator. She asked where these things would be located. She also asked for details about the fencing, landscaping, lighting, construction equipment, electricity, maintenance, and repairs.

Mr. Connors displayed a different slide and described where the equipment would be located in relation to the tower and road. The equipment would be surrounded by shrubs and a wooden fence with an engineered concrete retaining wall. He believed the top portion of the compound would be visible from the path, as shown on the slide. Mr. Sandstrom added that the fence would be surrounded by landscaping. The retaining wall would be the length of the leased area and about two or three feet high. He confirmed no lighting would be associated with the tower, but the cabinets will have interior lighting and lights on timers will allow technicians to work safely at night. Technicians would be working at the site very infrequently and the lights would only be on when they are working. No other security lighting will be necessary. A crane, the tower, a truck, the cabinets, and concrete trucks would need to be brought to the site during construction, which could take between one and two months. Flexcom was working with PP&L to run power and fiber underground along the roadway to the cabinets at the site. The power will be run from the existing power poles. The final design might include a new power pole in the right-of-way, but he has not received the final design yet. Flexcom already has a design and agreement with PP&L, but no fiber provider has been chosen yet. Mr. Connors explained that once the tower is up, a technical operations person will be assigned to the site. This person will make emergency repairs to the cabinets and equipment on the ground and do regular maintenance one or two times per month. These technicians drive Jeep Cherokees and he confirmed they would need to drive to the site to do maintenance and repairs.

Mayor LaMear called for testimony opposed to the appeal, noting that speaking in opposition to the appeal would be in support of the permits granted by the HLC and APC. There were none. She called for the Appellant's rebuttal.

Mr. Zilli said he has been a professional forester for over 20 years and he did measure several of the trees. He confirmed for Councilor Price that the diameter of the trees varied, but trees in the vicinity of the tower have a relatively small diameter. The hardwoods are approximately 18 to 22 inches in diameter and some conifers nearby are approximately 2 to 3 feet in diameter; however, there are no real big trees in the vicinity of the roadway. Once the area is cleared for the equipment enclosure, there will not be a tree within 30 feet of the tower. The plans stated the fence will be green powder coated chain link with lattice, which is a minor technicality. There are several differences of opinions on many aspects of this project and he respected Mr. Connors work; however, he discounted the comment that the City had its own contractor working on the project throughout the process because the City did not hire Converge; they were hired by the Friends. Although City staff was involved, there is no public record of Converge reporting to Council on the progress relative to Shively Park.

Mayor LaMear closed the public hearing at 9:58 pm and called for Council discussion and deliberation. She reminded City Council of its options, 1) uphold the HLC and APC decisions to approve the requests, 2) reverse the decisions of the HLC and APC and deny the requests, 3) remand the issues back to the HLC and APC for reconsideration, 4) continue this hearing to another day, or 5) tentatively approve or deny the requests pending new Findings of Fact.

City Manager Estes suggested Council consider each appeal individually even though the combined public hearing was for all appeals.

Councilor Nemlowill said she wanted Council to deliberate prior to discussing each appeal. She believed there had been a fatal flaw in the process, the photo simulations were deceptive, the tower was not compatible with the historic park, and substantial adverse impacts would result. She agreed with Mr. Zilli that the proposed tower does not conform to the Development Code and should be denied.

Councilors Herzig and Price agreed with Councilor Nemlowill.

Councilor Warr said he believed the entire package needed to be considered. The City has been trying to upgrade the emergency communications for years and this tower was a component of those upgrades. Denying this tower will have a much larger impact than denying a standalone tower. He believed denying this tower would be detrimental to the community. Therefore, he disagreed with Councilors Nemlowill, Herzig, and Price.

Mayor LaMear stated Council must also consider whether the design is compatible with the design of adjacent historic structures, etc. Councilor Warr responded that the HLC considered the evidence, spoke to all the parties that wanted to speak, and both the HLC and staff have recommended approval of the New Construction Permit. He agreed with the HLC and staff.

Councilor Price believed good emergency communications were important, but agreed there was a fatal flaw in the process. The minutes, Findings, and revised Findings all very clearly state that the HLC relied on inaccurate photographs to make a decision. The HLC and APC might have dug more deeply into the requests, but she did not believe there was any bias. She was not happy with the way the previous Council left these issues for the current Council, but this Council has done as much as possible in the open since then. The HLC did not have correct information. A statement made in April 2013 stated the tower would be about the same height as the trees, which is not true. If the HLC had looked at information like this more carefully, and at some of these drawings, their decision may have been different. However, the City still does not have proper drawings that show how the pole will look at Shively Park from within the Park. The Park is used most by people walking or with their dogs on the path. The open area is a beautiful space. When she visited the Park to do her due diligence for this hearing, she saw a couple taking photos of themselves from the steps across from the proposed tower site. She also took pictures and confirmed that there are no large trees in the area. Saying the tower will be in a forest where it will barely be seen is not correct. She did not believe the inaccurate information was intentional, but it is still inaccurate, which makes the HLC's decision incorrect.

Councilor Nemlowill concurred. She did not agree that the tower would be of an appropriate scale, nor did she agree with the other appeal issues. City Council is in a difficult position both as legislators and as quasi-judicial land use hearing officials; however, she believed if City Council remanded the HLC and APC's decisions, the issues would end up right back at City Council again on appeal.

Councilor Warr understood that Councilor Nemlowill believed the HLC and APC wanted the appeals to be passed. Councilor Nemlowill explained that as land use officers who have been presented new photo simulations, she believed City Council should make a decision. All of the documentation and testimony given at this hearing supports the idea that the project would have a substantial adverse impact. Too many changes to the staff report are needed to deny the requests at this meeting.

City Manager Estes said if any of the applications are denied, staff would ask Council to provide specific direction as to why they believed the criteria had not been met so that staff can present revised Findings at the next City Council meeting.

Mayor LaMear was concerned about the practicality of the entire project. The community does not want the tower at the Column or in Shively Park, so the City is running out of locations. The City must ensure that the citizens have cell phone coverage. She did not care how much Verizon made on this deal, but she did care about cell phone coverage around the City.

Councilor Nemlowill said she cared about cell phone coverage too, but that is not what City Council is evaluating. Council is evaluating a proposed cell tower at Shively and how it applies to the Development Code. Mayor LaMear said she understood what City Council was evaluating but questioned what options Council had.

Councilor Herzig noted that when Converge made their presentation to City Council, other possible locations for cell phone towers were listed. Converge said Shively Park was not the most convenient site, but it was the most practical.

City Attorney Henningsgaard stated that the Applicant, Verizon, only has to fail at meeting one critical criterion in order for City Council to approve the appeals; however, it would be very helpful to staff if Council could verbalize which parts of the appeal Verizon failed to meet. This will help staff create the revised Findings. He noted this discussion usually occurs prior to the vote.

Discussion of Appeal AP15-01 of New Construction NC15-03

Councilor Nemlowill stated that Verizon did not meet the criteria for appropriateness of scale, specifically Development Code Section 6.070.B.1. The entire site of the Park is designated as a historic landmark in its entirety.

Councilor Price did not believe the tower at Shively Park should be linked with the tower at Reservoir Ridge. Even though separate applications were made, the hearings were conducted on the same night. The applications clearly stated the Reservoir Ridge site would not go forward without the Shively site, which has made it very difficult to consider the Shively site independently. If Verizon had just requested a tower at Shively Park just to improve coverage without being linked to the City's emergency communications, the request would have been denied. She did not know which Development Code Section this applied to, but this issue was stated in the revised Findings.

Councilor Herzig believed most people could not judge 150 feet and needed accurate photo simulations to consider. A cell phone tower in a historic park is not compatible, no matter how much camouflage is done. He believed Verizon had failed to demonstrate the tower would be compatible with the historic park. Councilor Nemlowill agreed, but suggested staff omit the language referring to adjacent vintage wooden structures because those structures were not historic.

Special Projects Planner Johnson confirmed she had enough detail to revise the Findings.

Councilor Price also wanted the Findings to state that the photos do not clearly show the visual impact. The Parks Board President stated in a meeting in August that the Parks Board trusts staff to give them accurate and educational information and pictures. The Findings also stated the APC relied on photographs; however, these

photographs were not accurate. Special Projects Planner Johnson confirmed which Findings Councilor Price was referring to.

City Council Action: Motion made by Councilor Nemlowill, seconded by Councilor Herzig to continue Appeal AP15-01 by Ron Zilli to the City Council meeting on February 1, 2016 at 7:00 pm in City Hall Council Chambers and direct staff to prepare revised Findings of Fact for approval of the appeal. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill; Nays: Councilor Warr and Mayor LaMear.

Discussion of Appeal AP15-02 of Variance V15-03

Councilor Nemlowill stated Development Code Section 15.065.B.2 states wireless communication facilities shall not create a substantial adverse impact on a view from any public park, historic property, etc. The proposed wireless communication facility will create a substantial adverse impact of the views within Shively Park from several locations.

Councilor Herzig said Development Code Section 15.065.B.6.c required the proposed structure and facility to use concealment technology. He did not believe brown and silver paint were adequate concealment technologies; therefore, Verizon did not meet the requirement for a variance.

Councilor Price added the photographs did not satisfy the visual impact requirements. The revised tree legend clearly indicated the trees were substantially lower than 150 feet and that the immediate area does not have many trees.

Councilor Nemlowill noted the tower would have a substantial adverse impact on the view from another historic structure, specifically the reservoir building.

Special Projects Planner Johnson confirmed she had enough information to revise the Findings.

City Council Action: Motion made by Councilor Nemlowill, seconded by Councilor Herzig to continue Appeal AP15-02 by Ron Zilli to the City Council meeting on February 1, 2016 at 7:00 pm in City Hall Council Chambers and direct staff to prepare revised Findings of Fact for approval of the appeal. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill; Nays: Councilor Warr and Mayor LaMear.

Discussion of Appeal AP15-03 of Wireless Communication Facility WCF15-03

Councilor Nemlowill stated Development Code Section 15.065 had not been met. She did not believe the paint and monopole were the best possible concealment technologies, nor did she believe that the wireless communication facility would be screened by the trees because it would extend so much higher than the trees into the skyline. The facility would be easy for the naked eye to detect.

Special Projects Planner Johnson confirmed that many of the issues with the New Construction permit could be carried over to the Variance and Wireless Communication Facility permit, including linking the sites, incompatibility, and adverse impacts.

Councilor Herzig said Development Code Section 12.030.B.2 had not been met. No full assessment has been done on the complete physical impacts of the construction and maintenance of the base of the tower or the incremental impacts of co-location. He believed this was another reason to deny the permit.

Special Projects Planner Johnson confirmed all of the issues had been covered and she had enough information to revise the Findings.

City Council Action: Motion made by Councilor Nemlowill, seconded by Councilor Herzig to continue Appeal AP15-03 by Ron Zilli to the City Council meeting on February 1, 2016 at 7:00 pm in City Hall Council Chambers and direct staff to prepare revised Findings of Fact for approval of the appeal. Motion carried 3 to 2. Ayes: Councilors Price, Herzig, Nemlowill; Nays: Councilor Warr and Mayor LaMear.

Councilor Herzig asked why Council was given the option to approve the appeals without being given the Findings necessary to take that action. City Manager Estes explained staff must revise the Findings. The motions were only to continue the items to be denied, not the hearings.

Councilor Herzig said Council was given five options, including the option to deny Verizon's requests; however, City Council did not really have that option. Instead, they had the option for a continuance to prepare Findings of Fact. He suggested staff refrain from giving the Council options it cannot use.

Councilor Nemlowill believed the option to approve the appeals was legitimate. Special Projects Planner Johnson could handwrite revised Findings to support Council's denials at this meeting and City Council could approve the revised Findings of Fact based on the hand written revisions; however, she believed evaluating a new document would be better, so the continuance makes more sense. City Manager Estes added that approving hand written revisions was easier for denials that were simpler to draft. This is done many times at APC meetings, but this case is more complex, so staff is requesting more time.

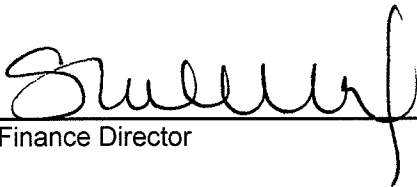
NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)

There was none.

ADJOURNMENT

There being no further business, the meeting was adjourned at 10:32 pm.

ATTEST:



Finance Director

APPROVED:



City Manager