

May 22, 2020

**Notice of Final Decision**

On May 22, 2020 the Community Development Director denied a request for the following:

**PLANNING ACTION:** PA-T1-2020-00097  
**SUBJECT PROPERTY:** 390 Stadium Street  
**OWNER:** Southern Oregon University  
**APPLICANT:** Smartlink, LLC *on behalf of*  
New Cingular Wireless PCS, LLC/AT&T  
**DESCRIPTION:** A request for Site Design Review and Conditional Use Permit approval to install a new Wireless Communication Facility on the Southern Oregon University Campus at 390 Stadium Street. The proposal is to install an AT&T 4G LTE tower in the form of a 105-foot tall stealth monopole designed to resemble a pine tree in a 450 square foot area southeast of Raider Stadium, approximately 450 feet from Webster Street and Walker Avenue, approximately 730 feet from Wightman Street and approximately 800 feet from Iowa Street. The application includes a request for an Exception to the Site Development and Design Standards to allow the applicant to provide a ten-foot landscape buffer around two sides of the WCF where the standards call for a buffer around the full outer perimeter.  
**COMPREHENSIVE PLAN DESIGNATION:** Southern Oregon University;  
**ZONING:** SO; **ASSESSOR'S MAP:** 39 1E 10 CD; **TAX LOT:** 100

The Community Development Director's decision becomes final and is effective on the 12<sup>th</sup> day after this Notice of Final Decision is mailed. *Denied applications are not eligible for resubmittal for one year from the date of the denial, unless evidence is submitted that conditions, the application, or the project design have changed to the extent that further consideration is warranted.*

The application, all associated documents and evidence submitted, and the applicable criteria are available for review and can be downloaded by going to the City's website at <https://gis.ashland.or.us/developmentproposals/> and searching for "390 Stadium".

Prior to the final decision date, anyone who was mailed this Notice of Final Decision may request a reconsideration of the action as set forth in section 18.5.1.050.F of the Ashland Land Use Ordinance (ALUO) which is attached, and/or file an appeal to the Ashland Planning Commission as provided in ALUO 18.5.1.050(G), also attached. An appeal may not be made directly to the Oregon Land Use Board of Appeals.

If you have any questions regarding this decision, please contact Senior Planner Derek Severson in the Community Development Department, Planning Division at (541) 488-5305.

cc: Parties of record and property owners within 200 ft



**SECTION 18.5.1.050 Type I Procedure (Administrative Decision with Notice)**

- E. Effective Date of Decision.** Unless the conditions of approval specify otherwise or the decision is appealed pursuant to subsection 18.5.1.050.G, a Type I decision becomes effective 12 days after the City mails the notice of decision.
- F. Reconsideration.** The Staff Advisor may reconsider a Type I decision as set forth below.
1. Any party entitled to notice of the planning action, or any City department may request reconsideration of the action after the decision has been made by providing evidence to the Staff Advisor that a factual error occurred through no fault of the party asking for reconsideration, which in the opinion of the Staff Advisor, might affect the decision. Reconsideration requests are limited to factual errors and not the failure of an issue to be raised by letter or evidence during the opportunity to provide public input on the application sufficient to afford the Staff Advisor an opportunity to respond to the issue prior to making a decision.
  2. Reconsideration requests shall be received within five days of mailing the notice of decision. The Staff Advisor shall decide within three days whether to reconsider the matter.
  3. If the Staff Advisor is satisfied that an error occurred crucial to the decision, the Staff Advisor shall withdraw the decision for purposes of reconsideration. The Staff Advisor shall decide within ten days to affirm, modify, or reverse the original decision. The City shall send notice of the reconsideration decision to affirm, modify, or reverse to any party entitled to notice of the planning action.
  4. If the Staff Advisor is not satisfied that an error occurred crucial to the decision, the Staff Advisor shall deny the reconsideration request. Notice of denial shall be sent to those parties that requested reconsideration.
- G. Appeal of Type I Decision.** A Type I decision may be appealed to the Planning Commission, pursuant to the following:
1. **Who May Appeal.** The following persons have standing to appeal a Type I decision.
    - a. The applicant or owner of the subject property.
    - b. Any person who is entitled to written notice of the Type I decision pursuant to subsection 18.5.1.050.B.
    - c. Any other person who participated in the proceeding by submitting written comments on the application to the City by the specified deadline.
  2. **Appeal Filing Procedure.**
    - a. *Notice of Appeal.* Any person with standing to appeal, as provided in subsection 18.5.1.050.G.1, above, may appeal a Type I decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection. The fee required in this section shall not apply to appeals made by neighborhood or community organizations recognized by the City and whose boundaries include the site. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded.
    - b. *Time for Filing.* A notice of appeal shall be filed with the Staff Advisor within 12 days of the date the notice of decision is mailed.
    - c. *Content of Notice of Appeal.* The notice of appeal shall be accompanied by the required filing fee and shall contain.
      - i. An identification of the decision being appealed, including the date of the decision.
      - ii. A statement demonstrating the person filing the notice of appeal has standing to appeal.
      - iii. A statement explaining the specific issues being raised on appeal.
      - iv. A statement demonstrating that the appeal issues were raised during the public comment period.
    - d. The appeal requirements of this section must be fully met or the appeal will be considered by the City as a jurisdictional defect and will not be heard or considered.
  3. **Scope of Appeal.** Appeal hearings on Type I decisions made by the Staff Advisor shall be de novo hearings before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.
  4. **Appeal Hearing Procedure.** Hearings on appeals of Type I decisions follow the Type II public hearing procedures, pursuant to section 18.5.1.060, subsections A – E, except that the decision of the Planning Commission is the final decision of the City on an appeal of a Type I decision. A decision on an appeal is final the date the City mails the adopted and signed decision. Appeals of Commission decisions must be filed with the State Land Use Board of Appeals, pursuant to ORS 197.805 - 197.860.



# ASHLAND PLANNING DIVISION

## FINDINGS & ORDERS

**PLANNING ACTION:** PA-T1-2020-00097  
**SUBJECT PROPERTY:** 390 Stadium Street  
**OWNER:** Southern Oregon University  
**APPLICANT:** Smartlink, LLC *on behalf of*  
New Cingular Wireless PCS, LLC/AT&T

**DESCRIPTION:** A request for Site Design Review and Conditional Use Permit approval to install a new Wireless Communication Facility on the Southern Oregon University Campus at 390 Stadium Street. The proposal is to install an AT&T 4G LTE tower in the form of a 105-foot tall stealth monopole designed to resemble a pine tree in a 450 square foot area southeast of Raider Stadium, approximately 450 feet from Webster Street and Walker Avenue, approximately 730 feet from Wightman Street and approximately 800 feet from Iowa Street. The application includes a request for an Exception to the Site Development and Design Standards to allow the applicant to provide a ten-foot landscape buffer around two sides of the WCF where the standards call for a buffer around the full outer perimeter.

**COMPREHENSIVE PLAN DESIGNATION:** Southern Oregon University; **ZONING:** SO; **ASSESSOR'S MAP:** 39 1E 10 CD; **TAX LOT:** 100

<b>SUBMITTAL DATE:</b>	March 23, 2020
<b>DEEMED COMPLETE DATE:</b>	April 22, 2020
<b>STAFF DECISION DATE:</b>	May 22, 2020
<b>APPEAL DEADLINE (4:30 P.M.):</b>	June 3, 2020
<b>FINAL DECISION DATE (4:30 P.M.):</b>	June 3, 2020

### DECISION

The application requests Site Design Review and a Conditional Use Permit to install a new Wireless Communication Facility (WCF) on the Southern Oregon University Campus at 390 Stadium Street, and would involve the placement of an AT&T 4G LTE tower in the form of a 105-foot tall stealth monopole designed to resemble a pine tree in a 450 square foot area southeast of Raider Stadium, approximately 450 feet from Webster Street and Walker Avenue, approximately 730 feet from Wightman Street and approximately 800 feet from Iowa Street. The application also requests an Exception to the Site Development and Design Standards to allow the applicant to provide a ten-foot landscape buffer around two sides of the WCF where the standards call for a buffer around the full outer perimeter.

### *Subject Property*

The subject property is located at 351 Walker Avenue and 390 Stadium Street, and is an approximately 17.46-acre parcel bounded on the west side by Wightman Street, on the south by Webster Street, and on the east by Walker Avenue. The parcel is located on the Southern Oregon University. In recent years, projects in the immediate vicinity have included the reconstruction of the McNeal Pavilion (now the Lithia Pavilion) and the Student Recreation Center on the subject property, and the construction of two new dormitories and a dining hall on the parcel immediately to the south.

## ***Proposal***

The current application requests Site Design Review and Conditional Use Permit approval to install a new Wireless Communication Facility on the Southern Oregon University Campus at 390 Stadium Street, and would involve the placement of an AT&T 4G LTE tower in the form of a 105-foot tall stealth monopole designed to resemble a pine tree in a 450 square foot area southeast of Raider Stadium, approximately 450 feet from Webster Street and Walker Avenue, approximately 730 feet from Wightman Street and approximately 800 feet from Iowa Street.

## ***Site Design Review for WCF Installation***

WCF installations are subject to Site Design Review to consider compliance with all applicable Site Development and Design Standards. Specifically, WCF installations shall comply with the design standards for WCF installation included in AMC 18.4.10.040. The overarching objective of the City's design standards and submission requirements described in 18.4.10 is to accomplish the legislative intent of its stated purpose:

### **18.4.10.010 Purpose**

**The purpose of this section is to establish standards that regulate the placement, appearance, and impact of wireless communication facilities while providing residents with the ability to access and adequately utilize the services that these facilities support. Because of the physical characteristics of wireless communication facilities, the impacts imposed by these facilities affect not only the neighboring residents but also the community as a whole. The standards are intended to ensure that the visual and aesthetic impacts of wireless communication facilities are mitigated to the greatest extent possible, especially in or near residential areas.**

To conform with this desired purpose, the Design Standards in AMC 18.4.10.040 include a “stepped hierarchy” which is to be applied in succession to consider placement options. The first design option is collocation. If it is proven not to be feasible, the next option considered is attaching the installation to an existing structure. If that proves not to be feasible, an alternative structure such as the mono-pine proposed here can be considered, and finally if other options have all proven not to be feasible, a free-standing support structure is the last option. Lattice towers are explicitly prohibited. The applicant is required to exhaust each previous standard, demonstrating that it is not feasible before moving to the next step in the preferred design hierarchy. By code, feasible is defined as “*capable of being done, executed or effected; possible of realization.*” A demonstration of feasibility requires a substantial showing that a preferred design can or cannot be accomplished. Here, the applicant's proposed mono-pine tower is an alternative structure, and the applicant must accordingly demonstrate that neither collocation or attachment to an existing structure are feasible.

In considering the feasibility of collocation, the application must document that alternative sites have been considered and are technologically unfeasible or unavailable, demonstrate that a reasonable effort was made to locate collocation sites that meet the applicant's service coverage area needs, and to document the reasons collocation can or cannot occur. Relief from collocation as the first-step in the hierarchy of design preference may be granted as a decision of the approval authority if the evidence contained within the application supported by independent third party analysis demonstrate collocation is not feasible because one or more of the following conditions exist at prospective collocation sites: a) a significant service gap in coverage area; b) sufficient

height cannot be achieved by modifying existing structure or towers; c) structural support requirements cannot be met; and d) collocation would result in electronic, electromagnetic, obstruction, or other radio frequency interference.

The applicants have provided the code-required collocation study, and as required by ordinance the City has retained the services of an independent third-party reviewer. William P. Johnson, an RF Engineering Consultant, reviewed the application materials to ensure that the site approvals are based on an objective need.

The table below is staff’s brief summary of the sites considered, the applicant’s general conclusions as well as third party review comments for each site.

<b>Site</b>	<b>Description</b>	<b>Conclusions</b>
<b>1</b>	Collocation on Existing 120-foot Tower (AT&T Site ORL00254C)	Not feasible as already in service for AT&T and predicted to saturate in two years. <i>(Third party reviewer concludes this is not a reasonable option for consideration.)</i>
<b>2</b>	SOU Facilities Management & Planning Building	Inadequate performance for 20-foot antenna tips. <i>(Third party reviewer concludes that if tip height could be raised, site may be viable.)</i>
<b>3</b>	SOU Digital Media Center	Inadequate performance for 54-foot antenna tips. <i>(Third party reviewer concludes that if tip height could be raised, site may be viable.)</i>
<b>4</b>	Collocation on SOU Science Building	Inadequate performance for 47 ½-foot antenna tips & less optimum sector orientation with respect to the target coverage area. <i>(Third party reviewer concludes that if tip height could be raised, site may be viable for two sectors.)</i>
<b>5</b>	SOU Lithia Pavilion (formerly McNeal Pavilion)	Fails to cover target area due to height limitation. <i>(Third party reviewer concludes that if tip height could be raised, site may be viable.)</i>
<b>6</b>	SOU Raider Stadium Lights	Inadequate performance at 59-foot antenna tip. <i>(Third party review concludes has not fully considered potential to achieve objectives here.)</i>
<b>7</b>	SOU Hannon Library	Inadequate performance at 44-foot antenna tip. <i>(Third party review notes that will only work here if antenna height can be raised.)</i>

In reviewing the applicant's alternative site analysis and collocation study, the third party reviewer concludes that the applicant's analysis seems to largely miss the intention of alternate site analysis, explaining:

*Effective alternative site analysis should include and consider other options that may offer balanced aesthetic and functional approach to solving Applicant's RF coverage and capacity off-load requirements even if some technical performance tradeoffs are involved. For example, rather than limiting alternative sites to co-location, applicant may consider analyzing the sites and tell the city what antenna height would work. It is arguably inconvenient for a permit applicant to consider other sites where they may currently lack a land control agreement, but municipalities place requirements for zoning review for the purpose of assuring best compliance with existing community goals and visual impacts. The proposed site, after consideration of alternative sites, may indeed be the best aesthetic alternative. But we do not know for sure until they are analyzed. Few in the community will deny the advantages and conveniences of ubiquitous wireless service, and that was indeed one of the major goals of the Telecommunications Act of 1996 under which wireless service providers operate. There is an opportunity here to meet both aesthetic and technical performance objectives by considering viable alternative sites, not merely co-location on structures that are obviously too short.*

With no viable alternative sites analyzed by applicant, Johnson suggests that they should discuss if and how the potential antenna tip height at any of the alternative sites discussed could be modified to create a better solution which would meet both aesthetic and technical performance goals. Simply excluding alternative sites due to assumed height constraints when compared to a new 105-foot stealth structure proposed elsewhere seemed to Johnson to be “*a strategy to eliminate the opportunity to create alternative win-win situations for Applicant and the City of Ashland.*”

In reviewing the applicant's study, the Staff Advisor's conclusions were similar to Johnson's. The applicant's analysis and evidence in the record does not demonstrate that “*sufficient height cannot be achieved by modifying existing structures or towers*”. The analysis rather seems to select an arbitrary antenna tip height correlated with the height of the structure being evaluated which does not work in each location to exclude that location in favor of the property owner's preferred location. In order to comply with the code provision that alternative sites have been considered, information in the application should consider potential modifications to the existing structures to achieve the coverage objective. For example, the applicant's analysis should demonstrate that the existing stadium lights could not be modified to provide a viable WCF along with the stadium lights rather than simply stating that placement of WCF below the lights on the existing light structures would not provide sufficient height to meet service objectives. Without this evaluation, the Staff Advisor is unable to find that a slightly taller stadium light would not blend better than does a 105-foot tall artificial tree and achieve minimal visual impact within the broader context of the area where tall stadium lights are already in place. Furthermore, it is uncertain why the application fails to consider other structures in proximity such as the newly constructed dormitories, or the “fly tower” at the Ashland High School Mountain Avenue Theater.



The analysis was also unclear whether relative ground elevation at each of the sites was considered. The request proposes a 95-foot antenna tip height installed southeast of Raider Stadium where the ground elevation relative to sea level at the tower base is approximately 1,946 feet so the antenna tip would be at an elevation of about 2,041 feet. The application emphasizes that this 95-foot height is necessary to meet their service objectives. For example, in looking at alternate sites, Alternate Site #4, the SOU Science Building, is dismissed as not feasible because maintaining the existing building height only allows a 47.9-foot antenna tip height and would thus only be a fraction as efficient in meeting the service objectives, however the ground elevation in this location is roughly 2,066 feet, so even a 47.9-foot tip height here would put the tip of an antenna on top of the building at about 2,113.9 feet - almost 73 feet higher relative to sea level than the tip elevation in the proposed location southeast of Raider Stadium. Similarly, the higher of the two recently constructed dormitories is at an elevation of roughly 1,972 feet above sea level, and has an average height of 49 feet. An antenna tip at the existing building height would be at an elevation of 2,021 feet, and as an existing structure should at least have been considered here.

Finally, in several of the locations where rooftop installation was considered at alternative sites the applicant's analysis concludes that roofing material and/or rooftop mechanical equipment would cause "*passive intermodulation interference*" which excludes the site from consideration. As all current WCF installations approved in Ashland have been rooftop installations on existing buildings (i.e. Ashland Springs Hotel downtown, Best Western on Clover Lane and the SOU Science Building), information in the record seems insufficient to support this assertion. The city's independent third party RF Engineering Consultant explains that while metal structures can block signal radiation and re-direct the energy due to reflection and scattering which may in some cases cause a failure to isolate sectors and project the signal to the edges of the cell, as long as the antennas are raised sufficiently above the rooftop obstacles, the fact that a roof contains metal structures is arguably a non-issue.

### ***Exception***

The application also requests an Exception to the Site Development and Design Standards to allow the applicant to provide a ten-foot landscape buffer around two sides of the WCF where the standards call for a buffer around the full outer perimeter.

Specifically, the standards require that any primary or accessory equipment located on the ground and visible from a residential use or the public right-of-way be: screened with vegetation and materials selected and sited to produce a drought resistant landscaped area; the perimeter of the wireless communication facilities shall be enclosed with a security fence or wall. Such barriers shall be landscaped in a manner that provides a natural sight obscuring screen around the barrier to a minimum height of six feet; that the outer perimeter of the wireless communication facilities shall have a ten-foot landscaped buffer zone ten feet in width; that the landscaped area shall be irrigated and maintained to provide for proper growth and health of the vegetation; and that one tree shall be required per 20 feet of the landscape buffer zone to provide a continuous canopy around the perimeter of the wireless communication facilities. Each tree shall have a caliper of two inches, measured at breast height, at the time of planting.

The application explains that compliance with the standard is not possible due to the proximity to the existing fencing and gate into Raider Stadium, it is not possible to install the required landscape screening on the west and north sides of the proposed facility, and it is not possible to shift the

facility to accommodate the landscaping due to an existing catch basin, gated access driveway and fencing, and as noted in the applicant's Attachment 13, the location proposed is preferred by the property owner.

The Staff Advisor finds that the application fails to adequately establish why – other than the property owner's stated preference - the proposed placement cannot be shifted to a location elsewhere on the 17.46-acre parcel able to sufficiently accommodate a ten-foot wide landscape buffer. Additionally, as illustrated in the application materials provided (Sheet Z-4) neither the security wall nor vegetation appear to provide full sight-obscuring screening sought in the standards, the Deodar Cedar tree selections proposed are on the city's Prohibited Flammable Plant List within the Wildfire Lands overlay zone, and the alternative means of irrigation proposed do not comply with the city's irrigation standards which generally seek an irrigation system unless a landscape professional can certify that the area can be maintained and survive without an irrigation system. As such, the Staff Advisor does not believe that the application adequately demonstrates that an exception is merited in this instance.

### ***Conditional Use Permit for an Alternative Structure in SOU Zone***

The subject property is located within the Southern Oregon University (SOU) District, a special district designed to provide for the unique needs of Southern Oregon University as a State educational institution functioning within the planning framework of the City. The SOU District is regulated under AMC Chapter 18.3.6 and by the SOU Campus Master Plan which has been adopted by the City as Ordinance #3014. Within the SOU overlay zone, WCF are authorized subject to Chapter 18.4.10, and alternative structures (i.e. *man-made structures that, by design, camouflage or conceal the presence of wireless communication facilities, such as clock towers, bell towers, church steeples, water towers, light poles, and similar alternative-design mounting structures*) require a Conditional Use Permit for approval.

Conditional Use Permits provide for discretionary review of the adverse material impacts of a request in comparison to adverse material impacts that could reasonably be expected from the property's target use, which for the SOU District is "*The permitted uses listed in... (chapter) 18.3.6 Southern Oregon University District... complying with all ordinance requirements.*" Consideration in the criteria include impacts on the livability of the impact area when considered in terms of scale, bulk, and coverage, and architectural compatibility. Conditional Use Permits provide the city with the ability to impose conditions necessary to mitigate these adverse material impacts.

As with consideration of the alternative site analysis, in considering the bulk, scale and architectural compatibility of a 105-foot artificial pine tree, there may be more architecturally appropriate options which should be fully considered and exhausted before the mono-pine is found to be the appropriate option. Specifically, information in the application is inadequate for the Staff Advisor to determine whether a stadium light standard made taller and containing both field lights and a WCF might blend better in the context of existing structures and trees and thus be more architecturally compatible and with a more appropriate bulk and scale in the broader context of the area where tall stadium lights are already in place and expected than a 105-foot tall artificial tree.

### ***Comments Received***

Subsequent to the mailing of a Notice of Complete Application (NOCA), numerous written comments were received with regard to the proposal during the comment period. Many of these



comments had to do with the health impacts of wireless communication facilities. Title 47 U.S. Code, Chapter 5, Subchapter III, Part 1 §332.7.B.iv “*Mobile Services – Preservation of Local Zoning Authority*” provides that “No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the (Federal Communication) Commission’s regulations concerning such emissions.” Federal law explicitly precludes the city’s consideration of potential environmental health impacts of wireless communication facilities through the city’s local zoning authority. This preclusion prevents the city from considering health impacts in individual land use decisions, and as such these impacts cannot and have not been a consideration in the current decision.

Some comments have also suggested that the current COVID-19 situation would enable an emergency moratorium, however federal regulations also prevent the city from imposing a moratorium of facilities of this nature. In considering these comments, staff has consulted the City Attorney who has made clear that such emergency-related moratoria only apply to 5-G broadband installations (while the current request is 4-G), may only be imposed by states, and then only when the installation and use of these facilities must be halted out of necessity because they cannot be achieved safely. The City Attorney has made clear that even in the current state of emergency, cities have no authority to declare such a moratorium (*see 33 FCC 18-111, Section 157*).

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**The approval criteria for Site Design Review are detailed in AMC Section 18.5.2.050 as follows:**

- A. **Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
- B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
- C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
- D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
- E. **Exception to the Site Development and Design Standards.** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
  - 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*
  - 2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site*

*Development and Design Standards.*

**The Wireless Communication Facility Design Standards are detailed in AMC Section 18.4.10.040 as follows:**

*All wireless communication facilities shall be located, designed, constructed, treated, and maintained in accordance with the following standards.*

**A. General Provisions**

1. *All facilities shall be installed and maintained in compliance with the requirements of the Building Code. At the time of building permit application, written statements from the Federal Aviation Administration (FAA), the Aeronautics Section of the Oregon Department of Transportation, and the Federal Communication Commission (FCC) confirming that the proposed wireless communication facility complies with regulations administered by that agency or that the facility is exempt from regulation.*
2. *All associated transmittal equipment must be housed in a building, above or below ground level, which must be designed and landscaped to achieve minimal visual impact with the surrounding environment.*
3. *Wireless communication facilities shall be exempted from height limitations imposed in each zone.*
4. *Wireless communication facilities shall be installed at the minimum height and mass necessary for its intended use. A submittal verifying the proposed height and mass shall be prepared by a licensed engineer.*
5. *Lattice towers are prohibited as freestanding wireless communication support structures.*
6. *Signage for wireless communication facilities shall consist of a maximum of two non-illuminated signs, with a maximum of two square feet each, stating the name of the facility operator and a contact phone number.*
7. *The applicant is required to remove all equipment and structures from the site and return the site to its original condition, or condition as approved by the Staff Advisor, if the facility is abandoned for a period greater than six months. Removal and restoration must occur within 90 days of the end of the six-month period.*
8. *All new wireless communication support structures shall be constructed so as to allow other users to collocate on the facility.*

**B. Preferred Designs.** *The following preferred designs are a stepped hierarchy, and the standards shall be applied in succession from subsection a to e, with the previous standard exhausted before moving to the following design alternative. For the purpose of chapter 18.4.10, feasible is defined as capable of being done, executed or effected; possible of realization. A demonstration of feasibility requires a substantial showing that a preferred design can or cannot be accomplished.*

1. **Collocation.** *Where possible, the use of existing wireless communication facilities sites for*

*new installations shall be encouraged. Collocation of new facilities on existing facilities shall be the preferred option. Where technically feasible, collocate new facilities on pre-existing structures with wireless communication facilities in place or on pre-existing towers.*

2. **Attached to Existing Structure.** *If (a) above is not feasible, wireless communication facilities shall be attached to pre-existing structures, when feasible.*
3. **Alternative Structure.** *If (a) or (b) above are not feasible, alternative structures shall be used with design features that conceal, camouflage, or mitigate the visual impacts created by the proposed wireless communication facilities.*
4. **Freestanding Support Structure.** *If (1), (2), or (3) listed above are not feasible, a monopole design shall be used with the attached antennas positioned in a vertical manner to lessens the visual impact compared to the antennas in a platform design. Platform designs shall be used only if it is shown that the use of an alternate attached antenna design is not feasible.*
5. **Lattice towers** *are prohibited as freestanding wireless communication support structures.*

### **C. Collocation Standards**

1. *The collocation feasibility study shall meet all of the following requirements.*
  - a. *Document that alternative sites have been considered and are technologically unfeasible or unavailable.*
  - b. *Demonstrate that a reasonable effort was made to locate collocation sites that meet the applicant's service coverage area needs.*
  - c. *Document the reasons collocation can or cannot occur.*
2. *Relief from collocation under this section may be granted at the discretion of the approval authority if the application and independent third party analysis demonstrate collocation is not feasible because one or more of the following conditions exist at prospective collocation sites.*
  - a. *A significant service gap in coverage area.*
  - b. *Sufficient height cannot be achieved by modifying existing structure or towers.*
  - c. *Structural support requirements cannot be met.*
  - d. *Collocation would result in electronic, electromagnetic, obstruction, or other radio frequency interference.*

### **D. Landscaping.** *The following standards apply to all wireless communication facilities with any primary or accessory equipment located on the ground and visible from a residential use or the public right-of-way.*

1. *Vegetation and materials shall be selected and sited to produce a drought resistant landscaped area.*
2. *The perimeter of the wireless communication facilities shall be enclosed with a security fence*

or wall. Such barriers shall be landscaped in a manner that provides a natural sight obscuring screen around the barrier to a minimum height of six feet.

3. *The outer perimeter of the wireless communication facilities shall have a landscaped buffer zone ten feet in width.*
4. *The landscaped area shall be irrigated and maintained to provide for proper growth and health of the vegetation.*
5. *One tree shall be required per 20 feet of the landscape buffer zone to provide a continuous canopy around the perimeter of the wireless communication facilities. Each tree shall have a caliper of two inches, measured at breast height, at the time of planting.*

#### **E. Visual Impacts**

1. *Wireless communication facilities shall be located in the area of minimal visual impact within the site which will allow the facility to function consistent with its purpose.*
2. *Wireless communication facilities, in any zone, must be set back from any residential zone a distance equal to twice its overall height. The setback requirement may be reduced if, as determined by the approval authority, it can be demonstrated through findings of fact that increased mitigation of visual impact can be achieved within of the setback area. Underground accessory equipment is not subject to the setback requirement.*
3. *Antennas attached to a pre-existing or alternative structure shall be integrated into the existing building architecturally and to the greatest extent possible shall not exceed the height of the pre-existing or alternative structure.*
4. *Antennas attached to a pre-existing or alternative structure shall have a non-reflective finish and color that blends with the color and design of the structure to which it is attached.*
5. *All wireless communication support structures must have a non-reflective finish and color that will mitigate visual impact, unless otherwise required by other government agencies.*
6. *Exterior lighting for a wireless communication facility is permitted only when required by a federal or state authority.*
7. *Should it be deemed necessary by the approval authority for the mitigation of visual impact of the wireless communication facility, additional design measures may be required. These may include, but are not limited to: additional camouflage materials and designs, facades, specific colors and materials, masking, and shielding techniques.*

**The approval criteria for a Conditional Use Permit are described in AMC 18.5.4.050.A as follows:**

1. *That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.*

2. *That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.*
3. *That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.*
  - a. *Similarity in scale, bulk, and coverage.*
  - b. *Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.*
  - c. *Architectural compatibility with the impact area.*
  - d. *Air quality, including the generation of dust, odors, or other environmental pollutants.*
  - e. *Generation of noise, light, and glare.*
  - f. *The development of adjacent properties as envisioned in the Comprehensive Plan.*
  - g. *Other factors found to be relevant by the approval authority for review of the proposed use.*
4. *A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.*
5. *For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.*
  - a. *WR and RR. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*

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### ***Decision***

Ashland’s standards regulate the placement, appearance, and impact of wireless communication facilities (WCF) while providing residents with the ability to access and adequately utilize the services that these facilities support. These standards are based in a recognition that, because of the physical characteristics of WCF, their impacts affect not only the neighboring residents but also the community as a whole. The standards are intended to ensure that the visual and aesthetic impacts of wireless communication facilities are mitigated to the greatest extent possible, especially in or near residential areas.

It is important to first note that a key concern often raised in comments opposed to WCF installations - *the environmental health impacts associated with such installations* – is explicitly precluded from consideration in local decisions by federal law. This preclusion applies to moratoria, as well as to individual land use decisions. As such, applications must be carefully considered in terms only of the applicable local land use regulations including requirements for design review approval in light of specific approval criteria and design standards.

After consideration of all information contained in the record, the Staff Advisor finds that the application fails to meet the burden of proof in demonstrating that the visual and aesthetic impacts of the proposal will be mitigated to the greatest extent possible with the placement and design of the installation according to stepped hierarch of the city’s design standards. The applicant’s collocation study and alternative sites analysis is insufficient in demonstrating that collocation or

placement on an existing structure are not feasible. Relief from collocation requirements calls for a clear demonstration that sufficient height cannot be achieved by modifying existing structures or towers, and the application has failed to consider how the structures considered might be modified to achieve their needs while meeting community design standards. Without an adequate demonstration to that end, an alternative structure cannot be approved through the stepped hierarchy of the design standards.

Planning Action PA-T1-2020-00097 is therefore denied.



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Bill Molnar, *Director*  
Department of Community Development

May 22, 2020

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Date