

REGULAR MEETING
September 17, 2001

CALL TO ORDER:

A regular meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Beaverton Library, 12375 SW Fifth, Beaverton, Oregon on Monday, September 17, 2001, at 6:30 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Fred Ruby, Evelyn Brzezinski, Dennis Doyle, Forrest Soth, and Cathy Stanton. Also present were Chief of Staff Linda Adlard, City Attorney Mark Pilliod, Human Resources Director Sandra Miller, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Police Chief David Bishop, Library Director Ed House, Support Specialist II Deborah Baidenmann, Associate Planner Scott Whyte, City Transportation Engineer Randy Wooley, Police Captain Wes Ervin and Acting City Recorder Sue Nelson.

CITIZEN COMMUNICATION:

There was none.

COUNCIL ITEMS:

Coun. Soth stated that he received the registration for the League of Oregon Cities in Eugene, Oregon. He urged the Council to submit their registrations early due to limited hotel accommodations.

STAFF ITEMS:

There was none.

CONSENT AGENDA:

Coun. Stanton MOVED, SECONDED, by Coun. Soth, that the consent agenda be approved as follows:

- 01289 Final Order for Traffic Control Board Issue 460 Regarding Two-Hour Parking on SW Apple Way
- 01290 Bid Award – Street Overlay & Traffic Calming Project, Fiscal Year 2001-02
- 01291 Boards and Commissions Appointments

Contract Review Board:

01292 Authorization to Extend State Price Agreements for Eight Copier Rentals from July 1, 2001 through December 31, 2001

Question called on the motion. Couns. Doyle, Brzezinski, Soth, Stanton and Ruby voting AYE. The motion CARRIED unanimously. (5:0)

PUBLIC HEARING:

01293 APP 2001-0013 Sprint PCS at Kim's Market; Appeal of Board of Design Review Determination (BDR 2001-0028)

Mayor Drake opened the Public Hearing at 6:35 p.m.

Joe Grillo, Community Development Director, read the Public Hearing declaration (in record).

Mayor Drake asked if any Councilor wished to abstain. All Councilors announced that they had no exparte contact.

Coun. Soth stated he had talked on the telephone with one person but no information was shared.

Mayor Drake noted he had a conversation about procedure with four or five of the neighbors.

Joe Grillo asked if anyone challenged the Council authority to hear this matter.

There was none.

STAFF REPORT:

Joe Grillo reported an additional item had been received on September 14, 2001, attached to memorandum of record. He added the Appellant had submitted a four-tabbed item that was dated July 5, 2001, addressed to the Board of Design Review (BDR) (in record). He noted that staff would show a video that had also been shown to the BDR.

Scott Whyte, Associate Planner, explained the Memorandum from Lucent Technologies attached (in record) that contained specifications for the equipment cabinets and stated it was not a noise study, but specifications and testing results.

Coun. Ruby asked for clarification from the staff material (page 9) dated August 13, 2001, on the recommendation approving the appeal. He asked if there was an alternative set of conditions that constituted the suggested variations.

Joe Grillo stated that there were alternative pole design considerations that were discussed at the Board of Design Review (BDR) meeting.

Coun. Ruby asked if the three modifications would make a better fit for the community. He asked if Grillo's department endorsed the three additional modifications beyond what was stated in the draft plan use order.

Grillo replied that was correct and he noted staff looked at the colors for the pole and the relationship with the surroundings.

Coun. Soth asked if the Telecommunications Act of 1996 gave the Appellant an advantage on the location and the Council's ability to modify the location.

Mark Pilliod, City Attorney, stated the Telecommunications Act allowed local bodies the authority to establish regulations over certain limited issues.

Coun. Soth questioned the documents dated 1996 and asked if that application was prior to the effective date of the Telecommunications Act of 1996.

Whyte said he believed the 1996 (Western Wireless) application was within a month of passing.

Coun. Stanton asked Whyte to indicate the location of the proposed tower on a map.

Whyte indicated the tower location of the proposed monopole.

Phillip Grillo and Ron Meckler from Sprint PCS explained the three issues that related to the project (1) alternative sight analysis (2) noise, and (3) height of the tower. Grillo expressed their agreement with the staff report recommendations and their concurrence with the changes to the conditions. He added Sprint had been willing to go the extra mile to accommodate the neighborhood. He emphasized the facilities did not produce noise above the Department of Environmental Quality (DEQ) standards. He referred to an article in The Oregonian.

Mayor Drake asked for copies of The Oregonian article (for the record).

Coun. Soth asked if Network System was a recognized acoustic analysis firm.

Phillip Grillo replied Lucent Technologies tested sound and to the best of his knowledge they performed the sound test.

Ron Meckler, SBA Network Services, Portland, described the element of the site (in record). He stated what had been proposed was an 80-foot monopole enclosure with the antennas and other equipment inside. He

noted the height was needed because it was a radio tower that would receive and transmit signals. He added that was the minimum height they were allowed to use. He described the landscaping and screening. He noted in regards to the noise they would follow the recommendations of City staff and did not feel that it was a problem. He referred to the photos that had been distributed and pointed out that they would be adding landscaping to the tree cover that obscured the tower.

Phillip Grillo noted the City had decided the height from the Conditional Use Permit (CUP) application. He concluded that they could add trees to the site.

Coun. Soth discussed with Phillip Grillo the height and location of the trees (in record).

Coun. Stanton discussed with Phillip Grillo the size and width of the pole (in record). She also asked about the level of noise to the neighborhood.

Phillip Grillo replied that an enclosed seven-foot high fence would help the pole become white noise.

Coun. Stanton asked who would monitor the noise.

Phillip Grillo replied he had not proposed a monitoring plan. He announced Sprint would be willing to take the readings.

Coun. Brzezinski said she read the noise level was lower than a room air conditioner. She asked if the fan cycled on and off.

Phillip Grillo replied he believed that would be the case. The fan was to maintain a certain temperature and to protect the equipment.

Coun. Brzezinski asked if it was the applicant's responsibility to replace any trees that did not grow.

Joe Grillo reported the final Land Use Order stated that it was the applicant's responsibility to maintain the plantings, even to the point of replanting.

Coun. Doyle asked how close the poles had to be to the units on the ground.

Jay Gratchner, Sprint PCS said the locator equipment was next to the pole because there was a transmission between the antennas and the equipment.

Coun. Doyle mentioned there were companies that could make the monopoles look like fir trees.

Gratchner noted he had seen a monopole painted like a palm tree but had not seen the fir tree.

Coun. Soth inquired whether interference with the 911 emergency vehicles and cellular phone signals was anticipated.

Gratchner replied he did not anticipate any interference, and noted they had a record of being good neighbors.

RECESS:

Mayor Drake called for a brief recess at 8:00 p.m.

RECONVENED:

The regular meeting reconvened at 8:15 p.m.

Witnesses in Opposition:

Paul Telles, Beaverton, remarked the one point he agreed on was the Sprint PCS monopole could not be made compatible with their residential property. He explained what caused the most alarm was the diameter of the pole (36 inches) and he did not feel a pole that size belonged in anyone's backyard. He noted the monopole was more than nine feet in circumference. He added new technology would change the connectivity and there may be other solutions.

James Wallace, Beaverton, noted the Federal Communications Commission (FCC) regulations continue to be quoted. He stated that local government did have the right to determine the location of the towers. He said the majority of the neighbors were seniors that lived in the neighborhood for over 30 years. He summarized by saying it was a government of the people, by the people and for the people and not corporate America.

Karen McGates, Beaverton, indicated she was in opposition of the monopole tower.

Charles Issac, Beaverton, commented that the videotape was grossly misleading. He concluded that all of the neighbors would see the tower from their homes and it was not compatible with the environment.

Lori Miille, Beaverton, said she lived in direct view of the proposed tower. She said the monopole did not meet City code and no matter what color it would be painted it would not be compatible to the area. She reported at the June 14, 2001 meeting Sprint was given an extension to find alternative sites. She related Sprint PCS promised a formal report from a sound engineer, but no report was shown. She noted her family wanted to remain in the area because her son was a Beaverton High School football player. She added the tree protection photographs presented were not accurate.

Vanessa McFarling, Beaverton, said they could not see Kim's Market during the summer, but in the winter the trees became sparse and the parking lot came into view. She concluded the tree coverage pictures were not accurate.

Appellant Rebuttal:

Mayor Drake asked for appellant rebuttal testimony.

Phillip Grillo said the issues he would address were the size of the pole, the noise, and the compatibility to the area.

Meckler reiterated specifications and dimensions of the pole. He related staff had recommended a slimmer tower and explained the pole would have to be reengineered.

Coun. Stanton asked if they had included the pole enclosure in the dimensions.

Meckler answered the dimensions did include the enclosure.

Gratchner said that a narrower diameter would mean a reduction of tenants and additional towers would be required. He expressed confidence that Sprint would meet the DEQ conditions. He said Sprint used a heat exchanger that involved a fan; not a compressor. He noted that the fan would run at a higher speed on hot days and was also a heating element for the cool days to keep the equipment warm. He stated with an increase of airflow there was not an on off noise that would be heard from a compressor. He noted the equipment that Sprint PCS used met 55 dBA.

Coun. Stanton asked how the test reports went from 65 dBA to 55 dBA for the same test on two different dates.

Gratchner explained the test was done with an additional growth cabinet that increased the decibel rating. He said a growth cabinet was not proposed but if the subscriber ship grew there was a potential of a 65 dBA.

Phillip Grillo related that city staff had required a standard that was greater than DEQ's standard (55 dBA) at the property line. He said he felt Sprint had met the requirement.

Coun. Stanton said she needed a level of assurance of how the standard was established at 55 dBA and how it applied to residential areas.

Phillip Grillo cited the DEQ standards had to do with new industrial or commercial uses in DEQ quiet areas. He said in regard to compatibility

the City found the height variance issue could be made compatible. He concluded that Sprint had been flexible.

Coun. Brzezinski referred to Tab 3 (page 14, paragraph 3), and asked how an 8-foot tree would screen an 80-foot tower.

Phillip Grillo said an 8-foot evergreen tree at the property line would screen the tower. He added that the sight line gaps between the trees could be filled with additional trees or a combination of landscaping.

Coun. Brzezinski said that the angle was different between the back and the front of the property lines.

Phillip Grillo replied the areas further back from the property line were at a lower elevation, so the angle would appear taller.

Mayor Drake asked if there was a setback from the building.

Phillip Grillo pointed out the setbacks and expressed concern about the proximity to the power lines.

Joe Grillo clarified the setback was 20 feet.

Coun. Soth asked if the pole was moved would that require a new BDR Hearing.

Joe Grillo stated if the applicant moved the pole, or made changes they would have to file for a new application.

Coun. Brzezinski asked if the order denying the approval could be supported.

Joe Grillo stated one of the motivations was to provide some clear options for the BDR, which was struggling over the evidence. He noted the staff felt they needed to prepare a motion of denial, based on what they heard at the board, which was the lack of landscaping. He commented the proposed draft was a reflection of what they had heard. He added that the BDR had difficulty with the landscaping design.

Pilliod stated after furnishing all the material to the BDR and the attempt to reach a decision, and since the development code limited decisions, he advised staff to submit to the BDR a clear denial.

He noted neither of the orders was approved and an order, which implied that a denial was an outcome, was signed by the BDR and was the subject of the appeal. He reported there was an interruption in the normal process. He noted where the Code required the Board to take action, there was none. He related he would not want Council to rely on a proposed form of order for denial that would suggest the staff believed it was supported by evidence in the record. He added he felt it was

motivated by the desire to obtain a final decision and unfortunately that effort failed.

Mayor Drake closed the public hearing.

Coun. Ruby MOVED, SECONDED by Coun. Soth to approve the appeal for Sprint PCS at Kim's Market thereby approving BDR 2001-0028 and adopting conditions of approval contained in the draft land use order attached to the staff memorandum dated July 19, 2001, and supplemented by the suggested variations to pole design and landscape changes.

Coun. Soth asked for clarification of the modifications.

Coun. Ruby replied he was referring to all of the modifications outlined by staff in the Memorandum to the Board of Design Review from Scott Whyte (07/12/01), pages 108 and 109.

Coun. Brzezinski stated she opposed the motion, because it did not meet Criterion A concerning compatibility.

Coun. Doyle stated he opposed the motion.

Coun. Soth expressed he supported the motion with the restrictions and limitations placed upon it. He added he felt they did everything they could to minimize the adverse impact to the surroundings area.

Coun. Stanton stated she did not support the motion. She affirmed she did not feel it was compatible.

RECESS:

Mayor Drake called for a brief recess at 9:30 p.m.

RECONVENED:

The regular meeting reconvened at 9:45 p.m.

Mayor Drake reported that the City Attorney felt there were not sufficient findings. He said if the Council rejected the motion he needed specific reasons, because on an appeal if the prevailing opinion was rejected there had to be specific reasons.

Coun. Ruby noted his basis for the motion was that he felt the latitude was significantly constrained by federal law that was contained in the material presented. He said the application made the effort towards the compatibility issue and he felt that was established. He related his concern was based upon the available site locations.

Coun. Brzezinski explained when the Council took the break no one was trying to get someone to change their vote. She said it was only for the

purpose of receiving more specific findings to support the vote. She referred to the memo of August 31, 2001, (pages 6 and 7). She said even though both sets of criteria used the term compatibility, they were different things. She said just because something was compatible under the CUP, did not automatically mean that it would be compatible under the BDR definition. She stated her issue was the height of the trees. She felt the applicant had made a good faith effort to monitor the noise level. She felt the surroundings of the fence and the effort to fill in the holes of the trees in the back property line were reasonable. She said she was not satisfied with how an 8-foot tall tree could block out an 80-foot tall tower. She added she based her intention to vote against the motion on what she read on pages 6 and 7 (in record).

Mayor Drake repeated the motion based upon the facts and findings presented in the staff reports and staff memorandum was staff recommendation of approval of the appeal APP 2001-0013 Sprint PCS at Kim's Market thereby approving BDR 2000-0028 adopting the conditions of approve contained in the draft land use order attached to staff memorandum dated July 19, 2001, with suggested variations to pole design and landscape changes as proposed in the staff memorandum dated July 19, 2001 on pages 108 and 109 of tonight's staff report.

Question called on the motion. Couns. Soth and Ruby voting AYE and Couns. Doyle, Brzezinski and Stanton voting NAY. (2:3) Motion Denied.

Mayor Drake asked if there was another motion.

Coun. Brzezinski MOVED, SECONDED by Coun. Stanton, for denial of APP 2001-0013 Sprint PCS at Kim's Market based on the finding that the landscaping plan to make the height of the pole have minimal visual impact on the surrounding areas, was not adequate.

Coun. Brzezinski clarified criterion A of the Design Review criteria was not satisfactorily met. She said specifically that the spatial and visual arrangements were not compatible.

Coun. Soth said he would not support the motion. He stated if he was standing in the back yard of one of these homes, he would be looking at an 18-foot buffer, because the back yards were 10 feet below the proposal site. He added with the appropriate motion they could have imposed a higher tree screening for that area.

Question called in favor of the motion for denial of APP 2001-0013 Criterion A, Couns. Stanton, Brzezinski and Doyle voting AYE, and Couns. Ruby and Soth voting NAY, the motion CARRIED (3:2)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 10:00 p.m.

Sue Nelson, Acting City Recorder

APPROVAL:

Approved this 10th December,.2001

Rob Drake, Mayor