

**LAYTON CITY PLANNING COMMISSION WORK MEETING MINUTES  
SEPTEMBER 23, 2014**

**MEMBERS PRESENT:** Dawn Fitzpatrick, Gerald Gilbert, Brett Nilsson, Randy Pulham, Robert Van Drunen, Dave Weaver L.T. Weese

**MEMBERS ABSENT:** Wynn Hansen, Brian Bodily

**OTHERS PRESENT:** Staff Members: Bill Wright, Peter Matson, Gary Crane, Steve Garside, Tyson Willis, Julie Matthews, Joy Petro

**TRAINING:**

City Planner, Peter Matson, introduced City Attorney, Gary Crane, Assistant City Attorney, Steve Garside, and Associate City Attorney, Tyson Willis. He said they were present to provide an overview of legal issues relative to the Board of Adjustment.

Mr. Matson said Mr. Crane was one of the most sought after land use and municipal land use attorneys and that he works with the League of Cities of Towns. He said Mr. Garside has a very good reputation across the State and is often called on for information and reference from the Planning Community. Mr. Willis is the Planning Staff contact and representative for legal issues.

Mr. Crane thanked the Commissioners for their service. He said Community & Economic Development Director, Bill Wright and Mr. Matson were two of the best planners in the State. Mr. Crane said land use is one of the most important issues at the Legislature.

Mr. Crane said the Legislature learns to work with the development community to determine their issues and put them into ordinance. He explained the Enabling Act which allows Cities to make decisions.

Mr. Crane said that in 2006 the State of Utah in conjunction with the development community revamped the land use laws. One of the things that became apparent was that the Planning Commission is a quasi legislative body and makes legislative decisions. Their decisions must be based on land use purposes such as health, safety and general welfare. If the decisions they make are rationally based on health, safety and welfare, the court will support the Planning Commission decision.

Mr. Crane said the Planning Commission is an advisory body to the City Council. The Planning Commission's sole task is to enforce and apply ordinances but make no decisions based outside of the ordinance or on personal issues. He said the City Council must have a land use purpose for the decisions they make.

Mr. Crane said the Planning Commission doesn't make any quasi judicial decisions. A quasi judicial decision is made by one body, which is an appeal authority. When considering a variance, the appeal authority must go through all the rules and decisions on the ordinance, taking into account a specific non-conforming use and appeals of the decision to Planning Staff. There must be a very good record. If the appeal authority's decision is appealed, the appeal goes to the District Court.

When the law was changed, it was determined that the Boards of Adjustment have over time not stuck to the criteria.

Mr. Crane said there is nothing wrong with a Board of Adjustment of five members, however, training is difficult as the Board has to be retrained with each decision. The current Board has had an attorney with real estate law experience, but he is now retired. He said a Board has to be trained to put together the case for a possible court review. He said the board is significant and narrowly focused on what they can decide. The board members have to be well-trained. Most decisions are not complicated, but the board must stay within the criteria. The board needs to understand the criteria, apply the facts and make good decisions.

Mr. Crane said a lot of jurisdictions have selected one person. He said there could be a panel of one for easy decisions and three for the difficult decisions.

Mr. Crane said that the Planning Commission is an advisory body to the City Council. After the Planning Commission makes a recommendation, the attorneys will review the ordinance before it goes to the City Council. Mr. Crane also explained routine and uncontested variances handled by the Zoning Administrator.

Mr. Crane said that when a hearing officer is appointed, it's best for the officer not to be part of the community and be unbiased. He has to be detached from the community to make decisions within the parameters. He said the person must be very, very familiar with planning and zoning and how it works.

Commissioner Nilsson asked if the five members of the current Board of Adjustment all lived in the City. Mr. Wright said one did not.

There was a discussion on the reasons to have more than one person acting as the appeal authority with the possibility of a three-member pool.

There was a discussion on who should appoint the appeal authority – the City Manager or the Mayor. Commissioner Van Drunen asked if the City Manager could make the appointment with the advice and consent of the Council. Mr. Crane said that he could. He said the Mayor could also make a selection from a pool. Mr. Crane recommended that the Mayor be given the flexibility to choose two or three people to act and rotate them in when an issue arises. Commissioner Gilbert asked if the Mayor and City Manager could make the selection together.

There was a discussion on what an easy case versus a hard case would be.

Chairman Gilbert said consideration should be given to the qualifications and background of the individuals. If one is properly trained and qualified, he would have to follow some very specific guidelines.

Commissioner Van Drunen said he felt one appeal authority would be sufficient. He also agreed with having an attorney from outside the City to be the appeal authority. Chairman Gilbert felt a pool would be a good idea. He liked knowing that the Legal Department would review and revise the ordinance.

Commissioner Van Drunen said the code is a code and doesn't change from City to City because the State is the enabling authority. It wouldn't be difficult for someone to come from Ogden to do an appeal. Mr. Garside said the State code is the law that is followed.

Mr. Crane said that at an appeal, the City argues the side of the ordinance and the applicant their side.

Commissioner Fitzpatrick said her concern was that if there was just one person and the person was appointed by the City manager, would they be an employee, would they be unbiased and if they ruled against the City, could they be released from the position without the City Council having a say.

Mr. Crane said that the appeal authority would be a contractor and not an employee. Commissioner Fitzpatrick asked if there should be bylaws. Mr. Crane said there is a specific structure and guidelines for the appeal authority.

There was a discussion on the structure of the term. Mr. Crane said the person could do a five-year contract but it would be at will. This would be the case whether it would be one person or three.

Commissioner Hansen asked if the individual doesn't agree with the appeal authority's decision if he would have to go to the District Court, or could he appeal to the City Council. Mr. Garside said that under existing State law, if the individual has gone through the administrative process, then they must go to the district court. However, they could petition the Planning Commission and City Council to have the ordinance changed.

Chairman Gilbert asked the Planning Commission if their concerns had been addressed. The Commission said their concerns had been addressed, and Mr. Matson said the concerns in the discussion would be incorporated in the ordinance. The attorneys will review the ordinance.

Mr. Wright asked that the item be tabled to a date certain of October 14, 2014. If the amendment is not ready for October 14, then it will be re-advertised. Mr. Crane said that if someone is at the meeting on October 14, their comments should be taken.

#### **1. AT&T WIRELESS – CONDITIONAL USE FOR A TELECOMMUNICATION FACILITY AT A COMMUNITY USE**

This property is located at 52 West Golden Avenue in an R-1-8 (Single Family Residential) zoning district. The applicant, NSA Wireless for AT&T Wireless, is represented by Kris Martinez.

Mr. Matson said Kris from NSA Wireless was ill and not able to attend. His representative at the meeting was Rachel Fenton. Paul Barnes from DSD was being represented by Darren Hamblin. He also introduced Victoria Chenault, outside legal counsel for AT&T and Semi Ajose from AT&T.

Mr. Matson said he, Andrew King and Mr. Wright had walked the site with Mr. Barnes looking at a little less conspicuous location. The proposal is to put the compound in the area next to the emergency crash gate.

Chairman Gilbert asked if the entire discussion was on the school ground property. Mr. Matson responded in the affirmative and said studies for coverage were included in the handout and in the packet with the details of why the four other publicly owned locations were not preferred over the junior high site. Working in the confines of the school property became the focus.

Mr. Matson said a 21 X 47 foot compound is proposed with the same configuration in terms of the generator. He explained the location of the equipment. He said the height of the pole is 60 feet, and 300 feet south of Golden Avenue. He reviewed what was included in the packet.

He said as they walked the site Mr. Barnes said the permanent goal posts will likely be removed so the field can be configured in different ways. This will keep the playing fields a reasonable distance from the compound.

A difference from the first proposal is the addition of 10-foot masonry wall around the compound. Commissioner Fitzpatrick said the documentation indicates chain link. Mr. Matson said the drawings indicate masonry to which they have committed. Ms. Fenton said the chain link would be the gate with privacy slats.

Mr. Matson said the slats would match the wall and there would be netting to keep balls out of the compound.

He said the commitment regarding the run-time of the generator is the same as first proposed. Ms. Fenton said it turned on a couple of times a week, and Ms. Chenault said a technician would come out once a month to check on the fuel in the generator and the working of the site.

Commissioner Fitzpatrick asked about a KnoxBox and Ms. Fenton said AT&T coordinates with the Fire Department for access. Mr. Matson said this would be addressed at the pre-construction meeting prior to the issuance of the building permit.

There was a discussion on possible co-location in the future and the area in which they would expand.

Commissioner Fitzpatrick asked if someone would have to come to the Commission for co-location. Mr. Matson said co-location is a permitted use but any expansion of the site would require conditional use review.

Commissioner Gilbert asked what size compound would have to be built to accommodate two other carriers. Ms. Fenton said approximately a 50 X 50 foot compound would be required, however, sometimes there is enough space from the start to accommodate others. This compound doesn't accommodate anything but AT&T.

Commissioner Weese asked if the Commission could deny another carrier. Associate City Attorney, Tyson Willis, said what is approved is the pole and that particular size of compound. Anything else would require conditional use review. He said, however, that there can be no discrimination between carriers.

Mr. Hamblin said Verizon has contacted the District on this pole. Commission Pulham remarked that AT&T should build a bigger compound. Ms. Fenton said the way the lease is written, another carrier would lease another space and provide more revenue.

Mr. Matson said the compound is in a notched area. He said there is a place to expand more efficiently in this area.

The Commissioners expressed concerns over child safety during construction. Ms. Chenault said all work will be done according to OSHA standards and night construction will be done if necessary to avoid disrupting children. She said AT&T would inspect the bird netting monthly and maintain it. Ms. Fenton said AT&T would do whatever it takes to maintain the netting.

Chain link was suggested instead of netting but it was dismissed because of possible rusting and aesthetic issues.

Commissioner Fitzpatrick expressed concerns about towers being too close. Ms. Chenault said if there are too many towers, then interference is caused.

There was a discussion on coverage and how to provide the best service to customers.

Chairman Gilbert and Mr. Willis reminded the Commission that a carrier can't be denied, but reasonable conditions can be instituted to mitigate impacts.



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Julie K. Matthews, Planning Commission Secretary

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**MEMBERS ABSENT:** Brian Bodily, Wynn Hansen

**OTHERS PRESENT:** Staff Members: Bill Wright, Peter Matson, Tyson Willis, Julie Matthews

Chairman Gilbert called the meeting to order at 7:05 p.m. The Pledge of Allegiance was recited, and an invocation was given by Commissioner Weaver.

**APPROVAL OF THE MINUTES:** Chairman Gilbert called for a motion to approve the August 12, 2014 and September 9, 2014, Planning Commission and Work Meeting Minutes. Commissioner Van Drunen moved to approve the minutes as written. Commissioner Fitzpatrick seconded the motion, and the voting was unanimous.

Chairman Gilbert called for a motion to open Public Review. Commissioner Nilsson moved to open Public Review. Commissioner Van Drunen seconded the motion, and the voting was unanimous.

**PUBLIC REVIEW:**

**1. AT&T WIRELESS – CONDITIONAL USE FOR A TELECOMMUNICATION FACILITY AT A COMMUNITY USE**

This property is located at 52 West Golden Avenue in an R-1-8 (Single Family Residential) zoning district. The applicant, NSA Wireless for AT&T Wireless, is represented by Kris Martinez.

City Planner, Peter Matson, said this item had been tabled at the July 8, 2014, Planning Commission Meeting to allow the applicant additional time to provide more information on sites both on and off the school district property. He said during this time Staff has had discussions with Mr. Martinez from NSA/AT&T and Paul Barnes from the Davis School District (DSD).

Mr. Matson pointed out the originally proposed location and the newly proposed location to the south. He said the compound would be 21 feet by 47 feet. The tower would be a 60-foot monopole tower housed within the compound. There would also be a shed with a generator and other utilities within the compound. The shed would be pre-manufactured with an aggregate finish and a flat roof. The fencing proposal is for a 10-foot masonry wall with the gate being chain link with privacy slats to match the color of the compound area. The masonry wall is upgraded from the original proposal of slatted chain link. The School district would lose one parking stall for the compound. He said the applicant will explain the studies that have been done.

Mr. Matson said AT&T is indicating the tower is to improve area coverage, particularly for in-house and vehicular coverage. Based on the previous proposal the onsite backup generator located within the shed structure of the compound will run in consultation with the DSD. Staff is recommending the afternoon when there are the highest ambient noise levels.

Mr. Matson said the 10-foot masonry wall will have an addition of bird netting draping across the compound area and up to the pole to keep balls from going over the 10-foot wall. He said AT&T will work with DSD on a material that will work well for years. Mr. Martinez said it is not tempting for someone to try to climb it due to the way it will be constructed.

Mr. Matson said Planning Staff feels that this new location is very appropriate for acceptance by the Planning Commission. He said Staff recommends approval of this conditional use request subject to the applicant meeting the following conditions:

1. All Fire Department, Building, Planning and Engineering Division requirements shall be met.
2. All metal materials associated with the cell tower shall have a matte (or non-reflective) finish, lessening the visual impact.
3. The compound shall be enclosed by a minimum ten (10) foot masonry wall of a solid earth-tone color similar to the main portion of the adjacent gymnasium building. The privacy slats on the gate of the compound shall match the color of the masonry wall.
4. The compound area shall be covered with a "bird netting" (as depicted on the Elevations in Exhibit 1) designed to keep soccer balls from entering the compound area.
5. The proposed onsite generator shall be fully enclosed inside a structure and shall be limited to recharging between the hours of 1 pm and 4 pm.

Peter asked the Commission if there were questions for staff. He said Victoria Chenault, outside council for AT&T, would give a PowerPoint presentation. He said these cell towers and compounds are still quite common place and mentioned some of the locations in the City.

Commissioner Weaver asked why the compound and pole had to be in the public viewing area. He felt it should be on the south side of the gym. Mr. Matson said Mr. Barnes from DSD had looked at the layout of the campus and buildings. Empty areas often get filled with portables, and he said it was important to keep maintenance of the facility away from student areas. He said if the compound were moved further south there would be access issues for utilities off the public street.

Mr. Matson said one of the aspects important to DSD was to be a good neighbor and respect the surrounding homes and their view sheds. He said it splits the difference between front yards of neighbors on one side and the back yards on the other.

Commissioner Weaver mentioned other facilities where the compounds were hidden or close to power lines, which was a reason the Gordon/Fort Lane area would not work for this tower. Mr. Matson explained that the Gordon Avenue location would not be within the area that would provide the service needed. He said that area was also planned for a trailhead.

At Commissioner Fitzpatrick's request, Mr. Matson listed the schools in the City boundary that have towers.

Chairman Gilbert asked the Commission if they needed to see the presentation. The Commission agreed that they did not need to see the presentation. Rachel Fenton, representing NSA Wireless, commented that it was a different presentation than the last presentation to the Commission.

Ms. Chenault explained how a location is determined with power lines, nature, and topography taken into consideration. The area is chosen based on coverage objectives being met with the least intrusive means. She explained that with regard to the site chosen, DSD had made that decision.

Commissioner Weaver continued to express concern that the Gordon Avenue location was 40 feet away from power lines. He suggested moving the site closer to the elementary school to remove it from the line of site from the ball fields. He also suggested moving the site 50 feet to the south.

Ms. Chenault said the lease was for 25 years and DSD wants the option to expand to the south or west. She said right next to the elementary school would not be a good location. The site chosen gave more leeway for expansion. She said moving the compound further south would make it difficult to bring utilities from the main right of way.

Commissioner Fitzpatrick asked if additional companies wanted to expand in this area if they could be denied for this area. Associate City Attorney, Tyson Willis, said if a future carrier wants to co-locate and expand the compound, it would be really difficult to deny a conditional use and could be considered discrimination between carriers.

Commissioner Fitzpatrick asked if the land south of Crestview Elementary was considered. She mentioned that the Heritage Elementary tower was not equidistant from all neighbors. Mr. Matson said DSD had very distinct opinions about where the Heritage Elementary School tower should be placed.

Commissioner Weaver said it seemed there was a good precedent to locate the proposed tower in a less obtrusive location.

Chairman Gilbert said that specific areas have been identified and he recommended that the Commission take a vote to approve, deny or table the item for future discussion.

Mr. Willis said that in terms of making a decision on this particular site, the Commission has to be careful not to deny it because there is a better site. It can only be denied if this site cannot be mitigated.

Commissioner Fitzpatrick said she was okay with one compound but not three compounds in the future. She said compounds should be kept out of play areas and this area is highly impacted by youth.

Mr. Willis said a cell tower will have a visual impact wherever it goes. He said if there are additional safety issues as opposed to putting the tower south of the gym, they it could be proposed for a different location only if the issues cannot be mitigated.

Ms. Chenault said AT&T is stuck to what the landlord has approved. The decision cannot be based on some future use.

Commissioner Weese said if the concern is the soccer balls, and if the tower were moved to the elementary school, the area would not be as supervised as at a soccer game where parents, coaches and relatives are watching. He said if the junior high expands, it would take over part of the field anyway

Ms. Chenault said carriers can be creative on what they can do to be as unobtrusive as possible.

Commissioner Fitzpatrick asked if future co-locations would have the same conditions.

Mr. Willis said they would but will be constrained by what the School District allows.

Chairman Gilbert discussed that all future co-locations, shouldn't be as big because the tower is already in the compound. Future co-locations should only include a shelter and other related facilities.

Commissioner Weaver asked to table the item until the School District representative is present to give firm answers to these questions.

Commissioner Fitzpatrick said she felt the School District has its mind made up. Commissioner Weaver wanted the School District to explain why they couldn't find a less obtrusive spot.

Commissioner Van Drunen said the Commission was forgetting the single family homes that ring the school property and was worrying more about the spectators than the homes that would have a big brick wall and the generator sound in their back yard. He said the proposal is the best location and equidistant to the street and the residents. As far as in the future, he said the Commission didn't know and couldn't make a decision on a future use. He said the Commission had discussed the issue for two or three meetings, and the School District is pretty adamant that this is what they want. The Commissioners can't say no to the use because they don't like the location. The applicant has provided mitigation for the impacts such as the 10-foot masonry wall and bird netting. He said the decision shouldn't be based on what may happen in the future. He suggested the Commission vote yes or no and move on.

Commissioner Weaver agreed with taking a vote and said if DSD wanted to be represented, they would be at the meeting.

Chairman Gilbert asked Ms. Chenault if she had seen the five conditions and agreed with them. Ms. Chenault said she agreed with the conditions and supported Staff's report.

There were no other questions of the applicant or questions from the audience.

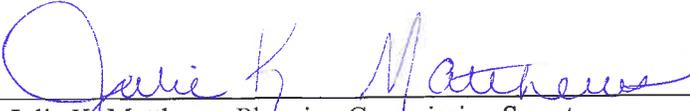
Chairman Gilbert called for a motion on the item.

Commissioner Van Drunen moved that the Planning Commission approve the request for conditional use for a Telecommunication Facility at a Community use at 52 West Golden Avenue subject to the applicant meeting all Staff conditions, which are hereby adopted as requirements. Commissioner Weese seconded the motion. The motion passed by a margin of four in favor of to two opposed to granting the conditional use with Commissioners Nilsson, Pulham, Van Drunen and Weese voting in favor and Commissioners Fitzpatrick and Weaver opposed.

Chairman Gilbert called for a motion to close Public Review and adjourn the meeting.

Commissioner Weaver moved to close Public Review and adjourn the meeting. Commissioner Van Drunen seconded the motion, and the voting was unanimous.

The meeting adjourned at 7:58 p.m.

  
Julie K. Matthews, Planning Commission Secretary