



AMENDED AGENDA

BLUFFDALE CITY BOARD OF ADJUSTMENT

October 4, 2016

Notice is hereby given that the Bluffdale City Board of Adjustment will hold a public meeting **Tuesday, October 4, 2016**, at the **Bluffdale City Public Works Building, 14175 South Redwood Road**, Bluffdale, Utah. Notice is further given that access to this meeting by Board members may be by electronic means by telephonic conference call. The Agenda will be as follows. Please note that all times listed on the Agenda are provided as a courtesy and are approximate and subject to change.

BUSINESS MEETING (6:00 p.m.):

1. Consideration and vote for Board of Adjustment Chair person.
2. **PUBLIC HEARING, CONSIDERATION, AND VOTE** on a requested variance to locate a monopole cellular tower less than two hundred (200') feet from a residential zone, located at approximately 1003 West 14600 South, Verizon Wireless, applicant.
3. Motion to approve minutes of the October 4, 2016, meeting of the Board of Adjustment via e-mail correspondence.
4. Adjournment.

Dated: September 29, 2016

Grant Crowell, AICP
City Planner/Economic Development Director

In compliance with the American Disabilities Act, individuals needing assistance or other services or accommodation for this meeting should contact Bluffdale City at least 24 hours in advance of this meeting at (801)254-2200. TTY 7-1-1.

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Present:

**Members: Colleen Dansie, Chair
Van Neilson
Joseph Sartori**

**Excused: David Nielsen
Charlotte Barlow**

**Others: Jennifer Robison, Senior Planner
Caitlyn Miller, Associate Planner
Gai Herbert, Community Development Assistant**

Van Neilson called the meeting to order at 6:03 p.m.

1. Consideration and Vote for Board of Adjustment Chairperson.

Van Neilson noted with deep regret the need to select a new Board of Adjustment Chairperson. He reported that previous Chairperson, Jim Shaw, had passed away. Colleen Dansie wanted to be considered as the Chairperson of the Board of Adjustment.

Van Neilson moved to nominate Colleen Dansie as the Board of Adjustment Chairperson. Joseph Sartori seconded the motion. Vote on the motion: Van Neilson-Aye; Joseph Sartori-Aye; Colleen Dansie-Aye. The motion passed unanimously.

Chair Dansie thanked the other Board members for their vote. Chair Dansie acknowledged the passing of Jim Shaw, who had served on the Board of Adjustment for many years. Chair Dansie noted that Mr. Shaw made a significant contribution to the City of Bluffdale through his years of service. When Chair Dansie asked if the City had acknowledged the passing of Mr. Shaw, Community Development Assistant, Gai Herbert, replied in the affirmative.

2. PUBLIC HEARING, CONSIDERATION, and VOTE on a Requested Variance to Locate a Monopole Cellular Tower Less Than Two Hundred (200') Feet from a Residential Zone, Located at Approximately 1003 West 14600 South, Verizon Wireless, Applicant.

Associate Planner, Caitlyn Miller, gave the staff report. She stated that Verizon Wireless was requesting a variance to Bluffdale City Code 11-24 to allow the construction of a 100-foot tall monopole cellular tower within 20 feet of a residential zone. The City Code in question requires that such a structure be no less than 200 feet from a residential zone. The site in question is located at 1003 West 14600 South and is immediately adjacent to the R-1-43 (CRO) Zone to the west and the Mixed Use Zone to the south. It is also near the railroad trestle. Ms. Miller identified the location of the subject property on a map. The subject property is currently zoned Heavy Commercial (HC) and has Light Industrial property to the east and property zoned R-1-43

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CRO to the west. The property to the south is zoned Mixed Use.

A monopole cell tower is a Conditional Use in all commercial zones within the City of Bluffdale. In addition to the Conditional Use requirements that must be met, there are also conditions that regulate the construction of cell towers. As was noted earlier, the issue with the request under consideration is that a monopole cell tower must be no less than 200 feet from a residential zone.

Ms. Miller next reviewed the proposed location of the monopole cell tower. It is within 20 feet of the western boundary, which is a residential zone. It is within 86 feet of a Mixed Use zone, which is also considered a residential zone because the MU allows residential uses. The 20-foot setback and the 86-foot setback constitute a 90% and 57% reduction, respectively, of the requirement set in Bluffdale City Code 11-24.

Ms. Miller identified on a map where the monopole tower would have to be located in order to be compliant with City Code. She noted that the applicant originally intended to locate the tower within the legal zone. However, when they spoke with City Engineer, Michael Fazio, they were informed that if the City were to widen and improve 14600 South, which is in the City Master Plan, the pole would have to be moved elsewhere. In light of that information, the applicant proposed a new location for the monopole tower. The applicant chose the proposed location because they feel a tower there will best meet the coverage needs of that part of the Valley.

Ms. Miller next discussed the requirement pertaining to the 100-foot fall zone. No homes will be allowed within the fall zone, which requires some consideration because the Independence project has vested rights to develop homes there. Ms. Miller indicated that City Planner/Economic Development Director, Grant Crowell, indicated that the homes were originally approved to have setbacks as small as 10 feet. Given the 100-foot height of the monopole tower and the fact that it is being located 86 feet outside of that zone, the additional 10-foot setback would be 96 feet, which would require a contingency to address the remaining four feet.

In response to Joseph Sartori's question regarding the fall zone in the originally proposed location, Ms. Miller stated that the fall zone relates to homes and not roads. In response to Van Neilson's question as to whether the developer of the property to the south is currently developing that property, Senior Planner, Jennifer Robison, stated that the developers are vested under the old Independence Plan. However, developers have formulated their own plans for some of the areas and the Planning Department has not yet seen the plans for that property.

In response to Chair Dansie's question regarding what is allowed in the MU zone, Mrs. Robison stated that the MU zone was created in 2007 for the east side of Bluffdale for the Independence project. It allows for residential, along with some commercial and light industrial uses. If the developer opted to develop the land as it is currently vested, there would be the previously mentioned problem with the four feet that need to be accounted for in the fall zone. Ms. Miller explained how the aerial imagery software used to create the graphic illustrations does not reflect exactly the fall zones that are provided in the meeting packet.

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Joseph Sartori sought to clarify the businesses that exist in the HC zone. It was stated that they are two separate construction companies. Board Member Sartori next sought to confirm that regardless of where the tower is located, if it were to fall, there would be the potential for destruction of neighboring property. Ms. Miller stated that the area marked in yellow denotes the area that would be meet the 200-foot requirement in the City Code.

In response to Van Neilson's question as to the ownership of the neighboring HC property, Ms. Miller stated that it is DKN Enterprises who leases it to a construction or gravel company.

Daniel Thurgood was identified as a representative for Technology Associates Engineering Corporation Inc. who is the contractor that is acting in behalf of Verizon Wireless.

Mr. Thurgood first addressed the fall zone. He stated that some cities have fall zone requirements to protect residential structures in the surrounding area. He then noted that he is unaware of a fall zone protection ordinance in the Bluffdale City Code; therefore, the verbiage regarding fall zones was added as a courtesy to Bluffdale City. If it is necessary, the monopole tower could be moved slightly to the north to address the concern previously identified by Ms. Miller regarding the 96-foot distance from potential homes. The tower height could also be reduced.

Mr. Thurgood then explained why the subject property was chosen for the tower. He reviewed a map showing where existing towers are located. One tower has a high elevation and is causing interference with other towers in the network. It is overloaded and is not functioning as it should. Therefore, it is not providing the level of service needed for the users in the area. Mr. Thurgood then identified an area where the residences are being serviced by a cell tower that is not on the map he was using. Thus, Verizon is trying to improve the capacity of the network for all the future residences because the City's Master Plan calls for residential and mixed uses. The current capacity is inadequate to meet that future need. Furthermore, Verizon is trying to provide a resource for other carriers to avert the creation of additional cell tower sites in accordance with the Bluffdale City Code, which requires a monopole tower to provide for co-location. For that reason, Verizon is proposing a 100-foot tower.

Mr. Thurgood stated that Verizon does not necessarily need that height, but it would facilitate the co-location of four other carriers to place antennas on the tower. If the tower were 60 feet high, there would eventually be four or five other towers in the area. The location of other towers would be limited by the setback requirements associated with monopole towers, so they would not be able to serve that area. Mr. Thurgood next showed a slide that showed what the proposed tower would be able to do.

In response to Van Neilson's question as to whether other sites have been considered, Mr. Thurgood replied in the affirmative, adding that the subject property is the sixth location that has been considered. There are a lot of high-tension power lines that interfere with the sites that have been considered. He noted that the pole cannot be moved any farther west.

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Van Neilson next asked about allowable locations for the Conditional Use Permit. Ms. Miller stated that it depends on the land use in the area. In some zones, proposed uses are a conditional use and in others they are a permitted use. In Bluffdale, monopole towers are a conditional use in all Commercial zones. Monopole towers are permitted uses on publicly owned land. Van Neilson next asked specifically about land that is zoned Agricultural. Ms. Miller stated that in the Agricultural zone, a monopole tower would also be a conditional use. Lattice towers and roof-mounted facilities are not permitted. Mounting an antenna on an existing tower is permitted. A wall-mounted facility is a conditional use in the Agricultural zone.

In response to Joseph Sartori's question as to whether Mr. Thurgood had spoken with the area residents due west of the proposed site, Mr. Thurgood replied in the negative. In response to Chair Dansie's question regarding the noticing requirement, Mrs. Robison stated that the Bluffdale City Code requires noticing to affected entities that are within 1,000 feet of the proposed project, which includes conditional uses.

Chair Dansie opened the public hearing.

Mike Stevens gave his address as 14471 Grey Fox Drive. He is a resident west of the railroad track and identified on a map where he lives. Mr. Stevens stated for the record that he is a Verizon Wireless customer. He noted that he has no problems with his service in the neighborhood. Mr. Stevens' concern with the 100-foot tower was that from the ravine up to where the subject property, there is an 80-foot difference in height. His back window will have a direct view of the tower on the hill, which does not appeal to him aesthetically. With all that is happening in the area, including the future expansion of 14600 South, Mr. Stevens stated was not in favor of the proposed location for the tower. He had spoken with many people in his neighborhood who feel likewise.

In response to Chair Dansie's request, Ms. Miller identified on the map where the cell tower would be located.

Cory Short gave his business address as 943 West 14600 South and identified a one-acre parcel of property that he owns, which is in the Heavy Commercial area. He then added that if he was a resident, he would not want that tower in his view. Mr. Short was open to the possibility of allowing the tower to be located on his one-acre parcel, which would be away from the residential area.

Chair Dansie requested that Ms. Miller review the residential areas that are adjacent to the subject property. The Heavy Commercial property includes the parcel owned by Mr. Short. Ms. Miller next pointed out the proposed location of the tower within the HC property. Mr. Short identified on the map the location of his parcel within the HC property.

In response to Chair Dansie's question regarding the development status of the I-1 property to the east of the HC property, Ms. Miller stated that it has been developed. Mrs. Robison elaborated on what is taking place on the I-1 property. In response to Chair Dansie's question

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regarding what is permitted in the I-1 zone, Ms. Miller stated that in the I-1 zone, a monopole would be a permitted use. Mr. Thurgood was not opposed to going into the Industrial zone, but his biggest concern was the number of residences directly west of the I-1 property. A monopole tower could have been placed on the I-1 property with no public hearing, but his company did not want to do that to the residences in the area. As a result, they are trying to stay as far to the south as possible to mitigate the visual impact on the residence.

In response to Joseph Sartori's question regarding the considerations involved with the location of a monopole cell tower, Mr. Thurgood stated that his company does not want the pole any farther east than the I-1 zone. He added that the property suggested by Mr. Short could possibly meet their requirements. That property is very narrow, which is why it was not considered. Mr. Thurgood added that with the HC zone, there are streets that would allow access to the parcels, but they are not public streets. In one location that was being considered, they would have to obtain nine access easements to allow access to the property. One neighbor said no which put an end to that location.

Mike Stevens noted the location of the railroad track and added that a monopole is quite unsightly, especially in that location because nearby is the nature preserve and railroad track. In addition, there is the hazardous risk of the tower falling down the hill.

Van Neilson read an email from Jared Van Moorlehem who resides at 14544 South Stone Fly Circle. Mr. Van Moorlehem expressed opposition to the variance and highlighted the following two reasons:

1. Health concerns: He cited studies that show that the radiation emitted by a cell tower negatively impact cognitive function, particularly in children.
2. Property values: Mr. Van Moorlehem cited studies that show that people are less inclined to live near cell towers and that they have a negative impact on property values and the tax dollars derived as a result of the diminished property value.

Mr. Van Moorlehem further urged the Board of Adjustment to decline the application because Verizon is a very profitable company and can afford to find a more suitable location. He concluded his email by requesting a copy of the minutes of the meeting and asked that his email be included as a part of the public record.

There were no further public comments. Chair Dansie closed the public hearing.

Van Neilson reported that he looked up the references that were cited in the email from Mr. Van Moorlehem. In doing so, he learned that the Electromagnetic Field (EMF) comes from electricity. Consumers of electricity used in homes or offices, such as home appliances, lights, dimmer switches, computers etc., and outdoor sources or consumers of electricity such as power lines, transformers, cell phone towers, city-wide wireless Internet, where provided, and electromagnetic radiation generated by neighbors all demonstrate that people are surrounded by

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EMF all the time. Van Neilson asked Mr. Thurgood to address the concern regarding EMF that was presented in Mr. Van Moorlehem's email.

Mr. Thurgood acknowledged that he is not a radio frequency engineer. He referenced a statement that Verizon provided that recommends that concerned individuals look at the World Health Organization's web site, which includes a statement that runs contrary to what Mr. Van Moorlehem indicated in his email. The American Cancer Association has likewise issued a statement regarding cell phone towers and their relation to cancer and health. Mr. Thurgood stated that he was not qualified to comment beyond what has been provided by the aforementioned organizations.

Van Neilson commented that he reviewed a statement from the World Health Organization that indicated that "the jury is still out" on those statements. He had heard that there are devices that can be worn to reduce EMFs around a person. Chair Dansie stated that we now live in a wireless world and the EMFs are a risk that people take for granted. When there were assertions that cell phones caused cancer, that didn't stop people from using them. Chair Dansie did not want to minimize the concerns or risks, but stated that wireless equipment is a fact of life today.

Joseph Sartori stated that he works in Radiology. He has a badge that measures the amount of radiation to which he has been exposed and it is constantly reviewed. He then noted that Mr. Van Moorlehem lives directly west of the proposed cell tower site. He acknowledged that there are many unknowns and did not want to downplay Mr. Van Moorlehem's concerns regarding the health effects of a cell tower. That said, efforts are being made in medicine and beyond to minimize things that people even think might be harmful. Therefore, the unknown risk variables are having an impact on the public response to the proposed location for the cell tower. Mr. Thurgood acknowledged those concerns and stated that Verizon adheres to the FCC power guidelines regulating the amount of power a cell tower can emit. In fact, he stated that Verizon maintains a level much lower than what is prescribed by the FCC. Mr. Thurgood added that any time changes are made to a cell tower, new tests are conducted to ensure that it is in compliance with FCC guidelines. That typically occurs about once every six months when tower upgrades take place. Mr. Thurgood emphasized that cell towers are a strict industry.

Ms. Miller noted that City Attorney, Vaughn Pickell, requested that the members of the Board of Adjustment be made aware of a federal law that has to do with the FCC. She read an excerpt of the law, as follows: "No State or local government or instrumentality may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effect of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." Ms. Miller clarified that the City cannot regulate more than the FCC. She added that the City cannot preclude the presence of cell towers solely based on the concerns of radio frequency. The federal law referenced by Mr. Pickell and Ms. Miller was included in the public record.

Mr. Thurgood next addressed the issue of visual impact and explained that if the variance is granted and Verizon moves forward with the proposed site, there are things that can be done,

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such as the use of “stealth structures.” For example, on Bangerter and Redwood Road the tower was concealed as a water tank. Along 10600 South, there are six artificial “pine trees” to help conceal a cell tower. Mr. Thurgood stated that Verizon is open to suggestions from the neighbors. The “water tank” tower is 80 feet high and will conceal two wireless carriers.

Van Neilson asked about the issues associated with the location of the tower on the property and the impact the location might have on surrounding uses. Mr. Thurgood stated that the location was a compromise between what the City suggested and where the property owner would allow it on the property. The south side of the property was undesirable mainly because there is a very slim chance that one day 14600 South may just go straight. Verizon doesn't want to be in the way if that happens. Also, anywhere else in the property still falls within the 200-foot setback restriction. Verizon was willing to locate the tower within the yellow area on the map until the City Engineer requested otherwise so that there is not a conflict in the future between Verizon and Bluffdale City. Mr. Thurgood was willing to meet with the property owner if another option needs to be explored.

In response to Chair Dansie's question regarding the life expectancy of a cell tower, Mr. Thurgood stated that the tower is built to be there forever, but Verizon enters into 25-year leases. The leases are renewed at the end of the lease period. Mr. Thurgood added that the cement pad is 25 to 50 feet deep, so it is a very permanent structure.

Van Neilson had some concern with the appearance of the tower, particularly with regard to height and where it is located on the property. He asked if the tower could be placed closer to the southwest corner of the yellow triangular section on the map, perhaps about 25 feet south of the property. That might mitigate some of the concerns and still allow for the widening of the road. In response to Van Neilson's question as to whether Mr. Thurgood has visited with landowners in the area, Mr. Thurgood replied in the affirmative and added that the main concern regarding the proximity of the tower to the building was the turnaround for large equipment that is in there.

The lease for the tower is starting at 20 feet by 30 feet, but for each carrier that uses the tower, there would need to be additional parcels of 20 feet by 15 feet each. A 100-foot tower has been selected in order to allow for growth. If there is a 60-foot tower that is exclusively for Verizon, another carrier would need to find a separate location. The 100-foot tower would preclude the proliferation of additional towers. Chair Dansie thought it was a great idea to build a tower that allows other carriers to make use of it later. Mr. Thurgood stated that with expansion, the base area could expand to 80 feet by 80 feet. If that happens, there would be an even bigger problem for the turnaround of trucks.

With regard to the potential expansion of 14600 South, Mrs. Robison stated that it is part of the City's five-year plan. The City is in the process of acquiring the land needed for that expansion.

In response to Van Neilson's confirmation that the railroad tracks are in the R-1-43 zone, Ms. Miller replied in the affirmative.

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Van Neilson noted that the yellow triangle would meet the setback requirements. When he sought to confirm the distance of the proposed location from R-1-43 zone, Mr. Thurgood stated that the R-1-43 zone is 20 feet west of the subject property. When Van Neilson stated that the setback specified in the City Ordinance is 200 feet, Ms. Miller replied in the affirmative. Ms. Miller reiterated that from the western boundary, the setback would be a 90% reduction from what the City Ordinance stipulates. From the southern boundary, the setback would be 86 feet, which is a 57% reduction of the requirement.

Van Neilson had concerns with having the tower so close to the R-1-43 zone. He acknowledged the efforts Mr. Thurgood had made to solve Verizon's problem. He empathized with the residents' concerns about the visual impact of the tower in the proposed location. He also wondered how thoroughly Mr. Thurgood had visited with the landowners in the HC property to examine the viability of locating the tower elsewhere in the HC property.

Chair Dansie suggested that the Board of Adjustment examine the standards of review as specified in Utah Code Ann. § 10-9a-702 to determine whether the applicant has adequately addressed the following standards:

1. Literal enforcement of the ordinance would cause an *unreasonable hardship* for the applicant that is not necessary to carry out the general purpose of the land use ordinances.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the land use ordinance is observed and substantial justice done.

Although she thinks the cell tower is a great idea, Chair Dansie opined that the hardship for the location is self-imposed by the applicant. Van Neilson concurred with Chair Dansie's opinion because the applicant has not been able to work out the location with the owners of the property. Verizon does not own the property. Joseph Sartori agreed with the opinions shared by Chair Dansie and Van Neilson. The Board of Adjustment has tried to propose alternate sites and there has been a great deal of dialog to understand what is required. Joseph Sartori agreed that the hardship was self-imposed.

Chair Dansie suggested that the applicant's failure to satisfy the first requirement of the standards of review would be adequate to make a motion to deny the variance request.

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Mr. Stevens agreed with what Mr. Van Moorlehem wrote in his email, even though “the jury was still out” on the dangers enumerated in his email. Mr. Stevens added that the proposal is to place a permanent structure very close to a residential neighborhood that has the potential to cause damage. With regard to the EMFs referenced by Van Neilson, Mr. Stevens stated that there will be constant exposure with the cell tower so close to a residential neighborhood. He reiterated the concerns expressed about the impacts the tower would have on aesthetics and property values of the surrounding residential areas. Mr. Stevens expressed his hope that the City will make decisions that are in the best interest of the residents.

In response to Joseph Sartori’s question as to why the setback requirement is 200 feet, Ms. Miller stated that the buffer has been added for visual impact. Board Member Sartori asked if there are any other aspects that are missing. Chair Dansie clarified that the Board of Adjustment can base its decision only on the five criteria specified in Utah Code Ann. § 10-9a-702.

Colleen Dansie moved to deny the variance as requested by Verizon based on the fact that it does not meet the following standards of review set forth in Utah Code Ann. § 10-9a-702:

- 1. The unreasonable hardship is self-imposed.**
- 2. There are no real special circumstances attached to the property that do not come into play with other pieces of property in the same zone.**
- 3. The granting of the variance is not a substantial property right.**
- 4. The variance would not substantially affect the general plan and would be contrary to the public interest, particularly with regard to the health concerns that have been voiced.**
- 5. The City would adhere to the spirit use ordinance and substantial justice would be done.**

Van Neilson seconded the motion. Vote on the motion: Van Neilson-Aye; Joseph Sartori-Aye; Colleen Dansie-Aye. The motion passed unanimously.

Chair Dansie expressed appreciation for those who attended the meeting. She also complimented Ms. Miller on her staff report. Chair Dansie informed Mr. Thurgood that he now has a feel for what the City is looking for as he continues to explore other options.

3. Motion to Approve Minutes of the October 4, 2016, Meeting of the Board of Adjustment via Email Correspondence.

Van Neilson moved to approve the minutes of the October 4, 2016, meeting of the Board of Adjustment via email correspondence. Once the minutes are prepared, they shall be emailed to the Members of the Board of Adjustment. The Members of the Board will then

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have ten (10) days to review the minutes and submit any changes to the Secretary. If after ten (10) days there are no changes, the minutes shall stand approved. If there are changes, the process shall be followed until all changes are made and the Board is in agreement. Colleen Dansie seconded the motion. Vote on the motion: Van Neilson-Aye; Joseph Sartori-Aye; Colleen Dansie-Aye. The motion passed unanimously.

4. Adjournment.

The meeting adjourned at 7:26 p.m.



Gai Herbert
Community Development Assistant

Approved: October 21, 2016