

CITY OF CLE ELUM
PLANNING COMMISSION MEETING
Meeting Minutes
03 September 2019 6:00

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6 **1. Roll Call and Call to Order**

7 *Commissioner Clark called the meeting to order at 6:00pm.* Commissioner Hawk was
8 absent. *Commissioner Davis motioned to excuse Commissioner Hawk, Commissioner*
9 *Fluegge seconded.* Passed unanimously.

10 **Set Agenda**

11 None.

12 **2. Review of the minutes**

13 Review minutes from August 20, 2019. No changes.

14 **3. Announcements, Appointments, Awards, & Recognitions**

15 *Planner Temple announced Commissioner application, Steven Malek. Commissioners*
16 *asked him questions such as his availability to be present at meetings and the role of*
17 *the Commission.*

18 **4. Business Requiring Open Hearing**

19 Shoreline Master Program (SMP) – Joint Review Hearing. *Planner Temple and*
20 *Ecology's Lennard Jordan explained the changes to the SMP. Commissioner Clark*
21 *opened and closed the hearing at 6:17pm. No comments. Commissioner Davis*
22 *motioned to recommend the changes for adoption by City Council. Commissioner*
23 *Lundh seconded. Passed unanimously.*

24 **5. New Business**

25 No new business.

26 **6. Citizen Comments on Non-Agenda Items (limited to 5 minutes)**

27 None.

28 **7. Public Appearances**

29 None.

30 **8. Unfinished Business**

31 CUP-2019-002 and VAR-2019-001 – Wireless/Vertical Bridge Wireless Communication
32 Facility.

33 *Commissioner Clark reviewed the August 20th meeting proceedings and announced that*
34 *there would be no public comment at this meeting.*

- 35 • Commissioner Clark: *I want to start before we get into this. I went through all the*
36 *submissions, the presentation, the comments, and so forth and I came back and looked*
37 *through the municipal code and I want to make sure read this through you guys and I*
38 *made copies of the municipal code. Here's the residential district code. So this is a*
39 *Conditional Use Permit ["CUP"] that we are hearing and the Variance is kind of*
40 *secondary so you have to get through the CUP portion. I remind you that you are the gate*
41 *keepers here so you the Municipal Code is your Bible so when you read through this, so*
42 *there are permitted uses, one accessory dwelling per unit, etc., you can go down through*
43 *them. so those are the permitted uses, would you like me to read through them?...so you get*
44 *to the CUP and that is where this application kind of gets me it's Telephone Exchanges,*
45 *Electric Substations and similar installations for public service. The difficulty I'm having*
46 *is that a telephone exchange is like the Quest operation across from the post office, it's*
47 *where you connect wires together. So from this I then went through all of the other zoning*
48 *districts and we have Business Park, Industrial, Old Town Commercial and Entry*

1 *Commercial. All of those districts in their permitted use or conditional uses, but it clearly*
2 *says wireless communications. That's where I'm stumbling on this. I was part of the other*
3 *tower here. I can't exactly remember anything, I just remember kind of vaguely about the*
4 *difference between wireless and an exchange. So I'm just bringing that up before we go*
5 *forward that I'm having trouble with it. I'm having trouble tying that tower, which is a*
6 *cellular communication tower, to a telephone exchange that is wires connected. And I*
7 *think that my concern is that if this isn't right then it should be denied just on that basis.*
8 *And sent back to the applicant and there are other zones where the tower is permitted.*
9 *Several others Industrial, and so forth, but not in residential. I would like to if they are*
10 *stuck on residential then I think they should petition the council for a change in the*
11 *ordinance or adopt a new ordinance. But it seems to be clear that this is the only one that*
12 *has telephone exchanges in it yet the others all have cell towers and its like it was an*
13 *omission...or this was clearly intended and I just have to take it on what it says in the*
14 *municipal code and so I'm assuming it doesn't say anything else but my interpretation is*
15 *that it's not a cell tower it's not cellular communication. So I'll just throw that out.*

- 16 • Commissioner Lundh: *I looked and looked and looked trying to find something and I*
17 *read telephone exchanges as not that they require wires right, its essentially what a*
18 *telephone exchange is what connects a phone to the telephone network and in this case*
19 *wireless is wireless so you could argue that it is the connection point but I'm on board with*
20 *what you're saying because it's not called out specifically, and because it's called out*
21 *specifically in other ones it's troublesome.*
- 22 • Commissioner Clark: *That's my concern is that you on something that has so much*
23 *public input that we need to get this right. if it's not allowed in residential and that's our*
24 *interpretation of the municipal code tonight, then we need to deny it, sent it back, and have*
25 *them either reapply at a different location, there were a few other locations that seemed to*
26 *meet their criteria, both city owned property and both public owned property in zones that*
27 *either allow it as a permitted use, or a conditional use, either or, but there's a few of them.*
28 *but that's my dilemma at this point and I'm looking to you guys to, I've probably been*
29 *through a few more of these [?] than you have but I'm looking at this and seriously I'm*
30 *having a hard time getting over this I'd like to see the language really clear. Tell me that*
31 *it's a cell tower because in Old Town Commercial it allows it on buildings...*
- 32 • [Commissioner Lundh: *asked staff what the Gore Property was zoned. Staff answered*
33 *Industrial, but proposed to be General Commercial in proposed area wide zoning*
34 *amendments]*
- 35 • Commissioner Clark: *There are the zones that it's not allowed in are believe it or not*
36 *General Commercial, Multi Family, Planned Mixed Use and obviously Public Reserve.*
37 *[Staff corrected that Planned Mixed Use allows the uses from other zones] Yes.*
- 38 • Commissioner Lundh: *and that's how it is currently.*
- 39 • Commissioner Clark: *yes, so the zones that allow either through conditional permit or*
40 *permitted use are Business Park, Industrial, and Old Town Commercial or Entry*
41 *Commercial. And in those it clearly states cell tower or cellular communication.*
- 42 • [*Staff clarified that when uses are not specifically stated in the code, the planner has*
43 *the authority to review the proposed use in terms of other permitted or conditional*
44 *uses in the code and make a determination of whether it is a similar use. Staff stated*
45 *Residential Zoning lists telephone exchanges and electric substations and that staff*
46 *made a determination that cellular towers fit into that use.]*
- 47 • Commissioner Lundh: *and that thought was that fits into similar installations for public*
48 *service.*

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- Commissioners clarified that the zoning code being discussed is the current/2001 code, not the proposed zoning code accompanying the comprehensive plan)
 - Commissioner Davis: *so I went in a little bit different direction after the hearing and I feel like the citizens should be aware of the FCC tower and antenna siting rules, and I went and looked it up and state and local authority over zoning and land use decisions for personal wireless service the federal law puts limitations on what we can do we cannot consider the health aspect. If we do, if that's an issue that we're making a decision on it's against the law. And that seems a little weird to me but that's the law. So I would encourage everyone to look at what the FCC says and what authority this group has. I think we can't discriminate between companies and we can't prevent prohibit providing service and if we deny an application we have to provide substantial written evidence to do that. And so I found that a little chilling. That local citizens have...*
 - Commissioner Lundh: *limited say*
 - Commissioner Davis: *yeah exactly. So that's troublesome to me. That the people who live here don't have a lot of control. I was also hung up on the conditional use for this after a lot of thought and reflection I've... and at the last meeting someone stood up and said they didn't know who any of us are. My name is Deb Davis, I work for the Forest Service. I have been working on the trails on the Cle Elum Ranger District for 28 years. I have been a resident here for 14 years. I started coming to this town before there were any coffee stands. So I have watched the changes come. I was recruited to volunteer for this position and I thought it would be a good thing because I'm really interested in affordable housing. I, really interested in this being a livable town for the people who live here. And after 2 years of being on this commission, this has been the hardest thing that has come up for me. And the first chief of the Forest Service said when there is a decision to be made make sure it provides the greatest good for the greatest number over the long run, and that is what I am trying to apply to this. What provides the greatest good to the greatest number over the long run. And I think as a City of Cle Elum planning commissioner the citizens of this town kind of have priority there. So I have a lot of questions about our code, I think its behind, I also would like it to be clearly spelled out – what is permitted and what a conditional use is in a residential area. I don't know that a cell tower in a residential area, especially a 153-foot tall one doesn't quite jive with me. I wish our code said something about buffers like what's the distance it has to be away from an occupied building. So just thinking it over, I don't feel good about moving forward with this application. But that's me. Especially after I counted all the comments, that's 300-plus people who had a say and to me for a town of this size that's a lot.*
 - Commissioner Clark: *well I think that aside from going into all the different submissions and so forth, I am still stuck on this and having been involved in real estate since I was 16 years old – multiple lawyers and I can't tell you how much money but issues like this when I read that and I'm reading it telephone exchanges, electrical substations, I get the fact that if it was your predecessors on the commission that wanted that changed I think they would have changed it because the other sections are updated. I just I'm really struggling with this. And if I just see flags not that I'm saying anything about whether I'll vote for or against it I'm having problems with that just getting over the fact that it doesn't say cell tower I'm really having a problem with that so if you can get me beyond that I'm great. But I'm really struggling with that. And if I feel we deny it they can change this, I can't we can't but if it's that important to them change it and bring it back or go to one of the other locations that was identified as equal to that location which the waste water treatment plant, the dog park, those were two of the city properties there was I think a few others. As much as I'd like to move this forward, you know, I'm just I'm stuck. I'm literally stuck on this language because when I read that I'm reading that it's not a cell tower. They're*

1 *talking about telephone exchanges where you're connecting hard wires or electric*
2 *substations. I know what a substation looks like – it doesn't look like a 153 foot tower.*

- 3 • Commissioner Lundh: *It'd be one thing if it wasn't called out in other places but because*
4 *it's called out specifically in other places...*
- 5 • Commissioner Clark: *that's my tripping point is that it's called out specifically in other*
6 *districts but not this one. And so I'm trying to I can't telepathically communicate with your*
7 *predecessors to figure out what they were thinking but it's that's what it says to me and*
8 *that's my feelings on it. I just I'm having trouble getting beyond that. I don't know how*
9 *you guys feel...*
- 10 • Commissioner Davis: *Well I was looking because I have questions about conditional use*
11 *permits in this land use goal Conditional Use Permits, street vacations, variances and other*
12 *special applications shall only be permitted when there is an overriding permanent public*
13 *benefit consistent with the goals and policies of this Comp Plan. I don't know about the*
14 *overriding permanent benefit.*
- 15 • Commissioner Lundh: *I think that argument could be made, not only because it expands*
16 *the amount of carriers available but also because as I understand it AT&T is very*
17 *interested in piggybacking on this tower shortly after and Governor Brown and Governor*
18 *Inslee just signed some legislation or an agreement like an RFP agreement with AT&T*
19 *that they are going to be the primary provider of whatever the E911 EMS System is so I*
20 *think you could make a big argument that there's an overriding need to have expanded*
21 *AT&T coverage if that's what our first responders are going to rely on , but that said I've*
22 *spent about I don't know 25 hours on this this week, I took a hike with Kate up to the*
23 *property and we hiked around for a couple hours and had a great conversation and then*
24 *we went down and checked out the gore property I was trying to get Greg Barr because I*
25 *know he was interested in that but we never hooked up. But I certainly have some big*
26 *concerns about the location as well and I think this is an opportunity to perhaps ask that*
27 *question. And certainly this is a this is troubling to me as well I was looking around trying*
28 *to see if there was an inconsistency and this is one that didn't pop out to me because I kind*
29 *of made an assumption assuming what telephone exchanges meant but it being called out*
30 *is an important thing to note.*
- 31 • Commissioner Clark: *well I would like to see that changed if you guys are saying you*
32 *need to be specific if you are going to deny it on just this because otherwise we need to go*
33 *further. I'm just having I'm having difficulty getting over the conditional use part in the*
34 *zoning for Residential. If that was cleaned up we could have the hearing all day long as*
35 *long as it takes, but I just if we approve and or deny either it could be challenged by the*
36 *applicant or*
- 37 • Commissioner Lundh: *anybody on record*
- 38 • Commissioner Clark: *yeah that's the concern I have and it looks to me let's get it right.*
- 39 • Commissioner Lundh: *can we play that out? How does that all go down? So we deny it...*
- 40 • Commissioner Clark: *Then it goes back to the applicant. This particular thing is difficult*
41 *I can say difficult. The City of Cle Elum is the property owner the city of cle Elum did a*
42 *site design review application. The applicant is Vertical Bridge. And if we deny it they*
43 *could appeal it and it would go to City Council. The City Council would have to look at that*
44 *based off of our decision that hey we the language isn't clear enough for us it's not telling*
45 *us cell towers in this case, my case that I'm trying to that I'm having trouble with here.*
46 *Then they would either approve it or agree with our denial. Then the to me next step the*
47 *proper step is to go back in that location if they are so stuck on that location then change*
48 *the code so that it says cell tower in Residential. If not then ok let's go with option 2 or 3 or*
49 *4 or whatever they were because there were several let's say 3 or 4 locations that seemed to*
50 *be acceptable to Vertical Bridge that when you look at the map one in particular to me in*

1 *my mind is the waste water treatment plant. It's in industrial it has utilities, it's got trees*
2 *albeit some of them short some of them close to 100 feet tall and there's a mix there's fir,*
3 *pine, and obviously cottonwood down there but if that location or another location would*
4 *work that's in an existing approved zone either as a conditional use or a permitted use then*
5 *considered that, because again Residential, I just I don't read it in there and it makes me*
6 *uncomfortable because I think it opens it up to challenges either way. But again you know*
7 *I always consider the Commission kind of the gate keepers they're supposed to interpret*
8 *this code and my interpretation is different than what staff has looked at and what the*
9 *attorneys have looked at and I'm just reading it like that's not what it means to me and*
10 *maybe it's just because of my age but it just doesn't mean that to me. And then I look at the*
11 *other codes and the other districts or how it is written in the other districts and it's clearly*
12 *stated.*

- 13 • Commissioner Lundh: *because of that I don't think it's your age because that makes*
14 *sense.*
- 15 • Commissioner Davis: *I agree it makes sense to me too.*
- 16 • Commissioner Fluegge: *Yeah I mean if it's saying it in one spot and it's not in the other*
17 *then I'm not willing to make that interpretation to [? Couldn't hear].*
- 18 • Commissioner Clark: *Do you guys want to make a motion or talk about it further because*
19 *in my opinion and it's just my opinion is that if we can't get passed the conditional use*
20 *permit we can't get passed the height variance or any of the other issues related to this we*
21 *just have to make sure that it is the use that's either in a permitted use or conditional use*
22 *and I am just having difficulty with that one. All the testimony and submissions and so*
23 *forth were great and I read all of them but I'm stuck on this one because I think it's a*
24 *tripping point, I think it's a trip wire. If I was somebody opposed or for I'd look at that and*
25 *it's easy for an attorney to twist words at \$500 an hour, so.*
- 26 • Commissioner Lundh: *Well and that's going to be the question probably, what does the*
27 *court think if it does go that far, right?*
- 28 • Commissioner Clark: *Yeah if it's challenged, but I just think that I've probably said*
29 *enough. If you guys want to go forward then you have to convince me that that's not the*
30 *tripping point. If not, then I think we need to make a motion and deny the application as*
31 *presented for that reason.*
- 32 • Lundh: *I will make a motion that we deny CUP-2019-002 on the basis that the code is not*
33 *clear that this is a permitted conditional use in a Residential zone.*
- 34 • Davis: *I'll second the motion*
- 35 • Commissioner Clark: *Any additional discussion? All in favor? Motion passed*
36 *unanimously.*

37 **9. Staff Report**

38 None.

39 **10. Report of Committees**

40 Commissioner Lundh reported on the parks committee for the City – Mayor appointed
41 Commissioner Lundh, former Commissioner Devin Smith, and Councilmember Beth
42 Williams, which gives them more authority for improving the parks – excited to get
43 started on park projects.

44 **11. Comments from Commissioners and/or Staff**

45 None.

46 **12. Adjournment**

47 *Motion to adjourn made by Matt Fluegge motioned to adjourn the meeting at 6:49pm,*
48 *and seconded by Commissioner Davis. Motion carried unanimously. Meeting*
49 *adjourned 6:49 pm. Next regular meeting Tuesday 17 September 2019, 6:00 pm.*