

**Minutes of a Regular Session of the Common Council of the Town of Clarkdale
Held on Tuesday, May 12, 2015**

A Regular Meeting of the Common Council of the Town of Clarkdale was held on Tuesday, May 12, 2015, at 6:00 P.M. in the Men's Lounge of the Clark Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, Arizona.

CALL TO ORDER – Meeting was called to order at 6:06 P.M. by Mayor Von Gausig.

Town Council:

Mayor Doug Von Gausig
Vice Mayor Richard Dehnert
Councilmember Scott Buckley

Councilmember Bill Regner
Councilmember Curtiss Bohall

Town Staff:

Town Manager Gayle Mabery
Town Clerk/Finance Director Kathy Bainbridge
Community Services/Human Resources Director Janet Perry
Community Development/Economic Director Jodie Filardo
Senior Planner Beth Escobar
Utilities/Public Works Director Wayne Debrosky
Police Chief Randy Taylor
Deputy Clerk Mary Ellen Dunn
Town Attorney Rob Pecharich
Town Attorney Jonathan Millett

PUBLIC COMMENT – The Town Council invites the public to provide comments at this time. Members of the Council may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. §38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date. Persons interested in making a comment on a specific agenda item are asked to complete a brief form and submit it to the Town Clerk during the meeting. Each speaker is asked to limit their comments to five minutes.

There was no public comment.

REPORTS

Current Events – A brief summary of current events. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary.

Mayor Von Gausig's Report –

- April 9, 2015 – Attended Yavapai County Mayors/Managers meeting
- April 14, 2015 – Attended meeting with Freeport McMoRan
- April 15, 2015 – Telephone conference with Verde Front leaders

- April 20, 2015 – Gave String of Pearls presentation at County Board of Supervisors meeting
- April 24, 2015 – Verde Valley Birding and Nature Festival Kayak trip
- April 25, 2015 – Verde River Institute kayak trip
- April 28, 2015 – Met with Chris Thomas and Peter Culp
- May 4, 2015 – Conference call with Dorothy Fire-Cloud;
 - Talked with Bill Cobb regarding the United Verde Soil Program
- May 5, 2015 – Gave keynote address at luncheon
- May 6, 2015 – Observed and photographed soil sampling;
 - Photographed proposed cell tower site and related pictures
- May 7, 2015 – Met with Freeport McMoRan, Chris Thomas and Gary Boettcher

Almost daily phone calls, research and personal meetings with Town Manager Mabery and others regarding the United Verde Soil Program.

Vice-Mayor Dehnert's Report –

- April 21, 2015 – Attended first meeting of Local Emergency Preparedness committee
- April 23, 2015 – Attended NACOG Regional Council meeting
- April 24, 2015 – Visited home of Brian and Karen Daniels regarding cell tower issues and to get view
- May 5, 2015 – Attended meeting of Yavapai County Board of Health
- May 9, 2015 – Attended the Han Kachina Awards Banquet honoring volunteerism in Arizona; one of the awards presented was to Clarkdale resident Dr. Catolico for his work in reducing overdoses/abuse of pain medication

Councilmember Bohall's Report –

- April 23, 2015 - Attended NACOG meeting in Flagstaff
- May 9, 2015 – Attended presentation at Verde Canyon Railroad

Councilmember Regner's Report –

- April 15, 2015 - Attended Yavapai College Board Advisory Committee meeting
- April 19, 2015 - Met with Ruth Wicks regarding Yavapai College
- April 28, 2015 - Attended Local First Arizona meeting
- May 5, 2015 - Met with Verde Valley Board Advisory Committee Chair Paul Chevalier
- May 6, 2015 - Attended Verde Valley Board Advisory Committee meeting
- May 8, 2015 - Met with Dr. Patricia McCarver, Yavapai College District Governing Board chair
- May 9, 2015 – Attended presentation at Verde Canyon Railroad

Councilmember Buckley's Report –

- April 17, 2015 – Attended NAMWUA meeting
- May 5, 2015 – Attended Downtown Clarkdale Business Alliance meeting

Town Manager Mabery's Report –

Since the issue arose that created the United Verde Soil Program most of her time has been spent researching. Special Council meeting has been scheduled for May 19, 2015 at 6:00 p.m. to concentrate on that program. Three entities will make presentations: the Arizona Department of Environmental Quality, Freeport Minerals Corporation, and the Arizona Department of Health Services.

Organizational Reports – Reports regarding regional organizations.

CAT/ VVTPO – Cottonwood Area Transit and the Verde Valley Transportation Planning Organization & other transportation affiliations. Councilmember Bohall:

- No report

NACOG - Northern Arizona Council of Governments. Vice Mayor Dehnert:

- Jodie Filardo did presentation on Verde Valley Broadband Initiative;
- ADOT presentation on future projects

NAMWUA - Northern Arizona Municipal Water Users Association. Councilmember Buckley:

April 17, 2015 meeting included

- a discussion on pinon tree removal for better water penetration;
- recharging Big Chino Wash;

VRBP – Verde River Basin Partnership. Mayor Von Gausig:

- No report

VVLP – Verde Valley Land Preservation. Councilmember Regner:

- No report

YC Advisory Board – A report from the Yavapai College Advisory Board representative.
Councilmember Regner:

Board recommendations:

- Postpone capital improvement projects until strategic plan is developed and approved;
- Increase marketing and recruitment efforts to parents and students in the Verde Valley;
- Recommendation to not raise property taxes this year (Councilmember Regner noted that he did not participate in this vote/discussion)

CONSENT AGENDA - The consent agenda portion of the agenda is a means of expediting routine matters that must be acted on by the Council. All items are approved with one motion. Any items may be removed for discussion at the request of any Council Member.

- A. **Approval of Minutes of the Common Council** - Approval of the minutes of the Regular Meeting held April 14, 2015 and Special Meetings April 14th and April 28, 2015.
- B. **Claims** - List of specific expenditures made by the Town during the previous month. April, 2015 check log and PPE dated April 4, 2015 and April 18, 2015.
- C. **Board and Commission Minutes** – Acknowledgement of receipt of minutes and draft minutes of the previous month’s Board and Commission Meetings.
Board of Adjustments Notice of Cancellation of meeting April 22, 2015
Design Review Board minutes of the meeting held April 1, 2015
Planning Commission minutes of the meeting held April 21, 2015
Parks and Recreation Committee Notice of Cancellation of meeting April 8, 2015
- D. **Memorandum of Understanding (MOU) between Northern Arizona Council of Governments (NACOG), Yavapai County and the Town of Clarkdale** – Approval of a MOU identifying general responsibilities of participating agencies regarding the Highway Safety Improvement (HSIP) Transportation Improvement Program (TIP) to perform signage upgrades/rehabilitation for the purpose of reducing traffic fatalities and serious injuries on public roads.
- E. **Special Event Liquor License** - Approval of a recommendation to the State Department of Liquor License and Control to approve a Special Event Liquor License for the Verde Valley Habitat for Humanity, Inc.’s fundraiser to be held on Saturday, June 13, 2015 from 5:00 p.m. to 9:00 p.m. at the Clark Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, AZ.

Vice Mayor Dehnert moved to accept Consent Agenda items A – E as presented. Councilmember Bohall seconded the motion. The motion was approved unanimously.

PRESENTATION OF CITIZENS AWARD – presentation of Citizens Awards to Quintin Benites, Jesse Benites, and Joseph Benites for their courageous service and efforts in saving the life of David Franks.

Police Chief Randy Taylor and Officer Nicole Florisi presented the awards to the Benites boys.

This is a presentation and no council action is required.

NEW BUSINESS

VERDE VALLEY HABITAT FOR HUMANITY REQUEST FOR WAIVER OF FACILITY USE FEES – Discussion and possible action regarding a request for waiver of the facility use fees for their fundraiser at the Clark Memorial Clubhouse June 13, 2015.

The Verde Valley Habitat for Humanity has requested a Special Event Liquor License for a fundraiser to be held on Saturday, June 13, 2015 from 5:00 p.m. to 9:00 p.m. at the Clark Memorial Clubhouse, 19 N.

Ninth Street, Clarkdale, AZ.

In association with the request for the Special Event Liquor License for their fundraiser, they have requested that the Town of Clarkdale waive the facility use fees required to rent the Clark Memorial Clubhouse.

The total rental fee for the clubhouse is \$852.00 for this event. Of that fee, the Town will be paying Facility Ambassadors \$156.00 and Police Officers \$400.00 for a total of \$556.00. The remaining \$296.00 will go towards cleaning, supplies and utilities.

Town Clerk/Finance Director Kathy Bainbridge presented information on this agenda item.

Vice Mayor Dehnert stated that one of the reasons for charging the fees is to protect the building.

Mayor Von Gausig suggested waiving only the upkeep fees.

Vice Mayor Dehnert moved to approve a forbearance of \$296.00 and Habitat for Humanities to pay the balance of the fees. Councilmember Bohall seconded the motion. The motion was approved unanimously.

SERIES 13 – IN-STATE DOMESTIC FARM WINERY LICENSE FOR COTTONTUCKY LLC, AGENT, JOSEPH BECHARD, D/B/A CHATEAU TUMBLEWEED– Discussion and possible approval of a recommendation to the Arizona Department of Liquor License and Control for approval of an In-state Domestic Farm Winery - Series #13 Liquor License application from Cottontucky LLC, Agent Joseph Bechard, d/b/a Chateau Tumbleweed at 1151 W. State Route 89A, Clarkdale, AZ.

Cottontucky LLC, Agent Joseph Bechard, d/b/a Chateau Tumbleweed at 1151 W. State Route 89A, Clarkdale, AZ has applied for a Series #13 In-state Domestic Farm Winery Liquor License.

An In-state Domestic Farm Winery is a winery located in Arizona that produces at least 200 gallons but not more than 40,000 gallons of wine annually.

This non-transferable, In-state Domestic Farm Winery liquor license has on- and off-sale retail privileges and allows the holder to sell and deliver wine produced on the premises to businesses licensed to sell wine in and out-of-state, and to serve wine produced on the premises for on and off-sale consumption and for the purpose of sampling. An in-state domestic farm winery that produces not more than 20,000 gallons of wine in a calendar year may make sales of wine produced on premises to consumers who order by telephone, mail, fax, catalogue or internet per A.R.S. §4-205.04(C)(9)(a)-(g). These orders must be sent to an Arizona-licensed wholesaler, then to an Arizona-licensed retailer who will arrange delivery to the consumer. Other than this exception, Internet sale of liquor is not permitted in the state of Arizona. A.R.S. §4-205.04(D)

Chateau Tumbleweed was posted with the required notification to the public that the Town of Clarkdale Council would review this request in accordance with the Arizona Department of Liquor Licenses and Control requirements. The notice was posted on the building April 20, 2015 and was scheduled for

action by the Clarkdale Town Council for May 12, 2015 in order to comply with the 20 day notice posting requirement.

The Liquor License Application Review Form has been completed by the Police Department, Fire District, Community Development Department, Utilities, Public Works and Clerk regarding “due diligence” reviews of the business.

Town Clerk Kathy Bainbridge presented the information on this agenda item stating that the Town Departments and the Fire Department reported no hindrances to the recommendation approving this application. Joe Bechard from Cottontucky LLC was available for questions.

Councilmember Regner moved to recommend to the Arizona Department of Liquor License and Control, approval of a Series #13 In-state Farm Winery Liquor License application from Cottontucky LLC, Agent Joseph Bechard, d/b/a Chateau Tumbleweed at 1151 W. State Route 89A, Clarkdale, AZ. Councilmember Buckley seconded the motion and the motion passed unanimously.

PUBLIC HEARING REGARDING CAPITAL TELECOM’S CONDITIONAL USE PERMIT APPLICATION FOR A WIRELESS FACILITY – a hearing to gather information from the public regarding Capital Telecom’s Conditional Use Permit application for a wireless facility which includes a 65-foot high monopole tower and associated supporting infrastructure at 1450 SR 89A, Assessor’s Parcel Number 406-26-010Y.

Capital Telecom has submitted a conditional use permit application for a wireless facility at 1450 SR 89A. The proposal includes a 65-foot high monopole centered on a 40’ x 60’ area located at the northwest corner of the subject property. The compound will be enclosed by a 6-foot high chain link fence with a 12-foot wide sliding gate. The proposal includes a 12’ x 20’ equipment shelter, a new transformer and additional support infrastructure. No lighting is proposed for the facility, other than ground-mounted emergency motion-sensor lighting. No signage is proposed for the facility. The applicant will be leasing this area from the property owner. The current property owner purchased the subject property in 1999.

Zoning and Vicinity

This approximately 1.18 acre property is zoned Commercial. The property is accessed from SR 89A by Paloma Way, a privately owned easement. The subject property is not within the 89A Highway Overlay District. Surrounding land uses include Nate’s Cowboy Café Restaurant, two storage facilities, a delivery services company and an auto mechanic business.

The Foothill Terrace subdivision is directly to the west of the subject property. There are several single-family residences to the south. The proposed Crossroads at Mingus Park is directly to the south.

Per the Wireless Facilities Ordinance adopted July 10, 2013, cell towers are an allowed use in the Commercial District with a conditional use permit.

Location

The applicant has stated the proposed location meets their requirements for their network and will increase both network coverage and availability in the area. The applicant will be presenting a report to Council regarding the other locations they explored at the public hearing on May 12, 2015.

Application Requirements: Reviews conducted**NEPA Review**

The applicant was required to complete an Environmental Summary Report to the Environmental Protection Agency as part of its FCC permit application. As part of this summary, the application was sent to the following agencies for review and comment:

Native American Tribes in Arizona
Yavapai County Flood Control via the Town of Clarkdale
Arizona Game & Fish
US Fish & Wildlife
Arizona State Historic Preservation Office
Army Corp of Engineers
National Park Service
Bureau of Land Management
National Wilderness Preservation System

Per the requirements of the FCC, the applicant published a notice in the Verde Independent soliciting comments regarding possible environmental impact related to the proposed site on November 19 and 21, 2014.

Through this review process, the proposed facility was found to have no significant negative environmental impact.

Internal Agency Review

The Clarkdale Police Department and Public Works Department submitted comments noting there is no secondary access to the site and stating this was a safety concern.

The Police Department has also requested the cell tower be pre-wired to accommodate placement of repeaters for emergency responders.

Independent Expert Review

At the request of staff, an outside expert review of the application was completed by David Baker, Sr. with Mariner Wireless Services, a Tucson telecommunications firm. The expert review determined the application to be in full compliance with FCC regulations and the Town of Clarkdale ordinance.

The independent expert also agreed the proposed location best fits the applicant's network development requirements.

Because Mr. Baker would be unavailable for further review after the Planning Commission meeting, a second radio frequency expert, Richard Tannehill, was contracted to review the application. Mr.

Tannehill has previously provided independent consulting to the City of Cottonwood in reviewing the cell tower application at the VFW property. Mr. Tannehill concurs with the statements of the previous review and will be submitting a written report to be presented to Council on May 12 at the public hearing.

The cost of the outside consultants was paid by the applicant as required under Town Ordinance 364 adopted August 8, 2014.

Outside Agency Review

Per a request from the Cottonwood Airport Authority, the applicant submitted a review request to the Federal Aviation Administration and received a "Determination of No Hazard to Air Navigation" for the proposed wireless facility.

Morgan Scott of the Cottonwood Airport Authority has requested warning lights be installed on the tower. This is not a requirement per the FAA review, however, and it is staff's opinion lighting at the top of the tower would be a nuisance to the surrounding neighborhood. The subject property is approximately 1.3 miles from the western end of the Runway 14 at the Cottonwood Airport.

Yavapai County Flood Control noted the south property line is impacted by the North Fork of Mescal Gulch, however there are no issues or concerns for the location of the wireless facility.

The Clarkdale Fire Chief provided comments stating there is no basis to object to the application, however, the district would like to see a secondary access to the property for public safety reasons.

Public participation

The applicant hosted a neighborhood meeting on Tuesday, February 17, 2015. A summary of this meeting, provided via email by the applicant's representative, follows:

Our neighborhood meeting at 4:00 also went well. About 30 people attended. About 10 of them were quite vocal and asked a lot of questions. Following the meeting we had about a dozen neighbors come up to tell us they supported the site, and apologized for some of their more vocal neighbors.

Notices of the Planning Commission and Town Council public hearings were mailed to 108 property owners within 1,000 feet of the subject property. Per state statute, the Town is required to notify property owners within 300 feet. The Community Development Department policy is to extend the notification distance to 1,000 feet for all public hearing items.

Two legal notices of the Planning Commission public hearing were published in the Verde Independent on February 15 and March 1, 2015.

A legal notice for the Town Council public hearing was published in the Verde Independent on April 26, 2015.

The property was posted for each public hearing.

Town Regulations

The Town's wireless communication facilities regulations, Ordinance #352, became effective August 9, 2013. This ordinance allows wireless facilities in commercial and industrial districts as a conditional use. The maximum allowable height for a cell tower in a commercial district is 65 feet. The purpose of having conditional uses in the Zoning Code is to allow for a process through which the proposed use is examined to determine its impact at a specific location.

Planning Commission

Per Section 5-5 of the Town Zoning Code, the Planning Commission shall make findings on a conditional use permit application based on the following six elements:

1. **Applicable Regulations:** Those conditions necessary to assure compatibility of the development of the land in question will be consistent with the purpose of the Zoning Ordinance, Town of Clarkdale General Plan, other statute, and any ordinance or policies that may be applicable.
2. **Bulk Regulations:** The site is adequate in size and topography to accommodate proposed use, population density, building height, lot coverage, setbacks, spaces, landscaping, fences and parking. That these elements are compatible with the general character of development in the vicinity of the proposed conditional use and are adequate to properly relate the proposed use with the existing land uses in the vicinity.
3. **Performance:** That the location, design and operation characteristics of the proposed use are such that it will have minimal adverse impact on the livability, public health, safety, welfare, or convenience of persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general in that the facility, once completed should not interfere with the day-to-day operations of the existing businesses.
4. **Traffic Impacts:** The provisions for ingress and egress, public streets and traffic circulation are adequate, or can be upgraded through street improvements as a condition of approval.
5. **Landscaping:** Landscaping and/or fencing of the proposed development assures that the site development will be compatible with adjoining areas and with the intent of Town policies.
6. **Nuisance:** That the proposed use will not create a hazard to persons and property from possible explosion, contamination, fire or flood. That the use will not create a nuisance arising from, but not limited to noise, smoke, odors, dust, vibrations, signage or illumination.

Staff Analysis:

Applicable Regulations – Zoning Ordinance: Ordinance #352, Wireless Communication Facilities, became effective August 9, 2013. This ordinance allows cell towers up to a maximum of 65 feet in height in the Commercial Zoning District with a conditional use permit. The ordinance includes a list of nine items required to be included in the conditional use permit application. The applicant has provided all nine of these items.

The Town's Wireless Ordinance does not permit placement of cell towers in the 89A Overlay District. This previously established overlay district extends 500 feet on either side of the center line of the highway and identifies an important viewshed along the highway corridor. This prohibition leaves only

a few properties in the area meeting the applicant's siting requirements. All of these potential properties abut property zoned for residential development.

The Federal Communications Commission oversees the regulations for wireless service facilities. Section 332(c) (7) of the Communications Act prohibits local governments from discriminating among providers and from prohibiting the provision of personal wireless services.

Until the Town adopted the Wireless Facilities Ordinance in 2013 the Town was not in compliance with this section because wireless facilities were not included as a use in any of the zoning districts.

Staff found no specific references to wireless facilities in the 2012 Clarkdale General Plan.

Bulk Regulations – The 1.18-acre site is adequate to accommodate the proposed use. The wireless facility would not conflict with the various surrounding commercial uses.

Performance – Visibility: The Planning Commission conducted a site visit to the subject property on February 17, 2015. The applicant had placed a balloon on the site. The top of the displayed balloon was at 65 feet. The 12-foot width of the balloon demonstrated the width of the proposed array at the top of the cell tower.

During the site visit, the top of the balloon appeared as high as the top of the Mogollon Rim in the distance from the properties to the south along Cholla Lane. Along the SR 89A Highway, the balloon was noticeable against the background of the existing vegetation and was higher than the flag pole at the property in front of the site. The balloon appeared visible to the residences along Deborah Drive, particularly the two properties at the south end of Deborah Drive in the Foothills Terrace subdivision which are less than 300 feet away from the proposed site. The balloon did not appear visible from the rest of this subdivision. The balloon was also visible from homes in the Mescal Spur neighborhood, specifically those along Cholla Lane. These homes were constructed in the late 1990's and the 2000's.

The homes along Deborah Drive abut commercially zoned property. These homes were constructed in the 1990's. The commercial corridor along SR 89A, including the subject property, has been zoned commercial since adoption of the first Town of Clarkdale zoning map in 1973, prior to construction of the surrounding homes. The maximum height allowance for buildings in the commercial zoning district is 50 feet.

The Town of Clarkdale Zoning Code does not include protection of individual views other than within the 89A Overlay District. Recognition of the 89A view corridor was established by adoption of the Overlay District in 2006.

In order to mitigate visual impact of the cell tower, the applicant has proposed to paint the tower a beige color to blend into the view.

The applicant will also provide examples of possible stealth towers at the May 12 Council meeting.

Staff has discussed with the applicant the possibility of planting landscaping along the boundaries of the subject property to provide screening of the proposed complex. The subject property is edged by native

landscaping providing natural screening of the area. The eastern border of the storage facility located on the other side of the town right-of-way has an existing 10-foot wide landscape barrier. Any additional landscaping would require extension of water service to the property and installation of an irrigation system. If the Council chooses to approve the conditional use permit application, **staff would like direction from Council regarding requiring additional landscaping on the site.**

Performance – Impact on public health, safety, welfare: Per the FCC, the radio frequency emissions of the proposed tower will be no more than 0.035 percent of the Commission's maximum permissible exposure.

Section 332(c) (7) of the Communications Act preempts local zoning decisions based directly or indirectly on the environmental effects of radio frequency (RF) emissions from a cell tower. Staff will therefore not address this issue in this report.

No hazardous materials will be stored on site creating a hazard from explosion, contamination or fire. If the conditional use permit receives approval, a building permit for the facility will be required. The cell tower must meet Electronic Industries Alliance/Telecommunication Industries Association standards. The building permit will be forward to Yavapai County Flood Control for review and approval.

The noise generated by the facility will be minimal and comparable to the noise generated by a typical single-family residence. (See attached email from the applicant's engineer). Traffic to the facility **once** construction is complete will also be minimal. In staff's opinion, the proposed facility will be no more of a nuisance than other various commercial uses permitted by right in the commercial zoning district.

The applicant is proposing a 6-foot high chain link fence to surround the complex. Staff has suggested the bottom half of the fence should be a solid material to prevent entrance of pack rats and other destructive vermin.

The Clarkdale Police Department has requested the applicant grant an easement on the tower for the installation of public safety communication repeaters. This request would increase public safety by providing redundancy for the public safety dispatch system. These repeaters are encompassed in a whip antennae which extends approximately 2 feet from the top of the tower.

Since installation of the requested public safety repeater antennae would exceed the 65-foot maximum height allowance for a cell tower structure, staff would need to take a request forward to the Board of Adjustment for a variance of the height requirement should the conditional use permit application be approved.

Performance – Traffic: During agency review of the application it was noted there is only one legal access to the subject property and the surrounding businesses. This is considered a safety concern for the properties in general, both for evacuation purposes in an emergency and access by public safety personal in case the SR 89A access is blocked. Staff has included a recommended condition of approval requiring the applicant complete a road connection to Old Jerome Highway.

Property Values – During the Planning Commission public hearing several residents stated installation of the tower would decrease their property values. Staff has researched this issue and found opinions

differ on whether a cell tower in vicinity of homes negatively impacts property values or whether the availability of good cell service positively impacts property values. The applicant, Capital Telecom, will be presenting information to the Council regarding existing cell towers in the Verde Valley. Staff has researched property values for property within 500 feet of these established facilities and has found no evidence of a decrease in the property evaluation as set by the Yavapai County Assessor. Per the Town Attorney, loss of property value must be substantiated on a case by case basis.

Summary: In staff's opinion, and with the recommended conditions, the application is in compliance with the required findings for a Conditional Use Permit.

Approval Process for Wireless Facilities

Per the Telecommunications Act of 1996 the Federal Communication Commission has the final authority for approval of all wireless communication facilities. One of the initial steps required by the FCC is an environmental assessment, which as previously noted has been completed by the applicant. The second step is the zoning entitlement process.

The FCC has already issued the radio station authorization to Verizon Wireless for Northern Arizona.

Planning Commission Public Hearing

In the staff report to the Planning Commission, staff stated it has determined the Conditional Use Permit application to be complete and in compliance with the requirements of Section 4-18 of the Town of Clarkdale Zoning Code.

Approximately 40 people attended the Planning Commission public hearing on March 17, 2015. Sixteen people spoke in opposition to the application, citing negative impacts to health, views and property values and two people spoke in support citing the need for better wireless coverage. In addition, staff read into the record two letters submitted in opposition to the proposal and one email submitted in support of the proposal.

At the meeting, Ms. Karen Daniels submitted 231 signatures of residents within one mile of the subject property expressing opposition to cell towers within one mile of their homes. A second petition, containing 123 signatures of residents throughout the Verde Valley obtained at Nate's Cowboy Café in opposition to placement of a cell tower in close proximity to the restaurant was also submitted.

Planning Commission Action:

At their March 17 meeting, having found the application to be in conformance with the regulations for a conditional use permit, the Commission voted unanimously (4-0) to move the application forward for review by Town Council with a recommendation of approval based on the following conditions:

1. A building permit shall be issued prior to construction of the facility.
2. No lighting, other than the motion sensor emergency lighting described in the staff report shall be installed.
3. All components of the facility shall be removed at the expense of the applicant/property owner if the facility is decommissioned and not used for 180 consecutive days.

4. Any substantial change to the project dimensions by more than 10 percent of the design of the facility as approved will require an additional Conditional Use Permit application.
5. The applicant will grant an easement to public safety entities for placement of repeaters on the tower to enhance communications. The applicant, at their expense, will prewire the proposed cell tower for ease of future installation of these repeaters. Design and installations shall be coordinated with a vendor designated by the Clarkdale Police Department.
6. The applicant will participate in facilitating broadband infrastructure development in the Verde Valley as opportunity arises.
7. The applicant shall improve the Town right-of-way along the western boundary of the subject property including engineering, design and installation of a finished road to connect to Old Jerome Highway.

Protest Provision

After the Planning Commission action, Ms. Karen Daniels of 1565 N. Cholla submitted a written protest including signatures of forty-two percent of the property owners within 200 feet of the subject property. Per Section 5-3.A.4 of the Zoning Code, a three-fourths majority of the Council shall be required to approve this conditional use permit application.

Complaints

Subsequent to the Planning Commission public hearing, staff received a complaint relative to illegal grading without a permit and disbursement of possible hazardous materials (asphalt millings) during the illegal grading. This complaint is being handled by the standard procedure through the Community Development Department.

A similar complaint had previously been made to the Federal Communications Commission as part of the public comment period for the required environmental assessment for this project. Per an email from a FCC representative dated March 10, 2015:

“A review of this application, including the request for further environmental review, as supplemented, and responses, does not indicate that the proposed structure may have a significant effect on the environment under the Commissions’ rules”.

Time Constraints

In 2010 the Federal Communications Commission issued an administrative ruling supplemental to the 1996 Telecommunications Act establishing a 150 day time period for local governments to make a decision on new wireless facilities. The Capital Telecom wireless facility conditional use permit from Capital Telecom was determined to be complete on February 2, 2015. This is when the check for the application fee was received. According to FCC regulations, the Town has until July 2, 2015 to act on the application. A failure to provide a decision on the application within this ‘shot clock’ time frame allows the applicant to bring legal action against the Town to demand a decision.

Town Attorney Rob Pecharich gave a brief statement regarding the legal aspects of the approval or denial of this application. If the council finds: the cell tower appearance or obstruction of viewshed creates a nuisance; decreases the property value of nearby property owners; the applicant has fulfilled the obligations required by the Town; there is a gap in cell phone coverage in the town and the cell phone tower would fill that gap; and the applicant has explored other less intrusive locations and there are no such locations; the Council must balance the local concerns with national purpose.

Beth Escobar, Senior Planner, presented information about the applicant, Capital Telecom, and a PowerPoint presentation was provided. She further explained the conditional use permit process as well as the other processes that bring us to this public hearing.

Greg Lake, attorney representing Capital Telecom, presented background on cell services and the alternative site analysis. The title of Capital Telecom's project is named "Lamplighter" which is the area for the tower location at 1450 State Hwy 89A, behind storage units and Nate's Cowboy Café, and has no connection to the residential community "Lamplighter".

1. The Cement Plant Site (Clarkdale Minerals property) does not fill the gap in coverages. It does not reach the southern part of the town due to a ridgeline along with cement dust and vibration causing maintenance problems.
2. The downtown site location, including the fire station, were previously rejected because of historic overlays, elevation problems, a wash and no residential buffer.
3. The Broadway Road parcel does not fill the gap in coverage because of low elevation, hills blocking coverage and would not cover 89A.
4. Sites around the Botanical Gardens do not fill the gap in coverage because ridgelines would prevent coverage to much of the area covered by Lamplighter.
5. A site at the Cemetery is not a solution because it is divided into small parcels (some used, others not yet) - a 40'x60' fenced parcel, 24/7 access, with construction access, is not available. Immediately adjacent to neighbors - not 150' away like Lamplighter. Much of Cemetery in 89A Scenic Corridor. Council would need to agree to a change of use. (MIG would not Lease)
6. Pine Shadows site is not a feasible site because much it is in a wash area, lower elevation, no buffer of self storage and restaurant and is split by access road into Pine Shadows.

Lamplighter is the only available site to fill the significant gap in coverage. The Town's RF Engineer agrees Lamplighter is the best site. Of the various sites presented, the "Lamplighter" site appears to be the best overall of the four sites analyzed, having sufficient space for the site, and providing coverage to the south and central parts of Clarkdale at the required -80dBm level from a 65' tower.

Capital Telecom has cooperated and agreed to suggestions:

1. Relocated the site on the parcel, at Ms. Daniels' request.
2. Changed the configuration from a Mono-Pine to a monopole at Ms. Daniel's request
3. Agreed, without charge, to build out Paloma Way.
4. Agreed, without charge, to allow the police department to put an antenna on the top of the pole, and install conduit for wiring.

The site meets the two tests: There is a significant gap in coverage within southern Clarkdale and this site is the least intrusive and only feasible location of all the alternative sites.

Mayor Von Gausig opened the discussion to public comment and read into the record some of the comments.

The following people spoke or gave written comment for the record in favor of the cell tower site:

Robyn Prud'homme-Bauer, Clarkdale resident and business owner (coverage)
Fire Chief Joe Moore, Clarkdale Fire District, resident (public safety)
Phil Terbell, Clarkdale resident and property owner of proposed cell tower site (coverage, property values)

The following people spoke or gave written comment for the record in opposition to the cell tower site for reasons including nuisance, viewshed obstruction, health, property values, location and aesthetics:

Gary Morgan, Clarkdale resident
Donna Whitmore, Clarkdale resident
Shawn Stirling, Clarkdale resident
Greg Kirkland, Clarkdale resident
John Tobias, Clarkdale resident
Steve Coleman, Clarkdale resident
Maya Radoccia, Clarkdale resident (for Reynold Radoccia)
Pat Ladeau, Clarkdale resident
Gen Arielle, Clarkdale resident
Elizabeth Sexton, Clarkdale resident
Rob Adams, Sedona resident, Clarkdale landowner
Cynthia Fawcett, Clarkdale resident
Mary Brunnemeyer, Clarkdale resident
Karen Daniels, Clarkdale resident
Brian Daniels, Clarkdale resident
Sandy Sullivan, Clarkdale resident
Barbara Van Wye, Clarkdale resident
Chris Bondurant, Clarkdale resident
Frank Brookbank, Clarkdale resident
Bill Lange, Clarkdale resident
Jean Worfolk, Clarkdale resident
Carl Brian, Clarkdale resident
Doug Palmquist, Clarkdale resident
Rick Hendrickson, Lampliter Village Clarkdale resident
Lenny Adams, Clarkdale resident

Mayor Von Gausig closed public comment and called a 5-minute recess.

This is a Public Hearing, no action necessary.

CAPITAL TELECOM'S CONDITIONAL USE PERMIT APPLICATION FOR A WIRELESS FACILITY – Discussion and possible action regarding Capital Telecom's Conditional Use Permit application for a wireless facility which includes a 65-foot high monopole tower and associated supporting infrastructure at 1450 SR 89A, Assessor's Parcel Number 406-26-010Y.

Mayor Von Gausig explained in this part of the meeting the Council would discuss with staff, attorneys and applicants and make a determination as to whether a conditional use permit will be issued or not be issued, or if agreed upon delay the decision.

Senior Planner Escobar addressed some questions raised by the community regarding.

Mayor Von Gausig and the Council addressed questions to the applicant and engineer regarding other viable locations.

Would a 200 foot tower provide coverage in the industrial zone area instead of the proposed area or a combination of two towers elsewhere provide coverage for the entire town? The applicant did not have testing reports to support positively identify coverage for this option, but based upon past experience stated that it would not provide the needed coverage.

Councilmen Regner wanted a comprehensive coverage map for Clarkdale that might include more than one tower location that might work instead of the current location.

Applicant stated that along with finding properties that have the correct zoning, they must also find a property owner that will allow the tower in that specific zoning.

The Mayor stated that we could not have a map for every possible location for a tower in the town and felt that all the practicable areas had been tested and eliminated.

The Town Attorney reiterated the legal findings required for the Council's decision.

Vice Mayor Dehnert stated that last December there was a question of a zoning change that the property owner wanted to change zoning from residential to commercial in order to increase his profits from his business. The Council in that case rejected the zoning request. Dehnert stated that zoning is something that citizens should be able to rely on and that should be the same in this case. He stated that the property location proposed for the cell phone tower had been zoned commercial in 1973 at least 20 years prior to homes being built there.

Councilmember Regner moved to table this agenda item for further discussion.

There was no second.

Vice Mayor Dehnert moved to approve the application. Councilmember Buckley seconded the motion.

Vice Mayor Dehnert amended the motion to approve the application to include the following conditions:

1. A building permit shall be issued prior to construction of the facility.
2. No lighting, other than the motion sensor emergency lighting described in the staff report shall be installed.
3. All components of the facility shall be removed at the expense of the applicant/property owner if the facility is decommissioned and not used for 180 consecutive days.
4. Any substantial change to the project dimensions by more than 10 percent of the design of the facility as approved will require an additional Conditional Use Permit application.
5. The applicant will grant an easement to public safety entities for placement of repeaters on the tower to enhance communications. The applicant, at their expense, will prewire the proposed cell tower for ease of future installation of these repeaters. Design and installations shall be coordinated with a vendor designated by the Clarkdale Police Department.
6. The applicant will participate in facilitating broadband infrastructure development in the Verde Valley as opportunity arises.
7. The applicant shall improve the Town right-of-way along the western boundary of the subject property including engineering, design and installation of a finished road to connect to Old Jerome Highway.

Councilmember Regner thanked the group for their participation, respect and courtesy.

Mayor Von Gausig thought the property value issue went both ways. He found it compelling that neighbors' viewsheds would be intrusive but also found that there are obstructions and infrastructure blocking views in most properties. Services also improve the value of the community. It was important to have thorough examination of what the alternatives are because that is the question is being asked.

The federal preemption on the Town of Clarkdale's ability to say "no" is a powerful thing and it is not something to which we can just say just "sue us, and we will pick up the tab". We would be breaking federal law if we did not allow the applicant to put a cell tower there if we believe that there were gaps in the coverage area and that there would be gaps in the future for that coverage area. Our own independent consultant confirmed all of Capital Telecom's information for us so we did not rely on the information brought to us by the applicant. If you believe that there is no other place to put this tower in order to get the coverage needed for that area of town we are compelled then to approve this application.

It is an interesting idea that if you could put a higher tower in some other part of town you might be able to reach that coverage, but I absolutely believe what the engineer just told us being that you are also going to have interference with other cells in the area once you get above a certain height.

I feel that we have satisfied the need to explore all the alternatives to see if this is the most reasonable and practicable, and I believe it is.

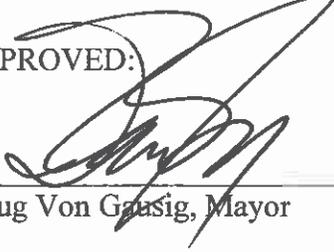
Councilmember Bohall stated he believed that he would vote against the cell tower location and was further swayed by the comments of the neighbors, but was convinced by Vice Mayor Dehnert's remarks about the zoning.

Councilmember Buckley seconded the motion. The motion passed unanimously.

FUTURE AGENDA ITEMS - Listing of items to be placed on a future council agenda.

ADJOURNMENT – Without objection, Mayor Von Gausig adjourned the meeting at 10:53 P.M.

APPROVED:



Doug Von Gausig, Mayor

ATTESTED/SUBMITTED:



Kathy Bainbridge, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Clarkdale, Arizona held on the 12th day of May, 2015. I further certify that meeting was duly called and held and that a quorum was present.

Dated this 10 day of June, 2015.

SEAL


Kathy Bainbridge, Town Clerk