

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning)
Director's Approval and Denying the Appeal)
of Planning Docket M-01-20/SDR-20-20;)
Approval of a Wireless Communication Facility) Board Order 21-304
as a Utility Facility Necessary for Public Service)
in an Exclusive Farm Use Zone and Approval of)
Site Design for the Facility; 551 SW Hill Road;)
Tax Lot 4419-2600; Applicant Verizon Wireless;)
Owner Bruce McKee)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on July 22, 2021, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. On March 9, 2021, following notice and opportunity to comment, the Planning Director approved Planning Docket M-01-20/SDR-20-20, an application by Verizon Wireless to install a wireless communication facility, including a 100-foot monopole tower, associated equipment cabinets, emergency diesel generator and cabling, on Tax Lot 4419-2600.

B. The Planning Director's decision was appealed to the Board, which held a public hearing regarding the application on May 27, 2021. At the hearing, the appellant City of McMinnville requested a continuance of the hearing for the purpose of facilitating the discussion of alternative sites. The applicant agreed to the continuation of the hearing until July 1, 2021, at which time the Board considered additional testimony and evidence regarding this matter. Following the hearing, the Board deliberated and voted 2-1 to uphold the Planning Director's decision, to deny the appeal and to approve the application with conditions; NOW THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The Planning Director's decision to approve Planning Docket M-01-20/SDR-20-20 is hereby upheld, the appeal filed in this matter is denied, and the application is approved.

//

//

Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of, and as part of, this order.

DONE this 22nd day of July, 2021, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

By: *Carolina Rook*

Deputy Carolina Rook



Chair

Mary Starrett

MARY STARRETT

Lindsay Berschauer

Commissioner

LINDSAY BERSCHAUER

FORM APPROVED BY:

T. Sadlo

Timothy S. Sadlo

Senior Assistant County Counsel

Commissioner

Casey Kulla

CASEY KULLA

Exhibit A – Findings for Approval – Board Order 21-304

DATE OF TENTATIVE DECISION: July 1, 2021

APPLICATION DOCKET NO.: M-01-20/SDR-20-20

REQUEST: A site design review for the construction and operation of a new wireless communications facility consisting of a 100-foot monopole tower (104-foot antenna tip) with associated equipment cabinets, emergency diesel generator, and cabling.

APPLICANT REPRESENTATIVES: ACOM Consulting, Inc. for Verizon Wireless
Attn: Christine Bradford
2098 Allendale Way NE
Keizer, OR 97303

E. Michael Connors
Hathaway Larson LLP
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209

OWNER: Bruce McKee
23350 SW McKee Road
Amity, OR 97101

TAX LOT: 4419-02600

SITE ADDRESS: 551 Hill Road South, McMinnville, OR 97128

PARCEL SIZE: 119.05 acres

ZONE: EF-80, Exclusive Farm Use District

APPLICABLE REGULATIONS: Oregon Revised Statute (ORS) 215.283(1)(c)(A) & 215.275; Sections 402.02(F) and 1101 of the *Yamhill County Zoning Ordinance*.

A. Summary of the Request and the Board’s Decision.

The Applicant requested approval for the construction and operation of a new wireless communications facility consisting of a 100-foot monopole tower (104-foot antenna tip) with associated equipment cabinets, emergency diesel generator, cabling and ancillary supporting equipment. The facility is necessary to address a significant coverage gap and capacity deficiency in the west side of the City of McMinnville (the “City”) and the surrounding County area.

The subject parcel is approximately 119.05 acres and located in the Exclusive Farm Use (“EFU”), EF-80, zone. The property is predominantly used for farming, in the form of grass seed and hay production. The property has direct access to Hill Road South. The property is not located in an area which is designated as sensitive wildlife habitat, nor is it in the Willamette River Greenway, floodplain or airport overlay district. The wireless communication facility will not require water or a waste management system. The property is served by the McMinnville Fire Department.

The subject property is bounded to the north and east by the City limits. Adjacent land uses to the north and east are urban residential with a mix of single-family, apartments, duplex and triplex housing. The surrounding parcels to the south and west are within the County, predominately zoned EF-80 and appear to be dedicated to commercial farming activities.

The Applicant applied for approval of the wireless communication facility as a “utility facility necessary for public service” under ORS 215.283(1)(c)(A) and Yamhill County Zoning Ordinance (“YCZO”) 402.02(F). The County Planning Director reviewed the Application, determined that it satisfied the applicable criteria and approved the Application subject to conditions of approval. The Planning Director concluded that the Applicant demonstrated there are no non-EFU reasonable alternative sites available to satisfy the coverage and capacity objectives for this site consistent with ORS 215.275.

The City appealed the Planning Director’s decision. After considering all of the testimony, argument and evidence in the record at a hearing held on May 27, 2021, and continued to July 1, 2021, the Board of Commissioner of Yamhill County (the “Board”) voted to uphold the Planning Director’s decision, deny the City’s appeal and approve the Application pursuant to these findings of approval.

B. Applicable Regulations and Analysis.

1. ORS 215.283(1)(c)(A) & YCZO 402.02(F).

The Applicant applied for approval of the wireless communication facility as a “utility facility necessary for public service,” which is a permitted use in the EFU zone under ORS 215.283(1)(c)(A) and YCZO 402.02(F).

ORS 215.283(1)(c)(A) lists a utility facility necessary for public service as a permitted use in the EFU zone:

- c. Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:*

- A. ORS 215.275 (Utility facilities necessary for public service);*

Similarly, YCZO 402.02(F) lists a utility facility necessary for public service as a permitted use in the EFU zone:

- F. Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale, or transmission towers over 200 feet in height. The applicant will also be subject to Section 1101, Site Design Review. A facility is "necessary" if it satisfies the requirements of ORS 215.275.*

A wireless communication facility qualifies as a “utility facility” under ORS 215.283(1)(c)(A) and YCZO 402.02(F). ORS 215.275 sets forth the factors for determining if the wireless communication facility is “necessary” under these provisions. To demonstrate that it is necessary, the Applicant must show that reasonable non-EFU alternatives have been considered and the facility must be sited on an EFU zoned property due to one or more of the factors in ORS 215.275(2). The Applicant is entitled to a considerable amount of discretion in determining the coverage and capacity objectives for the facility and alternatives sites that do not meet those objectives are not “reasonable alternatives” under ORS 215.275(2).

2. ORS 215.275.

ORS 215.275 requires the following to demonstrate that the wireless communication facility is “necessary” under ORS 215.283(1)(c)(A) and YCZO 402.02(F):

- (1) A utility facility established under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.*

The Applicant demonstrated that a wireless communication facility is necessary in this area following an analysis of market demand, wireless coverage and capacity requirements for a specific geographic area, and the need to provide continuous coverage from one site to another. The Applicant’s area of insufficient coverage can be found on Figure 1 of the Application narrative and encompasses a significant portion of the western-most area of the City of McMinnville. The Application noted that customer complaints regarding wireless service was a factor in determining that a new wireless facility is necessary in this area to improve the coverage and service. The Application stated that the increasing reliance on wireless telecommunication service for streaming (for remote work, education, or entertainment), gaming, cloud computing, and data storage has led to an unprecedented demand for increased telecommunications bandwidth capacity. The Application also noted that the proposed facility is needed to meet FCC requirements for Enhanced 911 service in the area, which allows a wireless service provider to provide more precise location information to emergency responders when necessary. There is no evidence in the record challenging the Applicant’s claim that a wireless communication facility is necessary in this area to address the coverage and capacity deficiencies.

Once the need for additional wireless coverage and capacity was established, the Applicant’s radio frequency (“RF”) engineers performed a study to determine the approximate site location and antenna height required to provide the required coverage and capacity. Using a computer modeling program that accounts for the terrain within the service area and other variables, such as proposed antenna height, available radio frequencies and wireless equipment characteristics, the RF engineers identified a “search ring” wherein a facility could be located to meet the Applicant’s

service objectives, which can be found on Figure 2 of the Application narrative. The search ring area includes an area within the City limits of McMinnville, roughly centered on NW 2nd Street—with the east to west extents approximately bounded by the NW 2nd Street and SW Agee Street intersection and the NW 2nd Street and NW Mt. Mazama Street intersection. The north to south extent of the study area is roughly centered on NW/SW Hill Road—from the intersection of Hill Road and SW Fellows Street, to the south, to just south of the Hill Road and Wallace Road intersection. The majority of the study area lies within the jurisdiction of the City.

The Board concludes that the Applicant demonstrated the proposed facility is necessary for public service in the surrounding area based on the substantial evidence in the record. The Board concludes that the Applicant demonstrated that the facility must be sited in an EFU zone in order to provide the service for the reasons provided in response to ORS 215.275(2) below.

The City challenged the Applicant's compliance with ORS 215.275 on the grounds that the wireless communication facility cannot qualify as a utility facility necessary for public service because it is intended primarily to provide wireless services for City residents as opposed to County residents and/or EFU zoned properties. The Board rejects this argument. The Board does not interpret ORS 215.283(1)(c)(A), YCZO 402.02(F) or ORS 215.275 as limiting this category to uses that are intended to predominately serve the County or properties zoned EFU. The City did not cite any authority for its claim. ORS 215.283(1)(c)(A), YCZO 402.02(F) and ORS 215.275 do not restrict a utility facility in general or a wireless communication facility specifically to those predominately providing services in the County or EFU areas. It is common for wireless communication facilities sited in county areas to predominately serve city residents because cities are more densely populated and have more wireless users. The main reason the Applicant was required to pursue the proposed EFU-zoned property is because the City's zoning regulations applicable to wireless communication facilities are so restrictive that none of the surrounding City properties are viable alternatives.

Therefore, the Board finds that the Application satisfies this criterion.

- (2) *To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:*
- (a) *Technical and engineering feasibility;*
 - (b) *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*
 - (c) *Lack of available urban and nonresource lands;*
 - (d) *Availability of existing rights of way;*
 - (e) *Public health and safety; and*
 - (f) *Other requirements of state or federal agencies.*

The Applicant must show that reasonable alternatives have been considered and that the facility must be sited in the EFU zone due to the factors provided by ORS 215.275(2). Based on the substantial evidence in the record, the Board finds that the Applicant demonstrated it considered reasonable alternatives and the facility must be sited in the EFU zone due to the factors provided by ORS 215.275(2).

a. Pre-filing Alternative Sites Analysis.

Prior to filing the Application, the Applicant considered multiple non-EFU zone options but was unable to identify an alternative site or option that can satisfy the coverage and capacity objectives.

The Applicant considered collocating on the closets existing tower. The closest wireless communication tower is a Crown Castle tower on a water tank site operated by McMinnville Water & Light and located at 12302 SW Fox Ridge Rd. The site is almost a mile from the search ring and does not have space available above the 92-foot RAD height. The Applicant's original Radio Frequency ("RF") Engineering Justification report submitted with the Application (the "Original RF Report") demonstrated that this option will not satisfy the coverage and capacity objectives because it is too far outside the search ring area.

The Applicant considered collocating on several existing structures in the City. The City allows collocation on existing structures but limits the additional height to 20 feet subject to conditional use permit approval. McMinnville Municipal Code ("MMC") 17.55.040. The Applicant made multiple attempts to contact the Church on the Hill and Hillside Assisted Living Facility in August and September of 2019 to discuss collocating on one of their structures, but neither responded to these inquires. The Applicant contacted the Calvary Mac Church, but they said they were not interested. The Applicant worked with the McMinnville Covenant Church to evaluate a faux steeple on the rooftop, but a structural assessment and feasibility study revealed that the roof could not structurally support the proposed antennas and equipment.

The Applicant contacted McMinnville Water & Light about collocating on utility and streetlight poles in the search ring area, but there were multiple problems with this option. Most of the poles in the area are transmission poles or double-circuit distribution poles, neither of which allow wireless collocation. MW&L Joint Use Construction Standards ("MW&L Standards") Section 9.4.3. The remaining poles in the area are not tall enough (approximately 35 feet) and can only be increased to 60 feet under MW&L Standards, which is well below the minimum antenna height necessary to provide the required coverage and capacity. MW&L Standards Section 9.4.15. The Applicant also does not have a right-of-way agreement with the City or McMinnville Water & Light, and therefore it cannot use the right-of-way for wireless facilities or the ground equipment.

The Applicant considered siting a new tower on non-EFU zoned properties in the search ring area, but no such options are available. The City only allows new wireless communication towers in the industrial zones and there are no industrial zones on the west-end of the City. MMC 17.55.040. The Applicant considered the Masonic Cemetery property located in the County, but it is not a viable candidate because the property is zoned Public Assembly Institution ("PAI"). The PAI zone does not allow wireless communication facilities. YCZO 801. There are no non-EFU sites within the search ring that would allow a new tower.

The Applicant pursued the subject property and submitted the Application only after exhausting

these non-EFU options.

The City claimed that the Applicant failed to consider all reasonable alternatives prior to filing the Application because it did not attempt to contact the Church on the Hill or the City to discuss alternatives for the facility. The Board disagrees based on the substantial evidence in the record. The Applicant submitted documentation demonstrating that it made multiple attempts to contact the Church on the Hill via phone, email, in-person visit and letter before filing the Application with the County, but the Church on the Hill never responded. The Applicant also provided documentation demonstrating that it communicated with the City planning department about its efforts to site a new wireless communication facility in this area and discussed several alternatives with the City. Regardless, the Applicant worked with the City and the Church on the Hill in response to the City's appeal, considered multiple options on the Church on the Hill property and discussed several alternative site options with the City, and demonstrated that none of these options are reasonable or feasible alternatives as explained below. Therefore, the Board finds that it is irrelevant whether the Applicant made sufficient attempts to contact the Church on the Hill or the City prior to filing the Application because the Applicant did so as part of the appeal process.

b. Alternative Sites Analysis in Response to the City's Appeal.

The City's appeal alleged that the Applicant failed to adequately consider reasonable alternatives because it did not consider the Church on the Hill property or collocating on utility or streetlight poles within the right-of-way. In response to the City appeal, the Applicant agreed to postpone the originally scheduled May 6, 2021 appeal hearing and explore these options further. The Applicant communicated with the City about the options identified in the City's appeal and reconsidered these options.

The Applicant met with the Church on the Hill representatives on site to discuss potential options. The Church on the Hill property is zoned R-4 Multi-Family Residential, which prohibits new wireless communication towers/structures and limits the additional height for collocating on existing structures to 20 feet subject to conditional use permit approval. MMC 17.55.040. The Church on the Hill identified four collocation options. The first three options were rooftop locations on the existing Church on the Hill building. The fourth option was to replace and extend the existing parking lot lights 20 feet.

The Applicant evaluated these options and determined that none of them will satisfy the coverage and capacity objectives. The tallest point for all four options is 31 feet, which with the 20-foot extension allows for a maximum antenna tip height of 51 feet or a 48-foot centerline ("CL") height with a 6-foot antenna. The Applicant explained in the Supplemental RF Engineering Justification Report submitted on May 19, 2021 (the "Supplemental RF Report") that the maximum antenna tip height at this location is not nearly tall enough to satisfy the coverage and capacity objectives. Therefore, none of these collocation options are reasonable alternatives.

The Applicant also discovered that the Church on the Hill's lease with T-Mobile, who is currently operating a rooftop wireless communication facility on the property, includes a non-compete clause that prohibits the Church on the Hill from leasing to a competitor. This non-compete clause prohibits the Church on the Hill from leasing to the Applicant because Verizon is in direct or indirect competition with T-Mobile.

The Applicant also contacted McMinnville Water & Light again to reconsider the utility pole

options. McMinnville Water & Light again confirmed that the utility poles are not a feasible option because the poles in the search ring area are all transmission poles or double-circuit distribution poles, which do not allow wireless collocation, they are not tall enough (approximately 35 feet) and they can only be increased to 60 feet under the MW&L Standards. The Applicant's Supplemental RF Report demonstrated that a 60-foot antenna tip height (56-foot CL using a 8-foot antenna) is not tall enough to satisfy the coverage and capacity objectives.

c. Post May 27 Hearing Reasonable Alternative Sites Analysis.

At the May 27, 2021 appeal hearing, the City requested a continuance of the hearing and identified another option for the Applicant to consider on the Church on the Hill property. The Board agreed to the City's request and continued the hearing until July 1, 2021. After the May 27, 2021 appeal hearing, the City asked the Applicant to also consider several McMinnville Water & Light site options. The Applicant agreed to reconsider these options.

(1) Church on the Hill Flagpole Option.

The Applicant conducted a zoom call with the City and the Church on the Hill to get additional information regarding the new option. The City suggested that the Church on the Hill erect a 50-foot flagpole prior to the Applicant submitting a land use application and then the Applicant could apply to collocate on the flagpole and extend it 20 feet subject to conditional use permit approval. After evaluating the flagpole option, the Applicant demonstrated that this is not a feasible or reasonable option for multiple reasons.

Neither the City nor the Church on the Hill resolved T-Mobile's non-compete clause in their lease as of the July 1, 2021 hearing. The Applicant advised the Church on the Hill and the City several months prior to the July 1 hearing that this lease provision would need to be removed via a lease amendment before this property was a feasible option. Although the City made efforts to contact T-Mobile, the City's email exchanges with T-Mobile demonstrate that the City is having difficulty getting T-Mobile to respond to their emails and T-Mobile is still unwilling to remove the non-compete clause. The City claimed that the Applicant could rely on the sublease provisions in the T-Mobile lease, but any sublease option would be limited to the rooftop premises where the T-Mobile facility is located, the rooftop cannot structurally support another facility, and it would still be subject to T-Mobile's non-compete clause and consent. Since T-Mobile has not agreed to remove the non-compete clause from the lease after multiple attempts by the City, the Board finds that the Church on the Hill property is not a reasonable alternative for this reason alone.

Additionally, there are several City code restrictions that would prohibit the Applicant from getting the flagpole option approved. ORS 215.275 does not require an applicant to consider alternatives for which the proposed facility does not comply with the applicable zoning standards or would require a variance.

The flagpole would qualify as an "Antenna Support Structure" under the City's code, which is prohibited in the R-4 zone. MMC 17.55.040(C) & (D). Since the purpose of the flagpole is to accommodate the Applicant's antennas, which would be clear from the record in this proceeding, it would qualify as an Antenna Support Structure under the plain language definition of that term. MMC 17.06.050. The City's appeal acknowledged that "McMinnville does not allow stand-alone antenna support structures in residential and commercial zones" and its "Code would allow a 20-foot height extension on an *existing* alternative support structure as a conditional use process,"

which seems to undercut the flagpole proposal. Additionally, the Applicant submitted emails from the City in the Fall of 2019 in which the City rejected a similar proposal for a faux bell tower on another church property that could be used to collocate the antennas. The City advised the Applicant that the faux bell tower would qualify as a prohibited Antenna Support Structure because it would be a new structure built specifically to accommodate the antennas. The flagpole proposal appears to have the same problem as the faux bell tower. The City's claim that the Applicant could rely on MMC 17.55.030(E) to extend the height of the flagpole, which acknowledges an applicant's right to modify an "Eligible Facility" (i.e. "base station" or "tower") under the Federal Telecommunications Act of 1996 (the "Telecommunications Act"), ignores the fact that an Eligible Facility is an Antenna Support Structure and therefore is prohibited in the R-4 zone.

The flagpole would require a stealth design, which is not possible under these circumstances. In Residential zones, collocation on an alternative support structure requires a stealth design and that the antennas be completely screened from view. MMC 17.55.050(A)(1); MMC 17.55.060(A)(5). There is no stealth design available for a standard flagpole that completely screens the antennas.

The City code limits the height of antennas to 50 feet in Residential zones. MMC 17.55.050(D). Since it is the height of the antenna that is key to satisfying the coverage and capacity objectives, it does not matter how tall the flagpole is if the antennas are limited to 50 feet. The Applicant's Supplemental RF Report determined that a 51-foot antenna height at this site is insufficient, and therefore no option will work on this site since antennas are limited to 50 feet. The City submitted a memorandum from the City attorney, which was endorsed by the City Council, claiming that MMC 17.55.050(D) does not limit the height of antennas to 50 feet in Residential zones. However, there is no assurance that the City attorney's proposed interpretation of MMC 17.55.050(D) would be adopted by the planning commission. The City Planning Director advised the Applicant after the City appeal was filed that the City cannot guaranty the outcome of any application because it would be subject to a public process and public input, the planning commission will make the decision and the Applicant has the burden to prove compliance with the City code. Additionally, the City attorney's memorandum did not address the fact that the flagpole would qualify as a prohibited Antenna Support Structure, could not satisfy the stealth and screening requirements, and T-Mobile's non-compete clause would prohibit the Church on the Hill from leasing to the Applicant.

Finally, a site with a yet-to-be constructed flagpole is not a reasonable alternative site. It is not reasonable to deny the Application based on an alternative collocation option for a structure that has not yet been approved or constructed. The Church on the Hill is not required to construct the flagpole and the Applicant would not have any control over the timing of such construction. The Application cannot be denied based on a conceptual alternative that does not yet exist.

For the reasons stated above, the Board concludes that the Church on the Hill flagpole option is not a reasonable or feasible alternative based on the substantial evidence in the record.

(2) McMinnville Water & Light Options.

The Applicant conducted a zoom call with the City and McMinnville Water & Light to get additional information regarding the new McMinnville Water & Light options. The City and McMinnville Water & Light identified three options for the Applicant to consider, one of which

the Applicant had already considered and ruled out.

The Applicant again considered the water tank site operated by McMinnville Water & Light where the Crown Castle tower is located. The Applicant's Original RF Report demonstrated that this site will not satisfy the coverage and capacity objectives because it is almost a mile from the search ring and well outside the targeted area. The Applicant's Second Supplemental RF Report submitted on June 29, 2021 (the "Second Supplemental RF Report") reached the same conclusion. The City's RF consultant, CTC Technology and Energy ("CTC"), agreed that this site was too far outside the search ring to satisfy the coverage and capacity objectives even with a 200-foot tower. Therefore, the undisputed expert testimony demonstrated that this site is not a reasonable alternative because it cannot satisfy the coverage and capacity objectives.

The Applicant considered a new undeveloped site owned and operated by McMinnville Water & Light located on SW Fox Ridge Rd., which is identified as Tax Lot R452400700. This site is even further from the search ring area than the water tank site. The Applicant's Second Supplemental RF Report determined that this site is too far outside the search ring area to satisfy the coverage and capacity objectives. CTC agreed that this site was too far outside the search ring to satisfy the coverage and capacity objectives even with a 200-foot tower. Therefore, the undisputed expert testimony demonstrated that this site is not a reasonable alternative because it cannot satisfy the coverage and capacity objectives. Additionally, this section of SW Fox Ridge Rd. does not currently have fiber available at this location, which is required to operate the wireless communication facility, and the property itself does not have an improved access or power.

Finally, the Applicant considered new 80-foot replacement transmission utility pole(s) McMinnville Water & Light intends to construct at the Hill Rd./2nd Street intersection. The Applicant demonstrated that this option is not viable due to multiple restrictions in the MW&L Standards and the MMC. The MW&L Standards prohibit wireless antennas on transmission poles. MW&L Standards Section 9.4.3.5. The MW&L Standards limit the height of antenna attachments to 60 feet, which the Applicant already demonstrated is insufficient. MW&L Standards Section 9.4.15. The MW&L Standards limit the number of antenna attachments to one per pole and the Applicant's proposal includes 12 panel antennas. MW&L Standards Section 9.4.8. The Board disagrees with the City's claim that these MW&L Standards only apply to wooden poles, and not metal poles, as there is nothing in the MW&L Standards to support that interpretation and there is no evidence that McMinnville Water & Light adopted or agrees with that interpretation. MMC 3.18.210(B) requires the Applicant to have a franchise agreement with the City to use the right-of-way for its ground equipment and the Applicant does not have a franchise agreement. Therefore, this is not a feasible or reasonable alternative.

For the reasons stated above, the Board concludes that the McMinnville Water & Light options are not reasonable or feasible alternatives based on the substantial evidence in the record.

(3) CTC's Small Cell Option.

CTC suggested that the Applicant consider using multiple small cell or small wireless facilities on utility or streetlight poles in the area as an alternative. The Applicant's Second Supplemental RF Report explained why small cell antennas cannot be used as a substitute for the proposed macro facility. Small cells are short range cell sites deployed at lower heights and used in dense urban environments to support macro facilities, not as a substitute for a macro facility. A small cell facility is not a viable option to fulfill the coverage objectives and close the significant gap for the

proposed macro site. The “reasonable alternatives” requirement under ORS 215.275(2) does not require an applicant to consider different methodologies for providing the utility service. Use of multiple small cells in lieu of a single macro cell site is clearly a different methodology for providing the utility service and would not meet the objectives for this facility. Therefore, the Board concludes that the use of multiple small cell facilities is not a reasonable or feasible alternative based on the substantial evidence in the record.

d. Response to the City and CTC’s Questions About the Applicant’s RF Analysis.

The City and its consultant CTC raised several issues about the Applicant’s RF analysis of the alternative sites. The Applicant responded to the City’s comments and provided the requested information. Based on the substantial evidence in the record, the Board concludes that the Applicant adequately responded to the City’s questions and issues and demonstrated that the Applicant’s RF analysis of the alternative sites is credible and reliable.

The Applicant responded to CTC’s request for additional information and clarification regarding the RF analysis. The Application narrative already included a detailed discussion regarding the reasons a new wireless communication facility is necessary in this area, the factors the Applicant considered in determining the search ring area, the numerous sites the Applicant considered for this facility and the reasons why the other sites were ruled out. The Second Supplemental RF Report provided the additional information and clarification requested by the City and CTC. The Applicant’s RF engineer explained what the colors on the propagation maps represent - green represents “Good Indoor and Outdoor Coverage,” yellow represents “Acceptable Outdoor Good Indoor and Outdoor Coverage,” and light purple represents “Degraded Outdoor and Indoor Coverage.” The Applicant’s RF engineer provided the dbm ranges for each color. The Applicant clarified that the objective for this site is to provide reliable indoor and outdoor coverage for the targeted area (green). The Applicant confirmed that its propagation model uses Above Mean Sea Level to compute the plots, and that the Above Ground Level (AGL) measurements are only used to show the location of the antenna centerline and/or tip height with respect to the ground level. The Applicant clarified that the coverage plots analyze the signal strengths for the mid-band frequency because that is the frequency that serves most of the Applicant’s customers.

The Applicant responded to CTC’s comments about the elevation of the Church on the Hill property being higher than the proposed site. Although there is a difference in elevation between the proposed site and the Church on the Hill property, the Applicant’s RF engineer explained that elevation alone does not determine if a site can satisfy the coverage and capacity objectives. There are several factors that contribute to whether a site can satisfy the coverage and capacity objectives. The location of the site, and its proximity to the targeted area with a coverage gap and the existing towers in the area, is the most important factor. If the customers are too far away at the cell edge, it will degrade the signal level. A facility that is located too close to existing facilities will increase interference between the wireless facilities.

The Applicant responded to CTC’s comments about the antenna height shown in the Proposed South and West Elevations, Exhibit C of the Application. The Applicant explained that the Proposed South and West Elevations are not intended to show the final antenna tip height for this facility. The Notes for this diagram reflect this fact: “2. Antenna Mount/Platform Analysis for the proposed loading configuration to be completed by others.” The Applicant clarified that it intends

to mount the antennas at a CL of 100 feet with an antenna tip height of 104 feet.

CTC submitted its own RF analysis on June 30, 2021, but the Board concluded that CTC's analysis is not as reliable as the Applicant's RF analysis. CTC characterized its analysis as "extremely preliminary," acknowledged that it is not based on all of the relevant technical information that factored into the Applicant's analysis and admits the analysis is based on "standard generic" information. The Applicant's RF analysis is based on all relevant technical information, much of which is proprietary network information only available to the Applicant's RF engineer, and is a final product. An extremely preliminary analysis that is not based on all relevant technical information is not reliable evidence or sufficient to overcome the Applicant's RF analysis. Additionally, CTC's RF analysis would not change the outcome even if the Board relied on it. CTC's representative testified that he agreed that the two McMinnville Water & Light sites are too far outside the search ring to provide the required coverage and capacity at any height. Although CTC concluded that the 70-foot flagpole option on the Church on the Hill property and the replacement transmission utility pole at the Hill Rd./2nd Street intersection would likely provide adequate coverage and capacity, these options were ruled out for non-RF related reasons.

For the reasons provided in this Section B.2, the Board concludes that the Applicant considered all reasonable alternatives and demonstrated that the facility must be sited in the EFU zone due to the factors under ORS 215.275(2) based on the substantial evidence in the record. Therefore, the Board finds that the Application satisfies this criterion.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

The Applicant did not rely on the costs associated with the various alternative options it considered as a basis for ruling out those options. Therefore, the Board finds that the Application satisfies this criterion.

(4) The owner of a utility facility approved under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

The footprint of the proposed wireless communication facility site is fairly minimal, measuring approximately 40' x 40', which will be fenced and landscaped. The total square footage dedicated to the facility, which includes the access drive area, is 3,876 square feet or 0.08898072 acres. The facility is proposed in the northeast corner of the property and will be located adjacent to Hill Road so very little of the existing agricultural operation on the property will be disrupted by the development of an access and maintenance road or by the wireless facility itself. The Board imposed a condition of approval that requires the Applicant to submit a performance guarantee, in

the amount of 1.25 times the estimated cost for decommissioning the facility, to ensure that the location is restored back to its previous agricultural capacity when the facility is no longer needed. Therefore, the Board finds that the Application satisfies this criterion.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

The wireless communication facility is proposed in the northeast corner of the property to minimize the impacts on the farming operations on the subject property. The footprint of the proposed wireless facility site is fairly minimal, measuring approximately 40' x 40', which will be fenced and landscaped. The total square footage dedicated to the wireless communications facility, which includes the access drive, is 3,876 square feet or 0.08898072 acres. Although the footprint includes space for future carrier equipment, which is common for new towers in order to provide future collocation opportunities to avoid the need to build new towers, the Applicant testified that the size of the lease area is also driven by the foundation requirements. If a mat foundation is required, which is likely depending on the soil conditions, the foundation will be required to be 40' x 40'. The Board concludes based on the substantial evidence in the record that this is the minimum size area necessary to accommodate the wireless communications facility. There is no evidence the facility will significantly change accepted farm practices or cause a significant increase in the cost of farm practices on the surrounding farmlands. Nonetheless, the Board imposed a condition of approval that requires the Applicant to minimize any potential impacts from the facility to surrounding farmlands. Therefore, the Board finds that the Application satisfies this criterion.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

The proposed facility is a wireless communication facility, not an interstate natural gas pipeline or associated facility regulated by the Federal Energy Regulatory Commission. Therefore, this criterion is not relevant to the Board's decision.

For the reasons provided above, the Board finds that the Applicant demonstrated it considered reasonable alternatives and the facility must be sited in the EFU zone consistent with the requirements of ORS 215.275. Therefore, the Board concludes that the proposed wireless communication facility is a "utility facility necessary for public service" and a permitted use in the EFU zone pursuant to ORS 215.283(1)(c)(A) and YCZO 402.02(F).

3. Site Design Review – YCZO 1101.

The Board concludes that the Application must be approved under site design review criteria in YCZO 1101 for two reasons. First, the County is prohibited from denying the Application based on the site design review criteria in YCZO 1101 since the wireless communication facility is a permitted use in the EFU zone under ORS 215.283(1)(c)(A). Second, the Board agrees with the

Planning Director that the Applicant demonstrated compliance with the site design review criteria in YCZO 1101.

a. The County Cannot Deny the Application Under YCZO 1101.

Oregon law provides that for utility facilities necessary for public service allowed in the EFU zone under 215.283(1)(c)(A), a local government cannot deny the application based on local standards other than those set forth in ORS 215.283(1)(c)(A) and ORS 215.275. *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995); *Seeberger v. Yamhill County*, 56 Or LUBA 656, 659 (2008). As previously stated, the Board concludes that the wireless communication facility is a permitted use in the EFU zone pursuant to ORS 215.283(1)(c)(A) and ORS 215.275. In *T-Mobile v. Yamhill County*, 55 Or LUBA 83, 87–88 (2007), LUBA determined that the County cannot deny a wireless communication facility proposed in the EFU zone based on the site design review criteria in YCZO 1101. Therefore, the Board concludes that the County cannot deny the Application based on the standards in YCZO 1101.

The City conceded this point, but it claims the Applicant waived this argument because it addressed the YCZO requirements as part of the Application and did not appeal the Planning Director's decision. The City did not cite any legal authority for this proposition. The Board disagrees with the City. The State law is the State law regardless of whether the Applicant addressed YCZO 1101 in the Application. The Applicant was trying to work cooperatively with the County by showing that the proposal complies with the County's local requirements and was not required to refuse to address YCZO 1101 to preserve this issue. The Applicant raised this issue before the Board's final decision and therefore it was adequately preserved. The Applicant was not required to appeal the Planning Director's decision to preserve this issue. The Planning Director determined that the Application complies with YCZO 1101 and approved the Application, so there was no reason for the Applicant to appeal that decision. State law prohibits the County from denying the Application based on local regulations, which did not happen in this case. The City's suggestion that an applicant must refuse to address any local code provision at the very beginning of the process to preserve its rights under State law is unprecedented and would create a bad precedent for the County by requiring applicants to take a hard line on every issue even if the applicant is willing to voluntarily comply. The Board does not want to adopt the City's position as it would preclude applicants from attempting to voluntarily address the site design review criteria in YCZO 1101.

b. The Application complies with YCZO 1101.

Even if the site design review criteria in YCZO 1101 could be used as a basis to deny the Application, the Board agrees with the Planning Director that the Application complies with YCZO 1101 based on the substantial evidence in the record.

Section 1101.01 Purpose.

The site design review process is intended to guide future growth and development in accordance with the Comprehensive Plan and other related county ordinances, to provide for an effective process and framework to review commercial and industrial development proposals, to insure safe, functional, energy-efficient developments which are compatible with the natural and man-made environment, and to resolve potential conflicts that may arise between proposed developments and adjacent uses. This section shall apply to all development in all Commercial, Industrial, and Public Facilities Districts, all development

in the PRO District, and all other uses as may be required by this ordinance in the AF, EF, F-80, AF-10, VLDR and LDR Districts.

YCZO 1101.01 is a purpose statement, not an approval criterion. Purpose statements cannot be applied as approval criteria unless there is specific language stating that they are mandatory approval criteria. There is nothing in YCZO 1101.01 that states it is intended to be an approval criterion. To the contrary, YCZO 1101.01 merely provides the “intent” of the site design review process (“The site design review process is intended to guide future growth and development”) not the approval criteria themselves. The approval criteria are provided in YCZO 1101.02. Since the Application complies with the approval criteria in YCZO 1101.02, the Board concludes it is consistent with the purpose statement in YCZO 1101.01.

The Board rejects the City’s claim that the wireless communication facility does not comply with YCZO 1101.01 because Ordinance No. 912 identifies this area for future residential development. Neither YCZO 1101.01 nor Ordinance No. 912 require or permit the County to review land use proposals based on the City’s future zoning planned for this area. The property is zoned EF-80 and must be reviewed under the EFU standards. If the County accepted the City’s argument, the County would be precluded from allowing any uses that are not allowed under the City’s future residential zoning. Such an interpretation would preclude many of the existing agricultural uses in this area because such uses are not permitted under the City’s residential zoning. The Board disagrees with the City’s claim that its future zoning controls the development of the urban growth boundary area before this area is annexed into the City.

Section 1101.02 Evaluation of Site Development Plans.

The site design review approval criteria are set forth in YCZO 1101.02. The Board concludes the Application complies with YCZO 1101.02 for the reasons stated below.

A. The review of a site development plan shall be based upon consideration of the following:

Section 1101.02(A)(1): Characteristics of adjoining and surrounding uses;

Surrounding parcels to the north and east are urban residential with a mix of single-family, apartments, duplex and triplex housing. The surrounding parcels to the south and west, located outside of the City limits, consist of commercial agricultural uses on properties predominately zoned EF-80. These farm lots are predominantly dedicated to grass seed and hay production. The wireless communication facility is designed to improve the wireless services of Verizon customers in the adjoining and surrounding areas, in particular the residential areas. The wireless communication facility will not impact the surrounding farm uses.

The Board disagrees with the City’s claim that the facility is inconsistent with YCZO 1101.02(A)(1) because the surrounding area is residential. As previously stated, the surrounding parcels to the south and west, located outside of the City limits, consist of commercial agricultural uses on properties predominately zoned EF-80. Additionally, the mere fact that some of the surrounding properties are City residential properties does not mean that a wireless communication facility is prohibited in this area. The facility is a permitted use in the EFU zone and YCZO 1101.02(A)(1) does not prohibit this type of use due to surrounding residential uses. The City suggested a 70-foot flagpole wireless communication facility in a residential area as an alternative

option so it is difficult to understand why the City believes a wireless communication facility does not comply with YCZO 1101.02(A)(1) due to surrounding residential uses. The City's proposed interpretation is inconsistent with YCZO 1101.02(A)(1) and YCZO 402.02(F). Therefore, the Boards finds that the Application complies with this criterion.

Section 1101.02(A)(2): Economic factors relating to the proposed use;

The Applicant states that more than one-half of the residents in the area are living in wireless-only households and rely solely on mobile networks for communication, education, commerce, and business needs. The proposed wireless facility will serve the surrounding community and improve the coverage and capacity of the wireless network in the area. Wireless services to the area can increase economic activities in both urban and rural settings. Though not strictly an economic factor, the proposed facility will meet FCC requirements for Enhanced 911 service to residents in the area.

The Board disagrees with the City's assertion that YCZO 1101.02(A)(2) precludes the wireless communication facility because some studies have concluded that wireless communication towers may impact property values. A local government cannot consider a wireless communication facility's impact on property values unless there is a specific requirement in the local code to do so. *Hill v. City of Portland*, 66 Or LUBA 250, 258-59 (2012). Neither YCZO 1101.02(A)(2) nor any other County code provisions require the consideration of impacts on property values. Even if the YCZO did require the consideration of impacts on property values, there must be evidence demonstrating that the tower will have a negative impact on the property values in this specific instance. *Johnson v. City of Eugene*, 42 Or LUBA 353, 366-67 (2002). Generalized claims of impacts on property values are insufficient. The City relies on general studies that do not support its claim that a wireless communication facility will impact property values in this case. Additionally, the City suggested a 70-foot flagpole wireless communication facility in a residential area as an alternative option which undercuts the City's claim. Therefore, the Boards finds that the Application complies with this criterion.

Section 1101.02(A)(3): Traffic safety, internal circulation and parking;

The proposed site for the wireless communication facility is located near the northeast corner of the property, along Hill Road South. The facility will have its own access driveway which will be improved and maintained by the Applicant while the facility is in operation. The site plans submitted with the Application indicates that there will be a parking area maintained on the property for technicians who will periodically visit the site for maintenance. The Applicant indicated that the wireless communication facility will be unmanned, with a technician visiting the site 1 to 2 times per month to ensure all things are in working order. The Board imposed a condition of approval that requires the Applicant to establish and maintain a parking area, with a turnaround, for employees who will occasionally be onsite for maintenance.

The Board disagrees with the City's claim that the Application does not comply with YCZO 1101.02(A)(3) because the City has not yet determined the traffic circulation needs for the future residential development of this area and therefore it would preclude any development in the urban growth area. YCZO 1101.02(A)(3) does not require the County to address future development that may occur after the City annexes this area. If the County cannot allow any use that might conflict with the City's unknown and undefined future traffic circulation of this area, no uses would ever be allowed. The property owners in this area would be precluded from developing their

property until the City determined its traffic circulation needs for this area. Additionally, the traffic from the wireless communication facility will be minimal and therefore there are no traffic safety, circulation or parking concerns. Therefore, the Boards finds that the Application complies with this criterion as conditioned.

Section 1101.02(A)(4): Provisions for adequate noise and/or visual buffering from noncompatible uses;

The wireless communication facility will create minimal levels of noise and will not impact surrounding properties. The facility will be surrounded by 6-foot tall cyclone fencing with privacy slats and a 5-foot landscaped buffer which will provide visual buffering from surrounding uses. There is no requirement in the YCZO nor is it possible to screen the entire wireless communication tower. Exterior lighting will be provided for security and maintenance purposes, which will be shielded or directed downward to minimize glare on adjoining roads and neighboring properties. The Board imposed a condition of approval that requires the lighting to be shielded or directed downward. The wireless communication facility does not need nor is it proposing a flashing light on top of the tower.

The Board disagrees with the City's claim that the Application does not comply with YCZO 1101.02(A)(4) because it is taller than the 35-foot maximum height allowed in the City's residential zoning. Any utility facility less than 200 feet is allowed as a permitted use in the EFU zone. YCZO 402.02(F). The City cannot use its residential zone height restrictions as a basis for restricting the height of a wireless communication facility that is one-half of the permitted height in the EFU zone. Additionally, the City suggested a 70-foot flagpole wireless communication facility in a residential area as an alternative option. Therefore, the Boards finds that the Application complies with this criterion as conditioned.

Section 1101.02(A)(5): Retention of existing natural features on site;

The site plan indicates that no natural features will be disturbed due to the construction of the wireless communication facility. The property consists of a small grassy field which has historically been used agriculturally, to produce grass seed and hay. The location and design of the facility was done in such a way to minimize the impact to the site and to maintain as much of the natural features of the property. Therefore, the Boards finds that the Application complies with this criterion.

Section 1101.02(A)(6): Problems that may arise due to development within potential hazard areas.

The property is not located in the Floodplain Overlay District or other identified hazard area. The Applicant hired a consultant to conduct a geotechnical analysis of the site and no geotechnical hazards were identified from this study. There is nothing in the record to indicate that there are hazards on the property, or surrounding area, that may be exacerbated by the construction of wireless facility. Therefore, the Boards finds that the Application complies with this criterion.

Section 1101.02(A)(7): Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.

The Application was processed as a Type “A” application consistent with the YCZO requirements, so no comments were solicited from surrounding property owners during the Planning Director phase. After the City’s appeal, the County received minimal public comments on the Application other than the City’s comments. The public comments raised many of the same issues the City raised in its appeal and the Board already addressed those comments in these findings. The wireless communication facility is a low impact use that will have minimal impacts on adjacent properties and properties in the vicinity. The location and design of the facility have been proposed to minimize visual impact and meet all required setbacks, height regulations, and screening of ground equipment. The proposed facility is the minimum height necessary to provide the coverage and capacity objectives and approximately one-half the 200-foot height allowed under ORS 215.283(1)(c)(A) and YCZO 402.02(F).

The Board disagrees with the City’s claim that the County and the Applicant failed to comply with YCZO 1101.02(A)(7) because they did not consult with the City or property owners in the vicinity. As previously stated, the Applicant did communicate with the City multiple times about this project before it submitted the Application to the County. In response to the City’s appeal, the Applicant consulted with the City and considered all of the alternative site options identified by the City. The County complied with the notice requirements in YCZO 1301.01(A) for a Type A review and notified the adjacent property owners consistent with these requirements. Neither the County nor the Applicant were required to provide more notice or consultation with the City or the adjacent property owners than what is required under the YCZO. Therefore, the Boards finds that the Application complies with this criterion.

Section 1101.02(B): All development applications for site design review are subject to the development standards of the underlying zoning district and may be modified pursuant to satisfaction of the considerations provided in subsection 1101.02(A). The Director may waive submittal requirements consistent with the scale of the project being reviewed, upon determining that requirements requested to be waived are not necessary for an effective evaluation of the site development plan

The wireless communication facility meets the applicable EF-80 zone development standards. The facility satisfies the minimum 30-foot setback requirement as shown in the Applicant’s zoning drawings. The facility is one-half the 200-foot height allowed under YCZO 402.02(F). No modifications were requested or required. Therefore, the Boards finds that the Application complies with this criterion.

C. Response to Additional City Arguments.

The City’s appeal raised several other issues related to provisions other than ORS 215.283(1)(c)(A), ORS 215.275, YCZO 402.02(F) and YCZO 1101. The Board’s findings below respond to those issues.

1. Section I of the Comprehensive Plan.

The Board disagrees with the City’s claim that the Application does not comply with Section I of the Comprehensive Plan and these provisions can be used as a basis to deny the Application. As previously explained, State law prohibits the County from denying the Application based on local provisions that impose criteria other than those authorized by ORS 215.283. The Comprehensive Plan provisions cited by the City are local provisions that cannot be used to deny the Application.

These Comprehensive Plan provisions are also not applicable to the Application based on the YCZO. Neither YCZO 402.02(F) nor the site design review criteria in YCZO 1101 require the Applicant to demonstrate compliance with these Comprehensive Plan provisions. The City does not explain why it believes Comprehensive Plan Sections I(A) and I(E) are approval criteria for the Application.

Comprehensive Plan Sections I(A) and I(E) are not intended to be approval criteria. Comprehensive Plan policies and purpose statements that set out goals, objectives or policies to be achieved through the zoning code or other provisions, or that contain language that is aspirational, such as those that “encourage” a particular action or result, are not mandatory approval criteria. *Bennett v. City of Dallas*, 96 Or App 645, 647-49, 773 P2d 1340 (1989); *Burlison v. Marion County*, 52 Or LUBA 216, 218-219 (2006). The Board interprets Comprehensive Plan Sections I(A) and I(E) as purposes statements that contain general and aspirational language (“encourage”), not mandatory approval criteria intended to be applied to all development projects.

Finally, Comprehensive Plan Section I(A) and I(E) goals and policies do not say what the City claims. The Comprehensive Plan goals and policies cited by the City do not prohibit or limit uses based on the City’s future zoning planned for the area. Nor would the wireless communication facility prohibit residential development in this area since it requires very limited space and has very little impact on the surrounding infrastructure. The mere fact that the City does not allow wireless communication towers in its residential zones does not mean that the facility would prohibit the area from being developed in the future as residential development.

2. UGB Management Agreement.

The Board disagrees with the City’s claim that the Application is inconsistent with the UGB Management Agreement and that it can be used as a basis to deny the Application. As previously explained, State law prohibits the County from denying the Application based on local provisions that impose criteria other than those authorized by ORS 215.283. The UGB Management Agreement provisions cited by the City is a local provision that cannot be used to deny the Application.

Neither YCZO 402.02(F) nor the site design review criteria in YCZO 1101 require the Applicant to demonstrate compliance with the UGB Management Agreement. The UGB Management Agreement is not intended to be applied as approval criteria to specific development proposals.

The City also mischaracterized the requirements of the UGB Management Agreement. The UGB Management Agreement does not entitle the City to more notice than the County provided. The County complied with the notice requirements in YCZO 1301.01(A) for a Type A review. As previously explained, the City’s claim that the Applicant did not consult with the City about this project is not supported by the substantial evidence. Even if more notice had been required, this appeal process provided the City ample opportunities to raise its concerns about the project and the Applicant agreed to postpone the hearing twice to provide more time to consider the City’s proposed alternatives. Therefore, the City has not been prejudiced. Lack of sufficient notice prior the Planning Director’s decision is not a legitimate basis for denying an application when the City clearly was provided an opportunity to comment on the Application.

Finally, the UGB Management Agreement does not prohibit or limit uses allowed based on the City’s future planned zoning for the area. The UGB Management Agreement provisions the City

cited are intended to limit urban development within the Urban Growth Boundary, not wireless communication facilities. A wireless communication facility is not an urban use. Nor would the wireless communication facility prohibit residential development in this area. The mere fact that the City does not allow wireless communication towers in its residential zones does not mean that such a use would prohibit the area from being developed in the future as a residential development.

3. The Federal Telecommunications Act of 1996.

The Board disagrees with the City's claim that the Application can be denied based on the federal standards in the Telecommunications Act for several reasons.

The Telecommunications Act is intended to *limit* a local government's authority to deny a wireless communication facility, not impose additional requirements or grounds for denying a wireless communication facility. The City cites to Section 332(c)(7)(B), which expressly limits or restricts a local government's authority to deny a wireless communication facility.

Claims under Section 332(c)(7)(B) are limited to parties adversely affected by a local government decision and must be brought in Federal District Court. LUBA determined that the standards under Section 332(c)(7)(B) are only applicable to federal cases brought under the Telecommunications Act and cannot be used as a basis for a local government to deny a land use application. *Rawson v. Hood River City*, __ Or LUBA __ (LUBA No. 2016-099, dated March 15, 2017).

D. Conclusion/Conditions of Approval.

Based on the Board's findings and conclusions above, the Board hereby upholds the Planning Director's decision, denies the City's appeal and approves the Application subject to the following conditions:

1. The development shall substantially conform to the site maps submitted with the application.
2. Prior to operation of the facility, all required building, plumbing, septic and electrical permits and inspections shall be obtained from the Yamhill County Planning Department.
3. Prior to issuance of building permits, the water supply and access shall be required to meet the McMinnville Rural Fire Protection District standards and conditions.
4. Parking shall be established and permanently maintained as long as the wireless facility is operating so that there is a minimum of one (1) parking space for each employee on maximum working shift, pursuant to Section 1007 of the YCZO. Parking shall not be permitted on SW Hill Road or the public right-of-way.
5. Any lighting for the facility shall be shielded, deflected, or directed on the applicant's property so it does not shine onto adjacent parcels or roads.
6. Prior to issuance of building permits, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it in the deed and mortgage records for Yamhill County:

“The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator’s responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator’s violation of state law.”

7. Prior to the issuance of building permits, the applicant shall provide to the County a performance guarantee in a form described in Section 1202.04 of the Yamhill County Zoning Ordinance and approved by the County. The amount of the guarantee shall be 1.25 times the estimated decommissioning cost. These estimates may not account for any projected salvage value from decommissioned materials from the wireless facility. It is the responsibility of the applicant to provide the County with the certified cost estimate. The guarantee shall be maintained by the applicant until the project is fully decommissioned. The guarantee shall be adjusted yearly based on the Western Region Consumer Price Index.
8. This approval shall expire two years from the date of final (un-appealed) approval unless the use has been initiated.
9. The construction of any additional structures for use as part of the wireless facility, or substantial modification to the footprint of the structures shall require the submission and approval of a site design review application.
10. Modification of any of the above conditions requires approval under Section 1101.02 of the *Yamhill County Zoning Ordinance*. Violation of any of the above conditions may result in revocation of the site design review permit with the process detailed in Sections 1101.06 and 1101.07 of the *Yamhill County Zoning Ordinance*.

END