

# NOTICE OF DECISION

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005



*Si necesita ayuda para comprender esta informacion, por favor llame  
503-588-6173*

## DECISION OF THE HEARINGS OFFICER

**CLASS 3 WIRELESS COMMUNICATIONS FACILITY SITING PERMIT /  
WIRELESS COMMUNICATIONS FACILITIES ADJUSTMENT / CLASS 3 SITE  
PLAN REVIEW CASE NO. WS3-WA-SPR16-01**

**APPLICATION NO. : 16-107873-ZO, 16-107874-ZO & 16-107875-RP**

**NOTICE OF DECISION DATE: November 10, 2016**

**Summary:** A proposal to construct a new 75-foot-tall cell tower designed as a bell tower near an existing church and install auxiliary support equipment in a fenced area under the tower.

**Request:** Class 3 Wireless Communications Facility Siting Permit, Wireless Communications Facilities Adjustment, and Class 3 Site Plan Review for a proposed facility designed as a bell tower and consisting of a 75-foot-tall support tower with 12 antennas and auxiliary support equipment at ground level, all within a 20-foot by 20-foot fenced area within a 40-foot by 40-foot lease area, at an existing church on a 5.37-acre property zoned RA (Residential Agriculture) at 1150 Hilfiker Lane SE 97302 (Marion County Tax Assessor Map and Lot Number 083W10DA00100). The Adjustment is requested because the proposed height exceeds development standards requiring a maximum support tower height of 50 feet.

**APPLICANT:** Sharon Gretch and Michael Connors for Verizon Wireless

**LOCATION:** 1150 Hilfiker Lane SE / 97302

**CRITERIA:** Salem Revised Code Chapters 703 and 220

**FINDINGS:** The findings are in the attached Order

**DECISION:** The Hearings Officer **APPROVED** the request for a Class 3 Wireless Communications Facility Siting Permit and a Class 3 Site Plan Review Case No. WS3-WA-SPR16-01 for a proposed 85-foot artificial tree design tower, consisting of an 75-foot support tower with 12 antennas, and auxiliary support equipment at ground level, all within a 20-foot by 20-foot fenced area, within a 40-foot by 40-foot lease area, at an existing church on 5.37 acres of property zoned RA (Residential-Agriculture) at 1150 Hilfiker Lane SE, and **APPROVED** the request for a wireless communications adjustment to exceed the maximum support tower height of 50 feet, subject to the following conditions:

**Condition 1:** All external cables and wires for auxiliary support equipment shall be placed in conduit or painted to match the tower, building, support structure, or utility structure as applicable.

**Condition 2:** Motion-detecting security lighting is allowed for auxiliary support equipment, but shall be the minimum necessary to secure the auxiliary support

equipment, shall not illuminate adjacent property in excess of 0.4 foot candles, measured directly beneath the security lighting at ground level, and shall be shielded to prevent direct lighting from falling on adjacent property.

**Condition 3:** The support tower shall not be lighted unless the applicant provides documentation that the Federal Aviation Administration or Oregon Department of Aviation is requiring such lighting.

**Condition 4:** An obsolete wireless communications facility shall be removed by the owner within six months of the date the facility ceases to be operational.

**Condition 5:** All wireless communications facilities shall be operated and maintained in compliance with all radio frequency emission standards specified by the Federal Communications Commission.

**Condition 6:** All wireless communications facilities shall be installed and maintained in accordance with applicable federal, state, and local laws.

**Condition 7:** All wireless communications facilities shall allow for the attachment or collocation of additional facilities to the greatest extent possible, unless such attachment or collocation interferes with the owner's wireless communications facilities, jeopardizes the physical integrity of a structure with which a wireless communications facility is associated, or the owner refuses to consent to the attachment or collocation of additional wireless communications facilities.

**Condition 8:** Vegetation that is either removed or destroyed as a result of construction shall be replanted with appropriate plant materials as prescribed in SRC 132.200 (SRC807.015).

**Condition 9:** Prior to making any opening or cut in any right-of-way, an owner shall obtain approval from the City Engineer.

**Condition 10:** After construction, maintenance or repair of any wireless communications facility, an owner shall leave any right-of-way disturbed by such activity in as good or better condition than it was before the commencement of such work. The owner shall promptly complete restoration work and promptly repair any damage caused by such work at its sole cost and expense. When any opening or cut is made by the owner in the pavement of right-of-way, the owner must promptly refill the opening or cut, and restore the surface to a condition satisfactory to the City Engineer, in accordance with public works construction standards.

**Condition 11:** Prior to performing any excavation in right-of-way to underground any auxiliary support equipment, all necessary city permits shall be obtained and all appropriate notice given to any franchisees, licensees and grantees, other city departments, and other governmental units that own or maintain facilities which may be affected by the excavation.

**Condition 12:** All undergrounding and excavation work must comply with the Oregon

Utility Notification Law, ORS 757.542-757.562 and 757.993, and all rules and regulations promulgated thereunder.

**Condition 13:** All excavations made by an owner in right-of-way shall be properly safeguarded for the prevention of accidents and must be done in compliance with all applicable federal, state, and local laws and regulations.

**Condition 14:** Except for short or temporary durations during testing or during operation in emergency situations, noise generating equipment associated with wireless communications facilities shall not produce sound levels in excess of standards established in SRC Chapter 93.

The rights granted by the attached decision must be exercised, or an extension granted, by November 29, 2018 or this approval shall be null and void.

Wireless Communications Facility Siting Permit	<u>November 29, 2018</u>
Wireless Communications Facility Adjustment	<u>November 29, 2018</u>
Site Plan Review	<u>November 29, 2020</u>

Application Deemed Complete: May 31, 2016  
Public Hearing Dates: August 10, 2016 & September 28, 2016  
Notice of Decision Mailing Date: November 10, 2016  
Decision Effective Date: November 29, 2016  
State Mandate Date: September 28, 2016  
Extended State Mandated Date: December 27, 2016

Case Manager: Pamela Cole, [pcole@cityofsalem.net](mailto:pcole@cityofsalem.net), 503-540-2309

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than **5:00 p.m., November 28, 2016.**

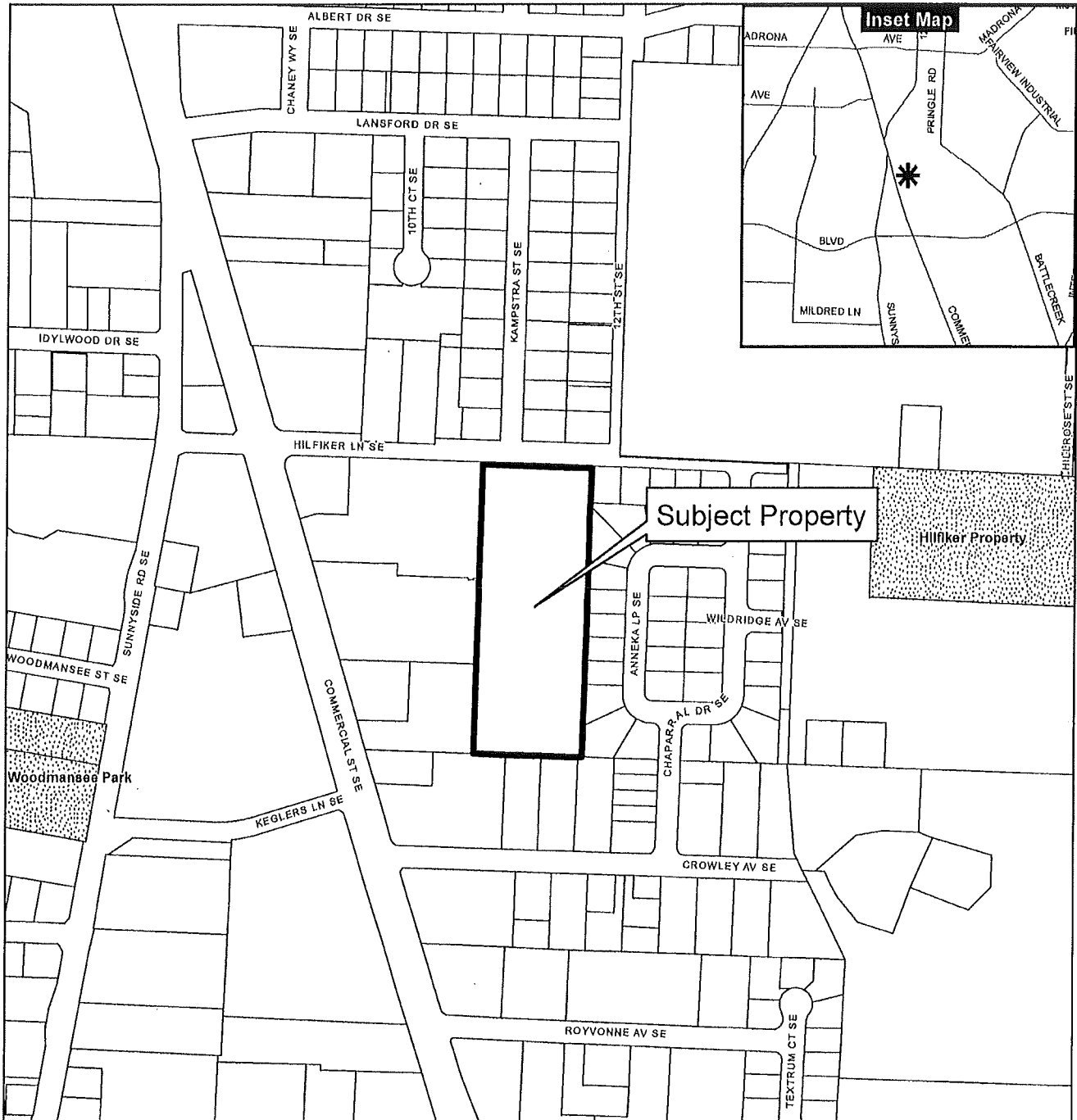
Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 703 & 220. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.







**<http://www.cityofsalem.net/planning>**

# Vicinity Map

## 1150 Hilfiker Lane SE



### Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools

 Parks

**CITY OF Salem**  
AT YOUR SERVICE  
Community Development Dept.

This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

0 100 200 400 Feet



MAY 26 2015

**LESSORS LEGAL DESCRIPTION**

LEAST AREA LEGAL DESCRIPTION

CONTAINING 800 SQUARE FEET.

(PER JURISDICTION) =

FENCE: 15

## PARKING SUMMARY:

• 185  
PARKING SPACES AVAILABLE AFTER  
INSTALLATION OF WIRELESS FACILITY:



OVERALL SITE PLAN | 1

No.	Date	Revision
A	03/07/16	ISSUE FOR REVIEW MEET
B	02/02/16	FINAL FOR REVIEW MEET
0	03/02/16	FOR REVIEW MEET
1	-	-
2	-	-



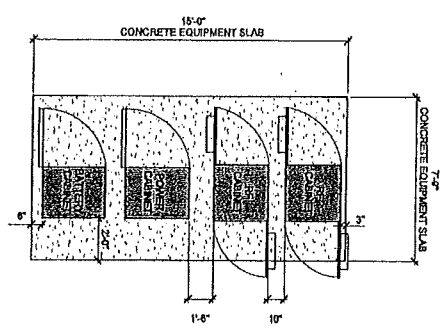
PRINGLE CREEK  
9150 HELLFINGER LAKE DR  
BAYVIEW, OH 44127

OVERALL SITE PLAN

Project Number:	Date:
0	05/02/16
Contract:	Contract:
RM	KM
Project Manager:	Project Manager:
AM	CS
Revision No:	Drawn By:
	A-0



**PROPOSED COMPOUND PLAN (WITHOUT ADJUSTMENT)**



RECEIVED  
MAY 26 2016  
COMMUNITY DEVELOPMENT

NOTE:  
CONTRACTOR SHALL OBTAIN SEPARATE PERMITS FROM FIRE  
MARSHAL REGARDING THE INSTALLATION OF THE GENERATOR  
AND FUEL TANK PRIOR TO CONSTRUCTION

NOTE:  
GENERATOR/REFUELING TANK SHALL NOT BE CLOSER THAN 5'-0" FROM  
PROPERTY LINE PER NFPA 30 TABLE 22.4.1.5

Alt.	Date	Location
A	05/02/76	50N 223 N 050W 4 BT
B	05/02/76	50N 223 N 050W 4 BT
C	05/02/76	220000 18 00N 177 00W
T	-	-
Z	-	-



Implementation Team:

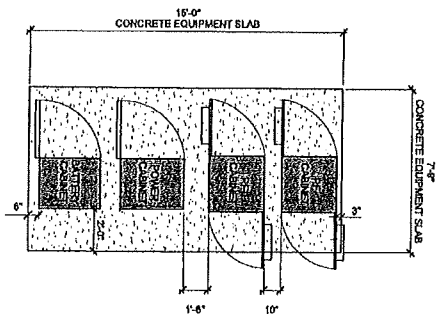
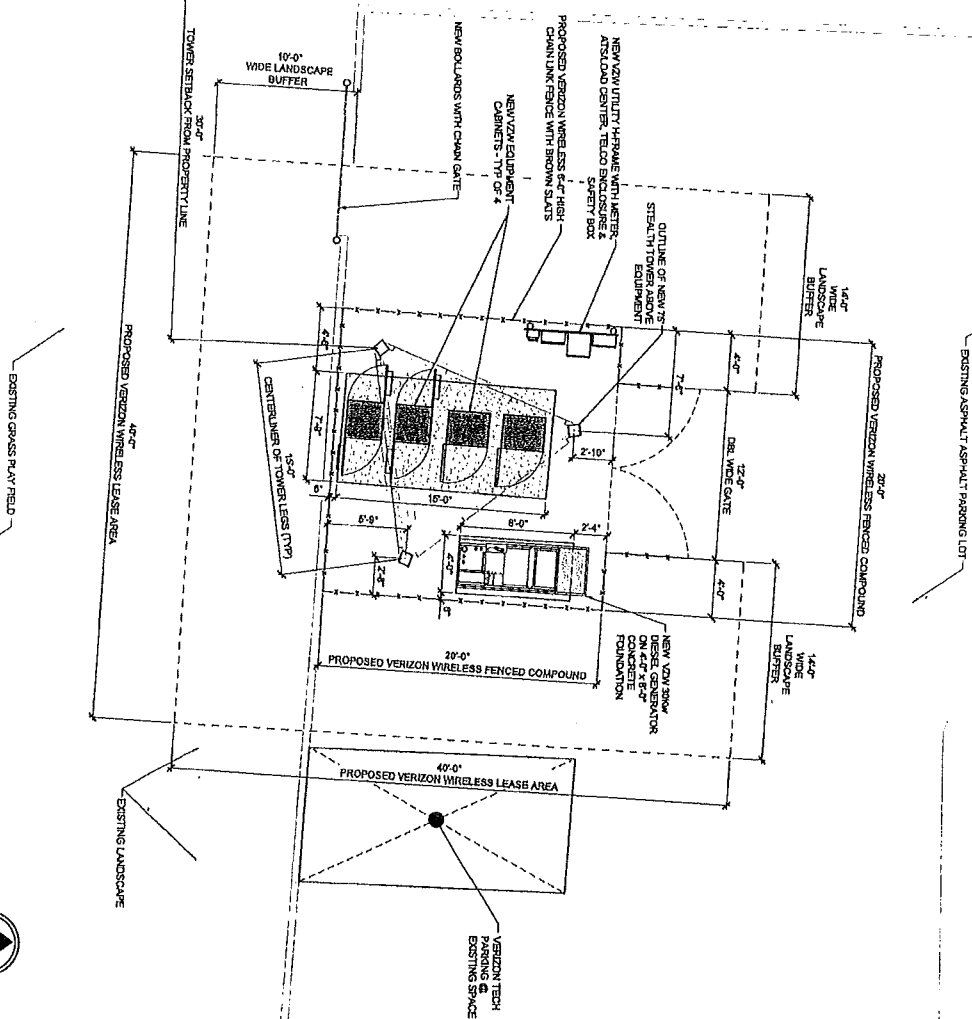
med7

AAE TOWERS  
Acom  
CONSULTING INC.

Pringle Creek  
SLM  
PRINGLE CREEK  
1125 HUNTER LANE SE  
BURLINGTON, VT 05403

Drawing Title:  
**PROPOSED  
COMPOUND PLAN  
(WITHOUT ADJUSTMENT)**

Project Number	Date
Order	06/22/16
RM	Design
Physical Summary	CM
Alt	Preparation of Plans
Revision No	CS
0	Sheet No
	A-1



RECEIVED  
MAY 26 2016  
COMMUNITY DEVELOPMENT

PROPOSED EQUIPMENT PLAN	2
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NOTE  
CONTRACTOR SHALL OBTAIN SEPARATE PERMITS FROM FIRE  
MARSHAL REGARDING THE INSTALLATION OF THE GENERATOR  
AND FUEL TANK PRIOR TO CONSTRUCTION

NOTE:  
GENERATOR/FUEL TANK SHALL NOT BE CLOSER THAN 5'-0" FROM  
PROPERTY LINE PER NFPA 30 TABLE 22.4.1.6



**PROPOSED COMPOUND PLAN (WITH ADJUSTMENT)**

No.	Date	Particulars
A	20/07/18	999.22 RECEIVED DEBT
B	20/07/18	999.22 RECEIVED DEBT
D		999.22 RECEIVED DEBT
E		999.22 RECEIVED DEBT
F		999.22 RECEIVED DEBT
G		999.22 RECEIVED DEBT
H		999.22 RECEIVED DEBT
I		999.22 RECEIVED DEBT
J		999.22 RECEIVED DEBT
K		999.22 RECEIVED DEBT
L		999.22 RECEIVED DEBT
M		999.22 RECEIVED DEBT
N		999.22 RECEIVED DEBT
O		999.22 RECEIVED DEBT
P		999.22 RECEIVED DEBT
Q		999.22 RECEIVED DEBT
R		999.22 RECEIVED DEBT
S		999.22 RECEIVED DEBT
T		999.22 RECEIVED DEBT
U		999.22 RECEIVED DEBT
V		999.22 RECEIVED DEBT
W		999.22 RECEIVED DEBT
X		999.22 RECEIVED DEBT
Y		999.22 RECEIVED DEBT
Z		999.22 RECEIVED DEBT



7093



**Acom**  
CONSULTING INC.

Project Name:  
**SUM  
PRINGLE CREEK**  
1150 HUNTER LAKE AVE  
BAYDLE, OR 97202

**PROPOSED  
COMPOUND PLAN  
(WITH ADJUSTMENT)**

Project Number:	Date:
Driver:	IS02016
RA:	Outgoing
Project Manager:	RA
AM	Professional of Finance
Running No:	CS
	Driver No:

No	Date	Revision
A	02/01/16	90% ZD REVIEW SET
B	03/02/16	FINAL ZD REVIEW SET
C	05/02/16	ZONING SUBMITTAL SET
1	-	-
2	-	-

verizon

7m3



**Acom**  
CONSULTING INC.

Project Info:  
SLM  
PRINGLE CREEK  
1150 HILPNER LANE SE  
SALEM, OR 97302

Drawing Title  
**PROPOSED  
ELEVATION  
(WITH ADJUSTMENT)**

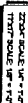
Project Number:	Date:
Drafter:	05/02/16
RM	Designer
Project Manager	KM
AM	Professional of Record
Revision No:	Sheet No:
0	A-2.1

1



MAY 26 1975

## COMMUNITY DEVELOPMENT



**PROPOSED SOUTH ELEVATION (WITH ADJUSTMENT)**

No.	Date	Incidents
A	12/20/78	897-223, RETURN, REET
B	12/20/78	PRIV. TO RETURN, REET
D	12/20/78	12/20/78, 12/20/78, REET
1	-	-
2	-	-



7297



**Acom**  
CONSULTING INC.

SLM  
PRINGLE CREEK  
1150 HILFINGER LANE SE  
SALENA, OR 97102

**PROPOSED  
ELEVATION  
(WITH ADJUSTMENT)**

Project Name:	05/0078
Project Manager:	Design
Project ID:	KOL
Project Status:	Completed or Pending

0 | A-2.1

MAY 26 2015

No.	Date	Remarks
A	02/07/15	80% 2D REVIEW SET
B	03/07/15	FINAL 2D REVIEW SET
C	03/07/15	200040 SUBMITTAL SET
F	-	-
G	-	-



7097



**Acom**  
CONSULTING INC.

**SLM**  
**PRINGLE CREEK**  
1150 KILMER LANE SE  
CALDWELL OR 97324

Proposed Elevation  
(Without Adjustment)

Project Number:	Date:
Director:	05/02/16
RM	On-Site
Project Manager:	Professional or Resident
AM	CS
Revision No:	Drawn By:

0	A-2.0
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**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

REQUEST: CLASS 3 WIRELESS  
COMMUNICATIONS FACILITY SITING  
PERMIT, WIRELESS COMMUNICATIONS  
FACILITIES ADJUSTMENT, AND CLASS 3  
SITE PLAN REVIEW FOR A PROPOSED  
FACILITY DESIGNED AS A BELL TOWER  
AND CONSISTING OF A 75-FOOT-TALL  
SUPPORT TOWER WITH 12 ANTENNAS  
AND AUXILIARY SUPPORT EQUIPMENT  
AT GROUND LEVEL AND ALL WITHIN A  
20-FOOT BY 20-FOOT FENCED AREA  
WITHIN A 40-FOOT BY 40-FOOT LEASE  
AREA, AT AN EXISTING CHURCH ON A  
5.37-ACRE PROPERTY ZONED RA  
(RESIDENTIAL AGRICULTURE) AT 1150  
HILFIKER LANE SE SALEM, OREGON.  
THE ADJUSTMENT IS REQUESTED  
BECAUSE THE PROPOSED HEIGHT  
EXCEEDS DEVELOPMENT STANDARDS  
REQUIRING A MAXIMUM SUPPORT  
TOWER HEIGHT OF 50 FEET.

WS3-WA-SPR16-01

FINDINGS OF FACT, CONCLUSIONS AND  
DECISION

**DATE AND PLACE OF HEARING:**

August 10, 2016 and September 28, 2016, Salem City Council Chambers, 555  
Liberty Street SE, Salem, Oregon.

**APPEARANCES:**

<u>Staff:</u>	Pamela Cole, Planner II
<u>Neighborhood Association:</u>	Morningside Neighborhood Association Geoffrey James
<u>Proponents:</u>	Michael Connors and Sharon Gretch
<u>Opponents:</u>	Eric Conzoner Katlin Conzoner Carole Wilson

Brad Igram  
Debra Herzog  
Naomi Strauser  
Janelle Hardman-Ingram  
Barbara Berry  
Kyle Carlton  
Adam Crateau  
Liam Crateau

### **SUMMARY OF THE APPLICATION AND HEARING**

Class 3 Wireless Communications Facility Siting Permit, Wireless Communications Facilities Adjustment, and Class 3 Site Plan Review for a proposed facility designed as a bell tower and consisting of a 75-foot-tall support tower with 12 antennas and auxiliary support equipment at ground level, all within a 20-foot by 20-foot fenced area within a 40-foot by 40-foot lease area, at an existing church on a 5.37-acre property zoned RA (Residential Agriculture) at 1150 Hilfiker Lane SE Salem, Oregon. The Adjustment is requested because the proposed height exceeds development standards requiring a maximum support tower height of 50 feet.

### **FINDINGS OF FACT AND CONCLUSIONS**

1. The Salem Area Comprehensive Plan Map designates property as Single Family Residential.
2. The subject property is zoned RA (Residential Agriculture). Wireless communication facilities are allowed in the RA zone, subject to SRC chapter 703.
3. The zoning of surrounding properties is as follows:

North:	Across Hilfiker Lane SE, RS (Single Family Residential)
East:	RS (Single Family Residential)
South:	C R (Retail Commercial) and RS (Single Family Residential)
West:	CR (Retail Commercial)
4. A number of comments were received at both of the hearings and in writing. A summary of those comments is as follows:
  - i. Verizon text message was unfair and misleading.
  - ii. Proposal would eliminate needed parking.
  - iii. Verizon breaks rules in other jurisdictions and in Salem.
  - iv. Third party signal check is misleading.

- v. Verizon needs to provide coverage to Fairview, and that is where the tower should be placed.
- vi. Supplemental information should not be considered.
- vii. Certified letter was not adequate or meaningful.
- viii. CO zone sites should not be ruled out only because of taller tower height.
- ix. Neighbors did not have time to respond.
- x. Tower could affect pace maker or defibrillator.

The Hearings Officer is not treating this as a popularity contest; thus, the unanimous comments through text messaging are not being giving any weight in the Hearings Officer's determination, just as a petition in opposition, in and of itself, isn't given any weight. The Hearings Officer's responsibility is to weigh the evidence against the applicable criteria, and if the evidence supports granting the application, the Hearings Officer will grant the application. If it does not, the application will be denied.

Parking requirements are for a religious facility, and are based upon the testimony received by the Hearings Officer. The Hearings Officer finds that the minimum requirements of 123 spaces and maximum of 216 spaces are the minimum and maximum for this location, and there are at least 161 spaces, so parking is not an issue.

With regards whether Verizon's actions within other jurisdictions are violating the rules does not apply to any applicable criteria. The City has hired a third-party reviewer who has evaluated and accepted the study regarding signal check, which shall be looked at more thoroughly later in this order. The Hearings Officer is relying upon the expert testimony of both the applicant and the third-party signal checker for the city. This will apply to whether or not the Fairview coverage should be the better location. The City's third-party reviewer evaluated and accepted the applicant's technical data on the coverage. With regards to supplemental information, the applicant requested the opportunity to continue the hearing. The Hearings Officer granted that continuance, all additional evidence is necessary to be reviewed, so we can have a complete and fair hearing on this application. Receiving supplemental information is exactly why we hold public hearings.

With regards to the certified letter, the applicant provided a letter and documentation that was mailed. The deadline was dictated by the hearings schedule.

With regards to the CO zone sites, the Hearings Officer will go into more detail later in the order. However, the topography, small lot sizes, nearby residences, existing businesses and other factors have made it difficult to site a

tower on any of those sites, that would be less intrusive than the proposed site that is being considered. The only vacant site is 4345 Sunnyside. A tower placed near Sunnyside will be approximately 180 feet from the nearest single family dwelling in the CO zone and 190 feet from the nearest RS zone— closer than the distances between the proposed site and dwellings.

The concern raised about not having enough time to respond to the supplemental staff report was addressed by the Hearings Officer, who granted a two-week extension from the date of the second hearing in which to submit additional written evidence, another week to respond to the written evidence and a fourth week for the applicant to respond in argument only. The claim of unfairness is adequately taken care of. Finally, the health concerns: the Hearings Officer can certainly understand the emotional testimony that was received by both adults and children. However, the City may not consider environmental effects of cell towers if a tower meets federal standards. The City's third-party reviewer evaluated the applicant's submittals as meeting federal standards. Therefore, it is out of the City's and the Hearings Officer's hands in terms of being able to deny based on health concerns.

5. Class 3 wireless communication facilities permit criteria SRC Chapter 703.020(e)(3) establishes the following approval criteria for a Class 3 permit:

**Criterion 1:** The support tower conforms to the standards of this chapter, and the reasonably likely adverse impacts of the use of the immediate neighborhood can be minimized through the imposition of conditions related to the location, size, design and operating characteristics of the wireless communication facility.

The proposed location would meet all applicable siting and development standards and conditions, with the exception of the height. The applicant has requested an adjustment to increase the height, which will be discussed later in this order.

The following siting standards are the ones that were reviewed and determined to have been satisfied.

- a. SRC Chapter 703.030(c), which includes the following siting standards for a new support tower :

1. *Residential mixed use and public zone and overlay zones.*

It is the finding of the Hearings Officer that the applicant has sufficiently demonstrated that co-location or attachment to existing structures was not feasible; that multiple utility pole installation would be more intrusive; and that other sites were not feasible locations for a new support tower. Therefore, prohibiting the siting will effectively prohibit the provision of the

wireless communication services, and thus, the proposal meets this siting standard. In addition, multiple utility pole installations would be required to provide the requested service, and the utility pole installations would not be subject to the design standard for the support tower in the Residential Agriculture zone and would have greater vision impacts on multiple adjacent properties. Therefore, multiple utility pole installation would be more intrusive. At the original hearing the staff recommended denial based upon the fact that there appeared to be several sites within the search ring, and near the search ring not zoned Residential Agriculture or Single Family Residential. The staff felt that the applicant did not clearly demonstrate that prohibiting the proposed siting would effectively prohibit the provision of wireless communication services. At a minimum, the staff suggested the applicant should provide an evaluation of these sites and determine why they were not feasible, and for that reason they recommended against the proposal. The hearing was continued to September 28, 2016, and at that hearing the applicant provided significant information to address this issue. Verizon supplemental information was significant to document that they attempted to contact owners of potential sites near or within the search area. They did not mail letters to owners of seven properties that had been identified, but these were rejected for reasons including: residential use, inability to meet the 100-foot setback from residential zones, and lower elevations that would require an increase in tower height. The Hearings Officer had to decide on whether these sites should have been provided notice. But in evaluating the testimony of both the applicant and the City's third-party reviewer, the Hearings Officer finds that these seven sites were rejected, based upon the testimony that they would not be feasible for this use. Others were rejected for reasons including residential use and inability to meet the 100-foot setback from residential zones and lower elevations that would require an increase in tower height. Three were ruled out due to title restrictions prohibiting parking areas from being used for permanent structures. Eighteen were ruled out due to lack of response to the certified letter, and four were ruled out because the owner or representative replied that they were not interested. Based upon this testimony, the Hearings Officer finds that the applicant has contacted most of the property owners in and near the search ring and has provided reasonable justifications as to why the other seven properties were not suitable and/or the owners were not contacted. The City cannot require property owners to accept Verizon's facility. For these seven tax lots whose owners expressed interest in working with Verizon, Verizon provided significant information explaining why the sites would not be feasible. The five potential sites in the CO zone are at lower elevations than the proposed site at 1150 Hilfiker Lane. A tower on any of those sites would have to be taller to provide the same service. Also, a tower on any of those sites would be approximately the same distance or closer to residential buildings than the tower on the proposed site. For the

two potential sites in the CR zone, Verizon testified that the CC&R-prohibited buildings or improvements (other than typical parking lot improvements) except within the defined building area, and rooftop installations, would not meet the requirements for antenna height.

The final lot that was discussed at length as to whether it was a potential for this siting was the WinCo parking lot. The City's third-party reviewer felt that the WinCo property could possibly be used, but they did not have enough information to say whether it was possible. However, Verizon testified that the owners of the WinCo property had not expressed interest in leasing a portion of the site for the proposed facility. The City cannot require WinCo to allow Verizon to locate on this property. Therefore, based upon the testimony from the staff, it is the finding of the Hearings Officer that the WinCo site is not a feasible alternative to the proposed site. Based on this, it is the Hearings Officer's determination that this criterion has been satisfied.

*2. New support towers may not be sited within the CB zone.*

It is the finding of the Hearings Officer that the site is not located within the CB zone or any historic overlay or right of way; therefore, this standard has been met.

*3. The location of the support tower minimizes visual impacts on residential zones to the maximum extent feasible, through the effective use of setbacks, height, bulk, and landscaping and other screenings techniques.*

It is the finding of the Hearings Officer that this criterion has been satisfied. However, as will be addressed later, part of the reason why this criterion was satisfied is the switching of the design to an 85-foot artificial tree design.

*4. The support tower is sited in a way that minimizes the visual impacts by taking advantage of existing buildings, topography or other existing features.*

The proposed location between existing buildings on the church property and the adjacent shopping center to the west would obscure the base of the lower part of the tower from the residential zones on the northeast. The existing trees south of the parking lot help screen the lower portion from the south. The tower itself would satisfy this criterion, but changing this to an 85-foot artificial tree design clearly satisfies this criterion.



5. *No new support towers shall be constructed unless the owners submit the required statement and documentation from a radio frequency engineer or a licensed civil engineer to demonstrate that the necessary service cannot be provided by co-location on or modification to an existing support tower or support structure or utility structure, or by attachment on a replacement utilities structure.*

The proposal meets this siting standard. The applicant submitted an engineer certification, propagation maps and written narrative to document the capacity issues within the service area, and to demonstrate that the proposed facility location and height of 75 feet would resolve these issues. The applicant stated that the other locations, including utility poles on collectors and arterials streets, will not fill the gap in coverage/capacity, and multiple locations would be required if antennas would be located on existing utility poles. The applicant found no existing cell towers nearby that would meet the coverage and the capacity objectives, according to the testimony. The applicant's testimony was that the proposed location was the only viable location that could meet the coverage objective. There was no credible evidence presented that contradicted that testimony. Therefore, this criterion has been satisfied.

- b. SRC Chapter 703.030 (a) included the following development standards for antennas on support towers:

1. *Height: Antennas attached to a support tower shall not be higher than 15 feet above the top of the support tower.*

It is the finding of the Hearings Officer that the proposed panel antennas are no higher than the top of either of the proposed 75-foot tower or the alternate 50-foot tower. A proposed GPS antenna would be approximately 1 foot higher than either tower; therefore, this standard is satisfied .

2. *Surface and coloration.*

The proposed antenna would be screened from view, and it will be designed as a tree, and therefore it meets this criterion.

3. *Mounting.*

The proposed mounting will be completely screened from view, and the proposal meets this standard.

- c. SRC Chapter 703.050 includes the following development standards for axillary support equipment associated with support towers.

1. *Screening.*

The proposal meets the screening standard.

2. *Setbacks.*

The proposed ground equipment would be approximately 10-feet in height. In the RA zone, accessory structures of this height shall be set back 20 feet from collector streets, 5 feet from interior side property lines and 1 foot from interior rear property lines. The proposal meets this standard.

3. *Vision clearance.*

The proposed equipment is not located in any areas where vision requirements from SRC 76.170 are applicable. Therefore, this meets this standard.

4. *External cables and wires.*

The applicant did not address this standard. Therefore, the Hearings Officer adopts this condition:

**Condition 1:** All external cables and wires for auxiliary support equipment shall be placed in conduit or painted to match the tower, building, support structure, or utility structure as applicable.

5. *Coloration.*

The artificial tree design satisfies this criterion, and the cables lines and auxiliary equipment will be non-reflective and of a color that will blend with the surrounding environments; therefore, this criterion is satisfied.

6. *Lighting.*

The applicant did not address this standard; therefore, the Hearings Officer adopts the following condition:

**Condition 2:** Motion-detecting security lighting is allowed for auxiliary support equipment, but shall be the minimum necessary to secure the auxiliary support equipment, shall not illuminate adjacent property in excess of 0.4 foot candles, measured directly beneath the security lighting at ground level, and shall be shielded to prevent direct lighting from falling on adjacent property.

7. *Undergrounding requirements.*

The proposed equipment will not be installed in the right of way, and therefore this standard is met.

d. SRC 703.070 includes the following developments standards for support towers:

1. *Height.*

*(a) In the RA zone the maximum height is 50 feet.*

The application is for 75 feet (or even 85 feet with the tree design), and the applicant has requested an adjustment to this standard to allow a higher tower height. Findings for the adjustment are found later in this order.

*(b) A support tower located three hundred feet or less from an EFU, RA, RS, RD, RM1, or CO zone shall be no greater in height than the lowest maximum allowed height in any of those applicable zones.*

Again, the applicant has filed for a height adjustment, which will be addressed later in this order.

2. *Setbacks.*

The proposed tower is located in the RA zone, and the base shall be set back a minimum of 100 feet from all property zoned EFU, RA, RS, RD, RH, RM1, RM2, or CO, and 30 feet from all other property. The proposed tower is located more than 30 feet from all property lines and more than 254 feet from all EFU, RA, RS, RD, RM1, and CO zones and 30 feet from the abutting CR zone. Therefore, the proposal meets this standard.

3. *Screening.*

The proposal meets the standard, but a full landscape and irrigation plan will be reviewed at building permit time.

4. *Surface and Coloration.*

The tree design, and cables, lines and ancillary equipment shall be non-reflective and of a color that will blend with the surrounding environment. Therefore, it meets this standard.

5. *Design Standards.*

As noted in the original report, the designed bell tower met the design standards. However, since that time the applicant has proposed a tree design, which would also meet these standards. The alternate design resembles a tree, an object that would be commonly found in the area, and is appropriate to the context of the existing buildings and vegetation on the subject property and adjacent to the commercial development to the west. The physical dimensions of the alternate design are similar in scale to other trees. The antennas would have the appearance of tree branches and would be partially concealed by the artificial tree branches. Therefore, it meets this criterion.

6. *External Cables and Wires.*

The proposal meets this standard.

7. *Lighting.*

The applicant testified that the required forms have been filed and the agencies contacted, but they have not responded. To ensure compliance with this standard, the following condition is adopted:

**Condition 3:** The support tower shall not be lighted unless the applicant provides documentation that the Federal Aviation Administration or Oregon Department of Aviation is requiring such lighting.

8. *Collocation.*

The Hearings Officer, later in this Order, will be approving the height adjustment. The proposed 75-foot tree design would be required to accommodate at least one future

antenna system. The proposed tower is designed to accommodate a future antenna system, and the tree design should also be so designed.

9. *Access.*

Access is provided from Hilfiker Lane SE, a collector street. No other access point is available. The access faces the right-of-way of Hilfiker Lane SE rather than any existing dwellings or adjacent property zoned residential or mixed use. Therefore, the proposal meets this standard.

- e. SRC Chapter 703.080 includes conditions for all wireless communications facility siting permits. The Hearings Officer adopts the following conditions to ensure that his criterion is satisfied:

**Condition 4:** An obsolete wireless communications facility shall be removed by the owner within six months of the date the facility ceases to be operational.

**Condition 5:** All wireless communications facilities shall be operated and maintained in compliance with all radio frequency emission standards specified by the Federal Communications Commission.

**Condition 6:** All wireless communications facilities shall be installed and maintained in accordance with applicable federal, state, and local laws.

**Condition 7:** All wireless communications facilities shall allow for the attachment or collocation of additional facilities to the greatest extent possible, unless such attachment or collocation interferes with the owner's wireless communications facilities, jeopardizes the physical integrity of a structure with which a wireless communications facility is associated, or the owner refuses to consent to the attachment or collocation of additional wireless communications facilities.

**Condition 8:** Vegetation that is either removed or destroyed as a result of construction shall be replanted with appropriate plant materials as prescribed in SRC 132.200 (SRC807.015).

**Condition 9:** Prior to making any opening or cut in any right-of-way, an owner shall obtain approval from the City Engineer.

**Condition 10:** After construction, maintenance or repair of any wireless communications facility, an owner shall leave any right-of-way disturbed by such activity in as good or better condition than it was before the

commencement of such work. The owner shall promptly complete restoration work and promptly repair any damage caused by such work at its sole cost and expense. When any opening or cut is made by the owner in the pavement of right-of-way, the owner must promptly refill the opening or cut, and restore the surface to a condition satisfactory to the City Engineer, in accordance with public works construction standards.

**Condition 11:** Prior to performing any excavation in right-of-way to underground any auxiliary support equipment, all necessary city permits shall be obtained and all appropriate notice given to any franchisees, licensees and grantees, other city departments, and other governmental units that own or maintain facilities which may be affected by the excavation.

**Condition 12:** All undergrounding and excavation work must comply with the Oregon Utility Notification Law, ORS 757.542-757.562 and 757.993, and all rules and regulations promulgated thereunder.

**Condition 13:** All excavations made by an owner in right-of-way shall be properly safeguarded for the prevention of accidents and must be done in compliance with all applicable federal, state, and local laws and regulations.

**Condition 14:** Except for short or temporary durations during testing or during operation in emergency situations, noise generating equipment associated with wireless communications facilities shall not produce sound levels in excess of standards established in SRC Chapter 93.

**Criterion 2.** The support tower will not be located in the right-of-way.

Based on the testimony, the Hearings Officer finds that the support tower will be located outside the right of way.

**Criterion 3 (SRC 703.020(e)(3)(C)).** If the proposal is to construct a new support tower:

- (i) Collocation on existing wireless communications facilities within the cell service area of the proposed site is not feasible.
- (ii) Proposed location for the tower is the least intrusive means of filling a significant wireless communications service gap in coverage and/or capacity, including in-building coverage; and
- (iii) Prohibiting a new tower would prohibit or have the effect of prohibiting the provision of wireless communications services.

It is the finding of the Hearings Officer that the applicant has demonstrated that collocation or attachment to existing structures was not feasible, that multiple utility pole installations would be more intrusive, and that other sites were not

feasible locations for a new support tower. Therefore, prohibiting the siting would effectively prohibit the provision of wireless communications services. The proposal meets this criterion. This has been addressed earlier in the order as well.

7. Analysis of wireless communications facilities adjustment criteria.

SRC 703.090(d) establishes the following approval criteria for an adjustment:

**Criterion 1.** The adjustment is consistent with the purpose of the development standard for which the adjustment is sought.

The purpose of the height standard is to ensure that a support tower is comparable in height to other nonresidential buildings that would be allowed in the zone so that it does not loom high above nearby residential structures. The maximum building heights in the RA zone are 35 feet for single family and two family uses, and 50 feet for other uses. For a religious assembly use in the RA zone, special use standards allow a maximum height of 35 feet for the building and 50 feet for spires, steeples, and towers. Although the proposed 75-foot tower would exceed the 50-foot maximum height allowed for other nonresidential uses, it would be located far from any residential structures. The proposed tower would be more than 254 feet from the nearest residential zone to the east – a distance equal to 3.4 times the tower height and 2.5 times the minimum setback; 331 feet from the residential zone to the south – a distance equal to 4.4 times the tower height and 3.3 times the minimum setback; and 465 feet from the residential zone on the north side of the centerline of Hilfiker Lane SE – a distance equal to 6.2 times the proposed height and 4.7 times the minimum setback. Therefore, it meets this criterion.

**Criterion 2 (SRC 703.090(d)(2)).** Based on a visual analysis, the design minimizes the visual impacts to residential zones through mitigating measures, including, but not limited to, building heights, bulk, color, and landscaping.

The proposal originally was a bell tower design. At the second hearing the applicant provided photo simulations of an alternate tree design for the proposed facility at 75 feet in height or 85 feet in height. Either height would minimize visual impacts to residential zones by disguising the antennas. The height of the support tower structure and the height of the antenna tips would be the same with the original bell tower design, or with either tree design. The additional 10 feet to 85 feet would allow for artificial branches above the antennas, which would make the tree design look more normal and complete.

The proposed location utilizes the existing building to screen most of the tower from view to the northeast and the existing trees to screen the bottom of the tower from view to the south. The proposed setbacks, greater than the minimum setback of 100 feet from the abutting residentially zoned properties, also minimize visual impacts..

The color of the tree will be similar to the color of other trees in the area. The proposed fencing, the large setbacks and landscaping around the base of the tower would screen all of the ground equipment from view.

The alternate tree design at 85 feet in height meets this criterion and will be the choice of the Hearings Officer in this Order.

**Criterion 3 (SRC 703.090(d)(3)).** This criterion deals with gap in service and minimization of impacts.

The original proposal, according to the City's consultant, fell short in this area, and additional information was requested. The applicant provided an additional RF Usage and Facility Justification, including a capacity forecast for the nearby Verizon sites, areas where coverage drops from 4G LTE to 3G, drive test data for indoor coverage, and coverage maps of the proposed site at 50 feet and 70 feet. Based on this the City's consultant was satisfied that the additional information justified the height request. There was some criticism of the methods used, but when the expert consultant concurred with the applicant, the Hearings Officer was convinced that this criterion has been satisfied.

In addition, the staff testified that the applicant had proved that the tower at this location in the RA zone would be the least intrusive means of filling a significant wireless communications service gap, and prohibiting a new tower at this location would prohibit or have the effect of prohibiting the provision of wireless communications services, and that the applicant also had proved that the gap can only be filled through an adjustment to the height of the tower at this location. This criterion has been satisfied.

8. Analysis of Class 3 Site Plan Review Approval Criteria. SRC 220.005(f)(3) establishes the following approval criteria for a Class 3 Site Plan Review:

**Criterion 1.** The application meets all applicable standards of the UDC.

It is the finding of the Hearings Officer that this criterion is satisfied. The proposed development complies with all the applicable development standards, as follows:

1. *Off-Street Parking, Loading, and Driveways, SRC 806.*

The new use or activity of this facility requires no additional parking. The proposed loss of four spaces would reduce the number of spaces to 161. That number of spaces meets the standard, which is a minimum of 123 and a maximum of 216.



2. *SRC 806.035 - Off-Street Parking and Vehicle Use Area Development Standards.*

The existing parking spaces are within an existing, completely paved parking and vehicle use area; no paved surface will be added, and the existing paved surface will not be replaced. Therefore, the off-street parking and vehicle use area development standards of SRC 806.035, including perimeter setbacks, landscaping, interior landscaping, and dimensions, do not apply to the proposed development.

3. *SRC 806.040 - Driveway Development Standards.*

There are no changes proposed to the existing driveway. Therefore, this standard has been satisfied.

4. *Bicycle Parking.*

The proposed wireless communications use does not require bicycle parking and does not reduce bicycle parking for the existing use. The proposal meets this standard.

5. *Off-Street Loading Areas, SRC 806.065.*

The proposed development does not result in any additional offstreet loading spaces required for the development site. The proposal meets this standard.

**Criterion 2.** The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

It is the finding of the Hearings Officer that the existing street system is adequate to serve the proposed development, and the development generates less than 20 new average daily vehicle trips; therefore, no right-of-way dedication or street improvements are required. No special setback is required, because the existing right-of-way exceeds the standard for a Collector street on Hilfiker Lane SE.

**Criterion 3.** Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

It is the finding of the Hearings Officer that the driveway access onto Hilfiker Lane SE provides for safe turning movements into and out of the property.

**Criterion 4.** The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.

The Hearings Officer finds, based upon the Public Works Department's testimony, that the water, sewer, and storm infrastructure are available within surrounding streets and appear to be adequate to serve the proposed development.

Based upon the foregoing, the Hearings Officer makes the following

### **DECISION**

The Hearings Officer GRANTS the request for a Class 3 Wireless Communications Facility Siting Permit and a Class 3 Site Plan Review for a proposed 85-foot artificial tree design tower, consisting of an 75-foot support tower with 12 antennas, and auxiliary support equipment at ground level, all within a 20-foot by 20-foot fenced area, within a 40-foot by 40-foot lease area, at an existing church on 5.37 acres of property zoned RA (Residential-Agriculture) at 1150 Hilfiker Lane SE, and GRANTS the request for a wireless communications adjustment to exceed the maximum support tower height of 50 feet, subject to the following conditions:

**Condition 1:** All external cables and wires for auxiliary support equipment shall be placed in conduit or painted to match the tower, building, support structure, or utility structure as applicable.

**Condition 2:** Motion-detecting security lighting is allowed for auxiliary support equipment, but shall be the minimum necessary to secure the auxiliary support equipment, shall not illuminate adjacent property in excess of 0.4 foot candles, measured directly beneath the security lighting at ground level, and shall be shielded to prevent direct lighting from falling on adjacent property.

**Condition 3:** The support tower shall not be lighted unless the applicant provides documentation that the Federal Aviation Administration or Oregon Department of Aviation is requiring such lighting.

**Condition 4:** An obsolete wireless communications facility shall be removed by the owner within six months of the date the facility ceases to be operational.

**Condition 5:** All wireless communications facilities shall be operated and maintained in compliance with all radio frequency emission standards specified by the Federal Communications Commission.

**Condition 6:** All wireless communications facilities shall be installed and maintained in accordance with applicable federal, state, and local laws.

**Condition 7:** All wireless communications facilities shall allow for the attachment or collocation of additional facilities to the greatest extent possible, unless such attachment or collocation interferes with the owner's wireless communications facilities, jeopardizes the physical integrity of a structure with which a wireless communications facility is associated, or the owner refuses to consent to the attachment or collocation of additional wireless communications facilities.

**Condition 8:** Vegetation that is either removed or destroyed as a result of construction shall be replanted with appropriate plant materials as prescribed in SRC 132.200 (SRC807.015).

**Condition 9:** Prior to making any opening or cut in any right-of-way, an owner shall obtain approval from the City Engineer.

**Condition 10:** After construction, maintenance or repair of any wireless communications facility, an owner shall leave any right-of-way disturbed by such activity in as good or better condition than it was before the commencement of such work. The owner shall promptly complete restoration work and promptly repair any damage caused by such work at its sole cost and expense. When any opening or cut is made by the owner in the pavement of right-of-way, the owner must promptly refill the opening or cut, and restore the surface to a condition satisfactory to the City Engineer, in accordance with public works construction standards.

**Condition 11:** Prior to performing any excavation in right-of-way to underground any auxiliary support equipment, all necessary city permits shall be obtained and all appropriate notice given to any franchisees, licensees and grantees, other city departments, and other governmental units that own or maintain facilities which may be affected by the excavation.

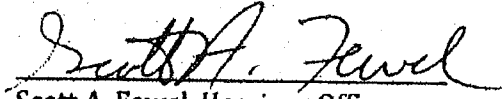
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**Condition 13:** All excavations made by an owner in right-of-way shall be properly safeguarded for the prevention of accidents and must be done in compliance with all applicable federal, state, and local laws and regulations.

**Condition 14:** Except for short or temporary durations during testing or during operation in emergency situations, noise generating equipment

associated with wireless communications facilities shall not produce sound levels in excess of standards established in SRC Chapter 93.

DATED: November 10, 2016.

  
Scott A. Fewel, Hearings Officer