

**SPECIAL MEETING MINUTES
PORTOLA CITY COUNCIL
35 THIRD AVENUE | PORTOLA, CA 96122
OCTOBER 28, 2020 | 4:00 P.M.**

1. CALL TO ORDER

Councilmembers attended this meeting via teleconference as permitted by California Governor Newsom Executive Order N-29-20. Member of the public were able to join the meeting via Zoom live streaming. Mayor Pro Tem Powers called the meeting to order at 4:00 p.m.

2. ROLL CALL

Councilmembers Tom Cooley, Pat Morton, and Mayor Pro Tem Bill Powers responded to the roll call. City Manager Lauren Knox, City Attorney Steve Gross, City Planner Karen Downs, and Deputy City Clerk Tara Kindall were also present. Mayor Oels and Councilmember Peiler recused themselves at the October 14, 2020 City Council Regular meeting.

3. PUBLIC COMMENT

There were no comments submitted in writing prior to the meeting and no one on the Zoom meeting platform engage in making any comments via the live streaming or chat platform.

4. ORDER OF BUSINESS

A. Approve Modification to Conditional Use Permit 19-01 Regarding the Applicant's Indemnity Obligation and Approve Notice of Decision.

City Attorney Steve Gross reviewed the additional conditions as outlined in Exhibit C-1 in Council's packet. He noted that under condition #22 there is a slight error concerning the subsection numbering and that the 3 be changed to c to remain consistent. These conditions were thoroughly reviewed with the applicant and Counsel for Verizon, Mr. Paul Albritton, and City Attorney Gross. There is a disagreement with some of the language in the indemnity portion (condition #3) between the applicant's legal counsel and City Attorney Gross. The recommendation before Council today would be to revise the CUP Conditions of Approval as set forth in the staff report and to approve the Notice of Determination.

Mayor Pro Tem Powers called upon Mr. Albritton to clarify his reasoning and why the changes are not acceptable? Mr. Albritton stated that Verizon has no intent to back away from any indemnity obligations to this application. His concern was the only liability for the City, in respect to Verizon Wireless and this project, is to grant the permit. They would defend the City against any claim that the City's action (to grant the permit) is inappropriate in any way and that the City does not have any liability beyond that perspective regarding Verizon Wireless's facility. The City is

not taking any other action beyond approval of the permit, and to do otherwise may open the door to perceived liability of the City for some of these other claims which might incur or invite frivolous litigation. That is why his recommendation is to just limit the City's liability to the granting of the permit which Verizon indemnifies the City for, and not suggest that there is any other action the City take with respect to Verizon Wireless's application that could create liability. In response to the modification language, the concern by the applicant was that it wasn't defined as to the type of modification, such as changing a sign on the fence, that would require testing. His suggestion would be that *any modification requiring a permit* be a part of that language in the conditions of approval.

Mayor Pro Tem Powers then asked City Attorney Gross if he had anything else he would like to explain or clarify? City Attorney Gross stated that he still feels that the indemnity language should remain even though the applicant disagrees; he feels that it would provide some extra protection for the City. He then stated that he sees Mr. Albritton's emailed comments proposing to add "*any modification requiring a permit* as stated under condition of approval #10" be added at the end of new condition #22 and that he has no objection to that addition.

City Attorney Gross then reviewed the Notice of Decision that was also included in Council's packet. This notice includes the item, appellants, property owner, applicant, location, and the decision. The notice includes the process of the public hearing and how the City Council came to their decision. It also includes the modified and new condition of CUP No. 19-01 that have been reviewed tonight.

Mayor Pro Tem Powers then invited any public comments at this time. He explained that each commentor is allowed five minutes to make their comment. As no one indicated on the Zoom meeting platform that they wished to make a comment, Deputy City Clerk Kindall read the written correspondence she had received prior to the meeting. The first letter by Mr. Josh Hart asked for City Council to delay this decision and outlined the problems he feels was not addressed properly by the applicant. He feels that "the decision you made Monday night is not about following federal law – you are selectively *choosing which* federal law to follow". Deputy City Clerk Kindall re-opened the comments again to the public participating on the Zoom meeting platform. Mr. Hart called in and stated that there should be a letter from his wife, Heidi Hart. The Deputy City Clerk went to check her email as she did not receive the comment by 4:00 p.m. She did receive an email one minute before the meeting that was not seen as she was already in the meeting room. She then read the letter by Heidi Hart. Ms. Hart feels that this project is a mistake. In her opinion, the tower will affect the aesthetics of the community as well as have a negative health impact on individuals. Deputy City Clerk Kindall also mentioned that she received another email from an individual participating in the Zoom meeting platform that stated that there is an echo when the Mayor Pro

Tem speaks making it difficult to hear what he is saying. Deputy City Clerk Kindall stated that someone on the Zoom meeting platform had raised their hand to speak. Ms. Carol Mero unmuted herself and addressed Council. She finished reading the letter sent in by Mr. Hart and then added that as a health care advocate, she is in opposition of this cell tower. As no one else wished to make a comment, Mayor Pro Tem closed public comment.

Councilmember Cooley moved and Councilmember Morton seconded a motion to approve Condition Use Permit 19-01 as approved on October 26, 2020 with additional modification (as read by City Attorney Gross below) and to approve the Notice of Decision.

Roll call vote, yes: Cooley, Morton and Powers. So carried.

Roll call vote, no: none.

Councilmember Cooley requested that City Attorney Gross please read into the record and for all those present the Conditions of Approval that were changed and added since the October 26, 2020 Special meeting.

3. The Applicant agrees to defend, indemnify and hold harmless the City of Portola (“City”), its agents, officials, officers and employees from any claim, action or proceeding to attack, set aside, void, or annul the approval of this Conditional Use Permit and any claim, action or proceeding alleging that the City, its agents, officials, officers and employees violated the Americans with Disabilities Act (“ADA”), the California Fair Employment and Housing Act (“FEHA”) or other laws relating to the access of public facilities or services based on, related to or arising out of the approval of this Conditional Use Permit. The City shall have sole discretion in selecting its defense counsel. The City shall promptly notify the Applicant of any claim, action or proceeding and Applicant shall cooperate fully in the defense.

21. The proposed telecommunication facility shall comply with all federal and state statutes, including, but not limited to, FCC licensing, NIER levels, and FAA requirements. No wireless telecommunication facility or combination of facilities shall produce, at any time; power densities that exceed current FCC adopted standards for human exposure to Radio Frequency Radiation as amended and revised (“FCC Standards”) fields. Failure to comply with FCC Standards will result in the immediate cessation of operation of the wireless telecommunication facility.

New Condition

22. In order to establish and assure continued compliance with the FCC Standards, the Applicant shall: (a) conduct pre-installation and post-installation testing of the telecommunication facility or combination of facilities at the Property and at the hospital owned and operated by the Eastern Plumas Health Care District located at 500 First Avenue, Portola, California (“Hospital”) for compliance with the FCC Standards by an independent third party and provide the results of such testing to the City; (b) re-certify in writing to the City, no less frequently than every two years, that the telecommunication facility or combination of facilities comply with the FCC Standards; and (c) retest the telecommunication facility or combination of facilities at the Property and at the hospital owned and operated by the Eastern Plumas Health Care District located at 500 First Avenue, Portola, California (“Hospital”) for compliance with the FCC Standards by an independent third party and provide the results of such testing to the City each time the site or the facilities are modified in a manner that requires a permit under condition of approval #10 above.

Councilmember Cooley also requested that Mr. Albritton or someone in his organization confirm that they have received this information and it is what was agreed on. Mr. Albritton stated that he heard the reading of the Condition of Approval just now and recognize/acknowledge the indemnity that has been included in the Conditions of Approval and believe any indemnity obligations that relate is the granting of the permit as the language says in compliance with the Attorney General opinion that’s cited in their letter. Councilmember Cooley then asked if the amendment to condition #22 was accurate. Mr. Albritton stated that it was and thanked Council for the amendment.

5. Adjournment

There being no further business Mayor Pro Tem Powers adjourned the meeting at 4:56 p.m.

Tara Kindall, CMC
Deputy City Clerk