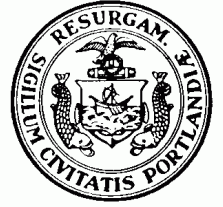


PLANNING BOARD REPORT PORTLAND, MAINE



ATT Telecommunications Facility
Vicinity of 636 Riverside Street

Amendment to an Approved Subdivision Plat to add access and utility easement
(and Administrative Authorization re Site Plan)
Project ID 2014-042; 2014-043

New Cingular Wireless PCS LLC d/b/a AT&T Mobility LLC

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| Submitted to: Portland Planning Board: Public Hearing Date: May 6 th , 2014 | Prepared by: Jean Fraser, Planner Date: May 2 nd , 2014 |
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I. INTRODUCTION

New Cingular Wireless PCS, LLC has requested Planning Board approval to amend the recorded subdivision plat for the Riverside (industrial) Subdivision. The amendment documents a new access and utility easement through Lot #3 (Lucas Tree) between the area to be leased by ATT for a 120 foot tall telecommunications tower and Riverside Street.

The amended subdivision plat is being brought to the Planning Board as a Level III review as an amended subdivision plan because the city's ordinance, under Subdivision 14-496 (c), specifically requires an alteration to an approved recording plat to be submitted to the Planning Board where an alteration will "...affect any street, alley, utility easement or drainage easement".

The area of the compound for the 120 foot tall tower is shown in red outline in the aerial to the right, and the tower/ compound /development itself triggers Site Plan Administrative Authorization. The primary focus for the Board is the plat amendment, but this report includes and considers all of the submitted information regarding the proposed tower /compound site plan and the amended subdivision plat as they are inter-related.



Based on City of Portland GIS and 2012 aerial photographs

A notice of this hearing was sent to 81 property owners within 1000 feet and interested citizens, and appeared in the April 28th and 29th, 2014 editions of the *Portland Press-Herald*. A Neighborhood Meeting is not required for this project. One public comment has been received from the owner of Lot #2 in the Riverside Subdivision (PC1).

II. PROJECT DATA

Existing Zoning: I-H Industrial Zone
Existing Use: Unused area within Lucas Tree lot
Proposed Use: Enclosed compound for telecommunications monopole tower and associated generator and equipment shelter
Parcel Size: Lot #3 is 174,313 sq ft; the tower compound is 90ft by 90 ft (8100 sq ft)

III. BACKGROUND

The proposed tower and associated compound is proposed to be located on land leased from Lucas Tree and located at the rear corner of the Lucas Tree parcel which is Lot #3 of the Riverside Subdivision. The Recorded Plat 2012 for that subdivision is Plan P1. The Riverside Subdivision covers a 53.81 acre area that was previously all City land and subdivided to create development lots. It includes a protected conservation area of 33 acres along the rear. Lots 2 and 3 are developed and now privately held, and the remaining area between those lots and the conservation area is

potentially developable with a joint access identified through lots #2 and #3. The Subdivision is also subject to a "Sidewalk and Driveway Plan" (referenced in a note on the recorded plat) that requires closure of some access points if others are opened or new users are added in the future. This was advised by staff to the applicant as it is not known how this may play out and whether it will affect the ATT site.

IV. PROPOSALS

- a. The proposed plat amendment (Plan P2) relates to an access and utility easement required as part of the proposed ATT tower development. The amended plat shows just a part of the original recorded subdivision plat (Lot #3) to identify the location of the new easement, add a note regarding the easement (note #9) and add a note (Note #12) regarding its potential relocation in the event that access arrangements are modified in the future to address the note on the recorded plat. The metes and bounds of the easement are listed in a table on the amended plat.
- b. The site plan proposals comprise (see Attachment J and Plans P3 to P7):
 - Easement 20 feet in width and approximately 500 feet long over existing paved/graveled area between Riverside Street and the proposed tower compound near the rear of Lot #3 (which requires the amended plat);
 - 90' by 90' compound, enclosed by chain link fence topped by barbed wire, to enclose:
 - 120' high telecommunications monopole with 12 panel type antennae mounted at 115 ft;
 - An 11'5" by 16' equipment shelter on a concrete pad;
 - An 50kW diesel generator for back up power.

The applicants submittal documents largely include supporting applications and documents, along with an analysis of how these proposals meet site plan submission and zoning requirements (Attachments K and L) and detailed specifications (Attachments M, N and O).

V. STAFF REVIEW

It should be noted that this Level III review relates to the subdivision plat. The leased lot for the ATT tower does not comprise a subdivision of land, as confirmed in recent Maine case law, and therefore the subdivision standards do not apply except in relation to the information contained on the recording plat. The proposals would not be required to meet Level III site plan standards unless there is some aspect on the list of Administrative Authorization criteria (see Attachment B) that need to be addressed.

- a. Amended Subdivision plat: The plat has been reviewed by the Associate Corporation Counsel, Public Services Department and Planning Division and is considered acceptable. Both the plat and the lease address the issue of a possible future modification to the access arrangements for this subdivision.
- b. Administrative Authorization
 - i. Zoning: The applicant has submitted a zoning analysis (Attachment L) and the Zoning Administrator has indicated that the proposals do not raise any zoning issues. A memo of confirmation from the Zoning Administrator will be available at the hearing.
 - ii. Site Plan: Under the Administrative Authorization process a project is exempt from review against the site plan standards if it meets the criteria listed in the ordinance and on the application (see Attachment D). In this case staff consider that the all but the last criteria have been met. The last criteria states: "*Are there any noise, vibration, glare, fumes or other impacts?*"

Staff consider that a 120 foot high monopole with electrical equipment mounted at the top and a diesel generator at the base could potentially have some impacts, such as on birds, aviation, noise from the generator, electrical interference, visual intrusion etc. Each of these has been investigated and staff suggest that the Administrative Authorization include conditions of approval as noted below:

- Impact on birds: the submissions include a federal level "NEPA" (National Environmental Policy Act) Screening Report (Attachment P) and part of that report (3.3) confirms that consultations with state and federal agencies indicate that this would not be an issue. It should be noted that there are no guy wires for this type of tower;

- **Aviation:** In Attachment K the applicant indicates that because the monopole is below 200 feet that this is not an issue. The applicant has sent the FAA document that confirms the status (Att. Q);
- **Noise from generator:** The applicant has stated that this is a back up generator (Attachment J). Staff are aware that such generators usually require regular testing and staff propose to impose the standard condition regarding generator testing (limits to week days and daytime hours);
- **Electrical Interference:** The applicant has confirmed in Attachment L (first page) that the operation will comply with the zoning requirement that there be no electrical interference. Staff will highlight that requirement in the Administrative Authorization sign off;
- **Visual Intrusion:** The NEPA report in Attachment P also includes photographs looking towards the site and aerial photographs that show the area is surrounded by a large area of mature trees and conservation land and deep within the IH and IM zones along the west side of Riverside Street. The tower would be 700 feet from the nearest boundary of the R5 zone and about 600 feet from 2 homes that are on Riverside Street (within the IM zone). The proposed monopole is 120 feet high, which (for reference purposes) is 20 feet higher than the light poles along Rte I-295. Staff have concluded that the tower would not be prominent and that this site is appropriate for the proposed monopole tower.

VI. PUBLIC COMMENTS

One public comment has been received from the owner of Lot #2 of the Riverside Subdivision, Ms Suzan Elichaa of *Solaris* (PC1). She has raised concerns regarding the possibility of the tower falling on her property, possible noise from the generator, and the tower transmissions potentially interfering with their electronics/reception or posing health risks.

The base of the proposed 120 ft tower is at least 300 feet from the nearest corner of Lot #2, so Lot #2 is outside of the potential “fall zone”. The tower project is subject to a building permit and the building review would ensure it is constructed to meet structural and wind load requirements.

The other two concerns raised by Ms Elichaa have been addressed above under “Staff Review” (last section) except the question of health risks. The applicant will address that question at the hearing.

VII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of application, plans, reports and other information submitted by the applicant and on the basis of the findings and recommendations contained in the Planning Board Report for project #2014-042 and #2014-043 (Telecommunication Facility at 636 Riverside Street), as relevant to standards for subdivision plat amendments and site plan administrative authorization, and other regulations and the testimony presented at the Planning Board hearing as follows:

- a. The Planning Board finds that the proposed Amendment to the Approved Subdivision Plat, which amends Lot #3 of the 2010 Riverside Subdivision Plat to add an access and utility easement, **is / is not** in conformance with the subdivision standards of the City’s Land Use Ordinance; and
- b. The Planning Board finds the site plan proposals **are / are not** generally acceptable, subject to final staff review and approval with conditions (eg re generators) under the Administrative Authorization process.

ATTACHMENTS

Report attachments

1. Legal comments 4.30.2014
2. DPS comments 5.1.2014
3. Zoning comments (will be available at the Hearing)

Public comments

PC1 Owner of lot #2 in subdivision Suzan Elichaa

Applicant’s Submittal

- A. Application (Level III) for Amended Subdivision Plat
- B. Application for Administrative authorization

- C. Lease
- D. Table of contents
- E. Letter of authorization
- F. FAA 1-A Survey Certification
- G. FCC License
- H. Certificate of Good Standing
- I. Abutters List
- J. Narrative Description of Proposal
- K. Narrative re Level III Site Plan standards
- L. Narrative re I-H Zone Performance Standards
- M. Equipment Shelter Specs
- N. Antenna Specs
- O. Generator specs
- P. National Environmental Policy Act (NEPA) Screening document
- Q. Further information re FAA requirements

Plans

- P 1 Original 2010 Recorded Subdivision Plat for all lots
- P 2 Amended Subdivision Plat in respect of Lot #3
- P 3 Title sheet
- P 4 Cover Sheet
- P 5 Existing Conditions Plan
- P 6 Site Plan
- P 7 Compound Plan

From: Jennifer Thompson
To: Jean Fraser
Date: 4/30/2014 12:31 PM
Subject: Original recorded plat re 636 Riverside RE: AT&T Telecommunications Facility

Jean -this looks fine to me. The easement is referenced in the title and although I'd probably like to see Note 1 include depiction of the new easement, I'm not terribly concerned about that. It's shown on the Plat.

>>> Jean Fraser 4/29/2014 11:46 AM >>>
Hi

This is the original recording plat (as recorded) for the subdivision that ATT now are requesting to be amended to add an easement for ATT- I already sent you the amendment plat (but attach it again)so please read and review the two together..

This is scheduled for Hearing next Tuesday and I have to complete the report on Thursday this week- I anticipate a condition asking for some amendments to the proposed amendment plat but if there are serious issues we need to discuss at Dev Rev tomorrow please.

Both this original plat and the proposed plat are in e-plan- 2014-043.

Many thanks
Jean

>>> "Gayle Witham" <gwitham@hobbinslaw.com> 4/29/2014 9:35 AM >>>

Morning Jean,

Please see the attached.

Thank you.

Gayle Witham, Paralegal
Law Offices of Barry J. Hobbins, PA
Northland Title Company, LLC
74 Beach Street
Saco, Maine 04072
(207) 282-5985
(207) 282-5986 (fax)

From: William Clark
To: David Margolis-Pineo
CC: Jean Fraser
Date: 5/1/2014 2:53 PM
Subject: Re: Fwd: Any comments on 636 Riverside amended Plat

Plan looks good and clean.

Bill

>>> David Margolis-Pineo May 1, 2014 11:15 AM >>>

Bill, I'm good on my end. I'd like to give this a quick sign off. You good?

>>> Jean Fraser 5/1/2014 11:01 AM >>>