

Prineville City Council Meeting May 24th, 2009 Issue Summary

Topic: Appeal of Cu-2009-303 AT&T Wireless Facility

Departments: Planning

Staff: Scott Edelman & Josh Smith

Overview: On January 20th, 2009 the Planning Commission held a hearing to review a proposed AT&T wireless facility within the County's 200 ft. rimrock setback. That hearing was continued until February 17th to allow for additional information; the applicant tolled the 120 day clock to that date. The applicant has filed an appeal to City Council. This appeal is based upon the applicant wanting a definitive answer on what is allowed within the 200 ft. setback. The entire record and transcripts will be made available when the Council finalizes a date to hear the appeal.

Summary: Crook County has an ordinance that prohibits structures within 200 ft. of the rimrock. The City has upheld that standard in the past through a measure 37 claim that would have allowed a house on the rim. The City's Comprehensive Plan was adopted with the following language:

City Comprehensive Plan: "The cliffs and rimrock areas should be preserved and local regulations should be crafted to limit development intrusion into these areas. Prineville will continue to apply Crook County scenic setbacks along rimrock canyons as land is annexed to the City, and new local regulations will protect the rimrock face and talus slopes below."

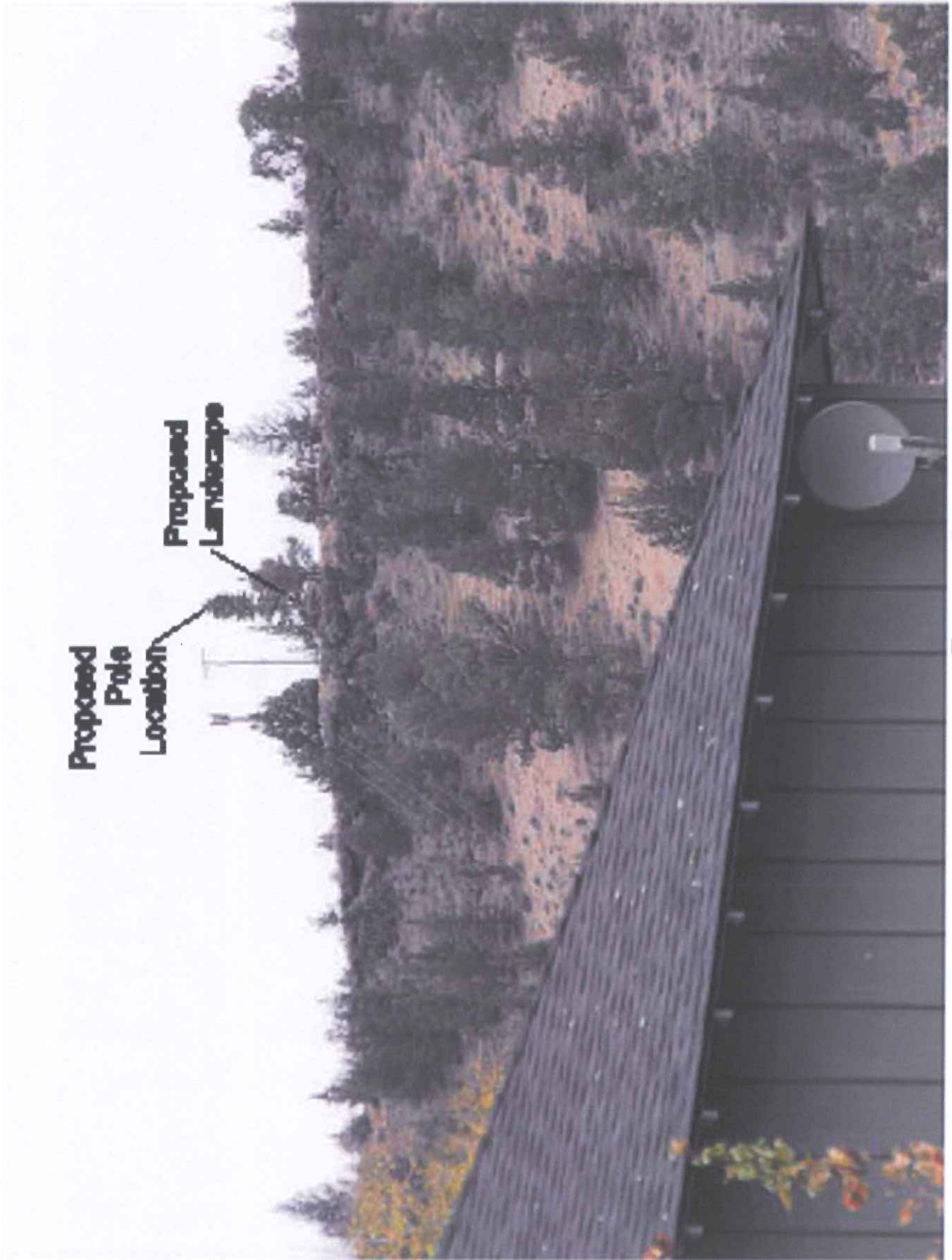
Once a City adopts its own Comprehensive Plan it is up to that City to determine the amount of regulation. The Comprehensive Plan states that the City will continue to apply the setback but did not specify the regulations within the setback. That is left to the implementing ordinances.

The above language is guidance for the ordinances currently under review by the Planning Commission related to State planning goal 5. Goal 5 deals with natural resources, scenic and historic areas and open space. Upon adoption the Goal 5 ordinances will specifically define what is allowed within the setback. Staff concluded that the Commission may determine the proposal meets the intent of preserving the rimrock scenic value and approve

BD72 Pineville Airport



Existing



Proposed



FOR OFFICE USE ONLY

Appeal # App-2009-100

Date Received 03/16/2009

**CITY OF PRINEVILLE
APPEAL APPLICATION FORM**

DATE SUBMITTED: March 16, 2009 FEE: \$1,744.00

APPELLANT: ATT by Don Larson PHONE: (503) 936-3820

MAILING ADDRESS: 5501 NE 109th Ct
Suite A-2 CITY: Vancouver ST: WA ZIP: 98662

LAND USE APPLICATION BEING APPEALED: CD 2008-303

PROPERTY DESCRIPTION: T 15N R 15E S 12 TAX LOT: 300

APPELLANT'S SIGNATURE [Signature] DATE: 3-12-09

IT IS THE RESPONSIBILITY OF THE APPLICANT (APPELLANT) TO COMPLETE A NOTICE OF APPEAL AS SET FORTH IN CHAPTER 153.258 OF THE CITY CODE, "APPEALS."

EVERY NOTICE OF APPEAL SHALL INCLUDE:

- A. A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.
- B. If the City Council is the Hearings Body, a request for review by the Council stating the reasons why the Council should review the lower Hearings Body's decision.
- C. If the City Council is the Hearings Body and de novo review is desired, a request for de novo review by the Council stating the reasons why the Council should provide de novo review as provided in DCC 153.258.060.

The Notice of Appeal must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

EXCEPT AS PROVIDED IN SECTION 153.258.040, APPELLANTS SHALL PROVIDE A COMPLETE TRANSCRIPT OF ANY HEARING APPEALED FROM, FROM RECORDED MAGNETIC TAPES PROVIDED BY THE PLANNING DEPARTMENT UPON REQUEST (THERE IS A \$5.00 FEE FOR EACH MAGNETIC TAPE RECORD). APPELLANTS SHALL SUBMIT TO THE PLANNING DEPARTMENT THE TRANSCRIPT NO LATER THAN THE CLOSE OF THE DAY 5 DAYS PRIOR TO THE DATE SET FOR THE DE NOVO HEARING OR, IN ON-THE-RECORD APPEALS, THE DATE SET FOR RECEIPT OF WRITTEN RECORDS.

March 12, 2009

City of Prineville
Community Development Department
Attn: Joshua Smith
387 NE Third Street,
Prineville, Oregon 97754

RE: Appeal of Cu 2008-303

Dear Prineville:

The purpose of this letter is to submit the required documentation and monetary payment to appeal the decision of the Prineville Planning Commission regarding Cu 2008-303. The Applicant in Cu 2008-303 is AT&T Mobility, and AT&T Mobility hereby requests a City Council Review of the Prineville Planning Commission Denial of Cu 2008-303.

A. A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearing Body an adequate opportunity to respond to and resolve each issue in dispute.

The Findings Summary of the Final Decision for Cu-2008-303 includes the following text; "Based on the City's Comprehensive plan referencing restrictions within the Crook County Code of ordinance, the Commission may decide that no structure of any kind should be built within the 200 ft. of the rim or may decide to allow smaller sites, such as the one proposed, to be built as an alternative to larger towers 200 ft. back. There is strong potential for setting a precedent in this decision; staff anticipates several more proposals similar to this due to the coverage that could be provided by wireless facilities located on top of the rim-rock."

Given the sensitivity of the rim area, AT&T believes a short stealth structure near the edge of the rim will minimize the visual impact to the Prineville Community, while also being an important part of a multi-site design. The coverage objectives for the proposed site on the rim are both above and below the rim, and being near the edge of the rim minimizes the size of the monopine structure reducing the visual impact from all vantage points.

This is a creative solution that clearly challenges the land use goals for the community. The letter of the code is relatively clear with respect to restricting development within 200-feet of the rim. The spirit of the code is equally as clear in communicating that the

community does not want anything to negatively impact the view of the rim rock surrounding the community. If the standard is not to negatively impact the rim rock, and the community at large for that matter, then the proposed stealth installation clearly meets the spirit of the code.

AT&T Mobility respectfully requests a definitive decision by the Prineville City Council to approve development of small unobtrusive wireless stealth monopine site on the rim through the City Conditional Use review process

B. If the City Council is the Hearings Body, a request for review by the Council stating the reasons why the Council should review the lower Hearings Body's decision.

- 1) Item # 1 of the Decision for Cu-2008-303 states; "The Commission found the City's Comprehensive plan made it clear that the Commission had the authority to uphold the County's ordinance in regard to the 200 ft. rim-rock setback." Comments among Commissioners and Staff made during the final deliberation on Cu-2008-303 also made it clear that the Prineville City Code allows development within the Crook County mandated 200-foot setback through a City Conditional Use review process.

AT&T Mobility respectfully requests a definitive decision by the Prineville City Council to approve the development of small unobtrusive wireless stealth monopine site on the rim through the City Conditional Use review process.

- 2) Also during the final deliberations on Cu-2008-303, some members of the Prineville Planning Commission expressed concerns that they could not approve development of a cell tower on the rim because they had paid a Measure 37 claim to the neighbor that prohibited him from developing a list of projects, including a cell tower, on his property above the rim-rock area. Just because the City purchased development rights from a neighbor not to build a cell tower (among other types of projects), the City certainly retains the right to permit a stealth wireless site on Crook County property.

AT&T Mobility respectfully requests a definitive decision by the Prineville City Council to approve development of small unobtrusive wireless stealth monopine site on the rim through the City Conditional Use review process

C. If the City Council is the hearings Body and a de novo review is desired, a request for de novo review by the Council stating the

reasons why the Council should provide de novo review as provided in DCC 153.258.060.

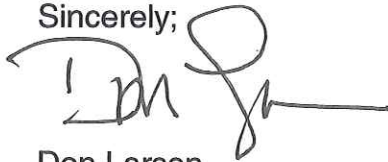
Not Applicable. The Applicant/Appellant is not requesting a de novo hearing.

AT&T wants to be a good wireless neighbor. A denial of Cu-2008-303 will force the applicant to pursue one of several alternatives all of which will have a greater visual impact on the Prineville Community. If the "no development within 200-feet" is strictly applied then it would seem to contradict a goal of minimizing the visual impact for the community. AT&T is prepared to pursue either option but sincerely believes that the proposed faux tree on the rim is the least obtrusive of the options available.

AT&T Mobility hopes this correspondence explains our Appeal and addresses the requirements of the City of Prineville Development Code. Should you have any questions regarding the Appeal, please do not hesitate to call me at 503 936-3820. AT&T appreciates the excellent assistance we have received from Assistant Planner Joshua Smith, and we look forward to working with you to better serve the public in the greater Prineville area.

Thank you in advance for your consideration of this matter.

Sincerely;

A handwritten signature in black ink, appearing to read "Don Larson", with a long horizontal stroke extending to the right.

Don Larson