



## Planning & Development Services

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# Historic Preservation Commission

## Worksession / Hearing Minutes of July 28, 2008

Commission Members Present Christopher Pooser, Chairman, Scott Chandler, Cathy Sewell, Barbara Dawson, Stephen Smith, Betsy McFadden

Members Present Sarah Schafer, Julie Archambeault, Matthew Halitsky, Teresa Sobotka, Nicki Heckenlively

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### **DRH08-00203 / T-Mobile / 1408 N. 14th Street**

Requests Historic Preservation approval to increase the height of a power pole, place a cellular antenna on the top, construct a small structure to house the associated equipment and fence the area on property located in an R-1CH (Single Family Residential with Historic Overlay) zone. *(This item was deferred at the July 14, 2008 hearing.)*

JULIE ARCHAMBEAULT: Presented staff report with a recommendation of approval.

COMMISSIONER DAWSON: I understand that there is already cell service on that pole?

JULIE ARCHAMBEAULT: No there is not. The poles in the alley are 34 ft. tall and the new pole will be 44 ft. and 50 ft. with the antenna on the top.

COMMISSIONER SEWELL: I seem to remember that we approved a pole at the Hollywood Market and it seems that we approved the pole with the idea that other carries could co-locate on it. Did they look for a co-location?

JULIE ARCHAMBEAULT: I don't know.

### SITE VISITS

COMMISSIONER SMITH: I did visit the site and looked at the pole.

COMMISSIONER McFADDEN: I drove the alley and noted the pole that was to be replaced and the backyard area where the new structure would go and its proximity to Hyde Park.

CHAIRMAN POOSER: I too noted the pole and the location of the supporting equipment.

COMMISSIONER CHANDLER: I drove the surrounding streets and tried to determine how visible the pole would be.

COMMISSIONER SEWELL: I also noted the location of the new pole.

COMMISSIONER DAWSON: I also noted the location of the new pole.

TERRY COX (APPLICANT / T-MOBILE WEST CORPORATION): I just want to refer to a couple of pictures....

CHAIRMAN POOSER: Do you have any problems with the Commissioner's visiting the site?

TERRY COX: No.

TERESA SOBOTKA (Legal): There are also some e-mails that came in after the packet went out. I would like Staff to summarize those into the record so they applicant can speak to them.

JULIE ARCHAMBEAULT: The following is opposition to the proposal.

1. *Robert Cahn: Concerned with the aesthetic and health concerns.*
2. *Cheri Cole / 1221 N. 15<sup>th</sup>: Opposed to the project because of the aesthetic incompatibility and the health risks.*

CHAIRMAN POOSER: Do those need to be exhibits?

TERESA SOBOTKA (Legal): Yes.

CHAIRMAN POOSER: Robert Cahn will be marked as Exhibit 1. Cheri Cole's letter will be marked Exhibit 2.

TERRY COX: Could you please get to Page 49? We have to do two things. We have to raise the ...right now the pole isn't tall enough to attach anything to it because the wires go right to the top and we would have to add pole to it to attach the panel antennas. Once mounted they will be painted to match the pole. Once attached the wires will go down the pole and run underground in conduit and to the equipment. This is the subject project right here. It is a rental home and there is another picture with a fishing boat in the backyard. The property is run down the owner resides in Arizona and in talking with him I doubt there would be much money spent on this home. We try to look for properties that could have a little money spent on it. We are looking to put a chain link

fence or a privacy fence. The Commission may want to suggest that we place a privacy fence to hide a lot of things on the property. Could you find the picture with the fishing boat. It is Page 17 in the packet. It shows pretty much what the backyard is being used for now. There is another picture of the pole and you can see the tall trees. Anywhere you drive around that block there are going to be tall trees and you aren't going to be able to see it unless you are standing at the bottom of it looking up. If you can see on Page 17 this picture shows basically what the house is used for besides bonfires...to store an old boat, there are old trees there that haven't been pruned for years. The fence is falling down. There are two gates; both of them are just hanging on their hinges. When we looked at the property we met Idaho Power there and asked if they could change out the pole and they said it wouldn't be a problem and they would actually like to replace the pole because it is inadequate. We could put some money into the project, change the siding, the fencing and clean up the yard. There won't be any cables going from the pole to the building. You won't see a change only improvement to the area. We have an obligation to give our customers adequate phone coverage. The 911 Act requires that people can dial that from every location in their home. We looked at the parks and the schools to put up the pole. We ran out of ideas. We would like to use a pole that is existing and change it out to a taller stronger pole and use what is there. It is for safety reasons.

COMMISSIONER CHANDLER: Will the pole replacing the existing pole be wood or metal?

TERRY COX: Wood. The pole will be owned by Idaho Power and stronger.

COMMISSIONER CHANDLER: The antenna at the top will be the same color as the wood?

TERRY COX: Yes.

COMMISSIONER CHANDLER: Obviously this signal has to get back to T-Mobile some how. How does that work?

TERRY COX: The signal will run down the pole to the equipment which hooks up to a telephone line to send the signal back.

COMMISSIONER CHANDLER: I assume that you are leasing part of the property from the owner?

TERRY COX: Yes. The owner is in Arizona and I doubt that he knows what the property even looks like at this time. He has a property management company overseeing the property. It is time for someone to put a little money into it to make it look decent.

COMMISSIONER CHANDLER: Are you leasing just the little area or a larger area?

TERRY COX: It is a 10 ft. x 20 ft. space and we are leasing the pole from Idaho Power.

COMMISSIONER DAWSON: Am I correct that you don't have any coverage in this area currently?

TERRY COX: We have outdoor and limited indoor coverage.

COMMISSIONER SMITH: Is it your understanding that they will maintain the transformers on the pole?

TERRY COX: Yes.

COMMISSIONER SMITH: I counted seven or nine hookups on the pole. are they going to remove those?

TERRY COX: They didn't say.

COMMISSIONER SMITH: This is an unsightly pole, have you tried to talk to them about doing a better way?

TERRY COX: I imagine they would be willing but it is going to take some redesigning.

COMMISSIONER SMITH: Do you or any other provider have an antennae somewhere else in the North End?

TERRY COX: No. In this kind of application it is not co-locatable. I am sure there are going to be other cell owners that are going to want to do a similar application.

COMMISSIONER SMITH: Is there a way, keeping in mind that if we do it for T-Mobile, we could create a way for co-location for other providers?

TERRY COX: Sure. Let us construct a big 100 ft. steel tower. That's what you see.

COMMISSIONER SMITH: So we would have to build a very large pole?

TERRY COX: The antennae rays need to be about a 10 ft. separation between antennas. If we raise this one up and we put our antennas on the top and we do a 10 ft. separation you're back down to where the wires are so you get pretty tall. Cellular companies don't like to put their antennas...they defeat their purpose with anything much lower than 50-60 ft. so you can see that's where we're going to be.

COMMISSIONER POOSER: How tall will the pole be?

TERRY COX: This one is 34 ft. so the next one will be 54 ft.

CHAIRMAN POOSER: I'm trying to understand what you're attachment to the pole is going to be. Is it going to be 44 ft. and you're going to put another 10 ft. on it with the antennas around or are you just putting the antennas around the top of the pole? Does that make sense?

TERRY COX: No.

CHAIRMAN POOSER: The replacement pole is going to be 54 ft.

TERRY COX: Yes.

CHAIRMAN POOSER: So what exactly is T-Mobile going to put on that replacement pole?

TERRY COX: Just our antennas at the top.

CHAIRMAN POOSER: Those are the rectangular looking things that are going to be placed around?

TERRY COX: No. The antennas are actually 8 inches wide, 6-7 ft. long. They're just flat panels and they mount right to the pole. There will be three of them so we can get a 360 degree radius with the coverage. The power lines on this line will stay the same height. We aren't adjusting that height.

CHAIRMAN POOSER: I am looking at Page 22 of the packet which is the site plan. The diameter says 12 and it points to the rectangular.

TERRY COX: That shows six but this one is only going to have three.

CHAIRMAN POOSER: Those are 6 ft. tall. So looking on Page 22, which is the south elevation...

TERRY COX: That is what it would look like with six antenna.

CHAIRMAN POOSER: So it isn't going to be quite that dense?

TERRY COX: No it should only be half that. And it is 50 ft. in the air so it isn't going to look as long.

CHAIRMAN POOSER: So you are only going to have three antenna and they are going to be 50 ft. in the air and they are going to be painted brown.

TERRY COX: Yes.

CHAIRMAN POOSER: You are going to replace the chain link fence that is there?

TERRY COX: Yes. But when driving by the property today I thought a privacy fence might be better so if you would approve of that we would be fine with it.

COMMISSIONER POOSER: What is the siding on the structure?

TERRY COX: A hardi-board lap siding with a pitched roof.

COMMISSIONER CHANDLER: You would be comfortable working with Staff on a design for a wood fence?

TERRY COX: Yes. That was my thought when driving past the property today.

CHAIRMAN POOSER: There was some concern about health risk. Is that part of our review?

TERESA SOBOTKA (Legal): Unfortunately it is not. The Telecommunications Act is a Federal Act that governs bell towers and cellular antennas. Local jurisdictions review regarding those items. The federal government has set standards to ensure safety. Local governments are preempted from looking at this issue and the federal government believes that they have set the adequate standards. Safety issues would be dealt with and referred to the telecommunications group and it wouldn't be held under the local government.

CHAIRMAN POOSER: Do we have any ordinances which apply to cell towers?

TERESA SOBOTKA (Legal): Yes. We have an chapter in the Zoning Ordinance. However, the applicant talked about the 911 amendment to the Telecommunications Act. We do have things in place, but that amendment, for public policy reasons does limit a local jurisdictions authority as to the extent of our review. It hasn't specifically preempted our review. There's been a lot of discussion about whether or not local jurisdictions are completely preempted and in fact it might be easier if there was a bright line drawn, but there's not. We can still look at it, but we have to be very careful because there's a public policy that's in place now in case of terrorism, missing children and a number of issues. Cellular towers, antennas, etc...are heavily utilized. That's the reason he was telling you that he is specifically mandated to go in and make sure there is adequate coverage.

CHAIRMAN POOSER: Our review is going to be limited to whether or not the addition to this power pole is congruous with the District and in that regard it meets our design guidelines?

TERESA SOBOTKA (Legal): That's correct. Is it congruous and/or are there conditions that you can put on it to make it congruous?

CHAIRMAN POOSER: This is a letter to the Historic Preservation Commission from Corrina Yost, Doug Marsh and Claudia Brandes... Exhibit 3...can I just read it in to the record?

TERESA SOBOTKA (Legal): It has to be summarized.

CHAIRMAN POOSER: I will read it into the record after Mr. Everhart's testimony.

### PUBLIC TESTIMONY

DAN EVERHART (NENA Representative): I would like to clarify that the NENA board voted on whether to oppose or support and they voted to oppose. There has been a lot of interest from the neighborhood and I would like to read a couple of the letters in full.

*Recently I received notice that a cell tower was to be built several hundred yards from my home. Please accept this letter as my official opposition to this project. As a home owner in the North End I value the historic character of our neighborhood and consider the addition of a visible tower to be a contradiction to the aesthetic that attracted me to the North End. Additionally the recent warning from Dr. Ronald B. Herbeman, director of the University of Pittsburg Cancer Institute to his staff to reduce their cell phone secondary to increased cancer risk is discomfoting. Given the large number of families with children in this neighborhood a new tower seems like an unreasonable risk.*

*Sincerely,  
Robert Cahn, MD*

A second e-mail which I will provide.

*I am writing you to express my opposition to the T-Mobile request for a new tower. This is for file DRH08-00203. I believe that a taller tower would block the view of the upper foothills and Boise front from the windows on my house on 14<sup>th</sup> Street. I can also see how building an additional structure would remove the Locust trees in the backyard of that house and take away from the historic appeal of the neighborhood. The additional building and height of the tower is just one more thing to crowd an already overcrowded Hyde Park. I urge the Boise City Historic Preservation Commission to deny this project and urge NENA to take action on behalf of North End residents.*

I would like to begin by reminding the Commission that on Page 34 of the staff report under Section C, number 2. The new taller pole is not visually compatible and it states that its increased height is acceptable and the cellular ray will be painted brown to match the other poles. It begins importantly by saying that the pole is not visually compatible. I would like to refer to a couple of spots in the design guidelines. 2.4.7, "It is appropriate to maintain the character of the streetscape when installing new sidewalks or driveways". There are no design guidelines for cell towers. I am pulling information from other parts of the design guidelines because I do believe they are appropriate and applicable. So if you wonder why I am talking about sidewalks and driveways I think the idea is in 2.4.7

you're maintaining the traditional character of the streetscape. In 2.4.8 it says, "*It is appropriate to comply with design guidelines for new construction*" in Chapters 4, 5 and 6 and that's where I'd direct you next. In chapter 5 on Page 46, 5.10 Utility Systems quote policy, "*Energy and water system improvements serving a greater efficiency are encouraged provided that they do not adversely impact the historic integrity of a building or the district by being generally placed out of view from the public way or street. The more common utilities serving properties in the district are telephone and electrical lines, gas meters, air conditioners and telecommunication systems. However, other systems are becoming more economic and accepted for use such as solar panel devices and rain water harvesting systems. For new construction visual impacts associated with utility systems should be minimized. Special care should be taken early in the conceptual stages of the design to minimize impacts*" It goes on to say, "*It is generally appropriate to 5.10.1, design systems that are unobtrusive and not in view of the public right-of-way*". Then it says, "*and it's not specific to cellular towers, but it says, "It is not appropriate to 5.10.3, design and construct utility systems into the front elevation or roofline of the building, 5.10.4, install solar panels that project above the plane of the roof if visible from the public right-of-way and 5.10.5, place a satellite dish in view of the public right-of-way*". The summary of all of these is to say that it is not appropriate to design systems that are obtrusive or viewed from the public right-of-way. At this point I'd like to go back to something that the applicant said. He stated that the public will just see a taller pole. I would tell you that on Page 23 of the staff report and as we've already discussed or as the Chairman has brought up you actually will see quite a bit taller pole with a very different profile than is currently in place. I would like to comment on something Commissioner Sewell commented on, which is the earlier proposal for a cell tower in the neighborhood which I believe was denied. I don't have any reason other than my memory for that, but I don't believe the cell tower is there behind the Hollywood Market and I think the Commission actually denied the application. To summarize all of this I think that the Commission is lacking information. What I am asking you to do, what the Neighborhood Association is requesting, is to get additional information that supports the applicant's argument. We want to see elevations that will provide an adequate idea of what the pole will look like from the street, but also from 13<sup>th</sup> Street and Hyde Park. We are asking that the Commission be interested in what a 20 ft. taller pole will look like in that alleyway. It has been suggested that the trees will block the additional height. I disagree. We are asking for elevations from two different locations from the middle of 13<sup>th</sup> Street and additionally from the center of 15<sup>th</sup> Street and its proximity. We would like to see elevations from the alley way as well. We are asking for a deferral for more information and request additional information. If you feel you have enough information we would request a denial.

COMMISSIONER SMITH: Is there any design of a cell phone tower that would be acceptable to NENA?

DAN EVERHART: I do believe that sensitivity to historic concerns, that cell phone companies have disguised them. They typically approach a facility with a tall building such as a church with a steeple or a school with a copula. Typically the best way to insert a tower is to not insert one at all but to co-locate. Perhaps using a rooftop in the near

North End that could use more revenue and would be close enough to the area that desires coverage would be an option. I think the neighborhood would be more than happy to accept alternatives to the proposed plan.

COMMISSIONER SMITH: I have read numerous e-mails and I don't agree with your opinion, I don't believe they would accept any form of a tower in their neighborhood. With that being said, we have federal requirements for cell phone coverage. With that we are left with a difficult choice because we have a neighborhood association that says put them somewhere else it isn't our problem, but that leaves us in a tough situation. Though this is a fairly ugly pole, I don't see how they could harm this more. Are you fairly confident as a representative of the neighborhood that if T-Mobile or the other providers that we talked about earlier were to come back with such a design that you won't be in here again saying, "Well we oppose this one because it doesn't quite meet what we'd like." It seems to me, from my perspective that a NIMBY answer isn't going to be acceptable.

DAN EVERHART: I don't share your pessimism. I don't think the neighborhood association is as NIMBY as it may seem. We are not asking you to deny the application we are just asking that you defer the application. I don't think the Commission has enough knowledge to see if it has an adverse affect on the neighborhood. I think the additional information would put everyone in a better position to make the decision. I would reiterate that the neighborhood is more than willing to work with the applicant and find a site that is acceptable to the neighborhood and the applicant. I can't guarantee what the outcome would be, but we would be willing to have those discussions.

COMMISSIONER CHANDLER: If my memory serves me correctly on the application for the cell tower behind the Hollywood Market, the application was withdrawn and there was no action taken on it.

CHAIRMAN POOSER: We will proceed with additional public testimony. For the record, the two e-mails that Mr. Everhart read into the record had already been presented to the Commission. I'll read what has been marked as Exhibit 3, which is a letter to the Historic Preservation Commission from Karena Youtz, Doug Martsch and Claudia Brandes. This is written comment in formal opposition to T-Mobile for the cell phone tower. *"Page 1 of the application claims addition of an existing power pole while Page 8 clearly states the power pole to be removed. The application is erroneous. A 20 ft. taller new power pole will have the size and scale that's incongruous with the character of the North End District and it detracts from the integrity of the neighborhood. A new prefab metal structure is not appropriate under guidelines 5.6.5 to ensure that the structures elevations and setbacks conform with all the District rules. Chain like fence is not appropriate. 2.2.11, proposed materials are not traditionally used for the District. There is no current existing structure whose modification is being proposed. A new commercial structure should not be allowed in a historical residential district. The application clearly states this is not a preferred a site and a make shift solution with a company. I sense the Washington School and the Elm Park rejected the tower. Along with the above state historical incongruity the perceived health risk such as the WHO reported cancer,*

*reduced fertility and memory loss and adverse changes in children's development with dramatic decrease in property values."* That was Exhibit number 3.

SHERI McNABB: I wanted to list a few things...I realize that you are not dealing with health issues specifically. You are looking at things associated with ...I wonder if it is possible for looking at this in conjunction with the educational aspect. Several things that I have read were that children are susceptible to the cell phone use. I read in the letter that this isn't the best location for the tower. I wonder why they have then chosen this location. As far as this not being highly visible. There is an existing tree... I along with Dan would like to see the elevations from different streets. I am concerned about the material of the pole. I have heard it will be a wood pole and a metal pole painted brown. The residents that were living there did move out. They did not take good care of the property. I don't see a cell tower as an improvement regardless. Even if they're not taking great care of the yard. I don't think that a cell tower is an improvement. The last thing is that I don't want to set a precedent for this in the North End. I understand your concerns Commissioner Smith, but I'm concerned about setting a precedent and having cell towers throughout the North End. I don't think that fits with the historical integrity of the area.

MATT EDMOND: This is two houses over. You all drove the alley and the alleys of a few streets over. That pole would be masked by the trees. In four months, the pole will be highly visible. I would imagine you will see it for a good two to three block radius. I ask that you keep that in mind.

CHRISTINA LEQUERICA: I am directly next door. The gentleman from T-Mobile talked about the run down nature of the property. That is a pure indication that the gentleman that owns the property has no care for the North End. He is going to make money for the cell tower location and that is an exchange for our well being. I know you can't take into consideration the health affects. I did a lot of research on the internet and it has been proven that cell phone tower radiation does cause cancer. It causes tumors. I have pictures of tumors caused from cell phone towers. I have pictures of a rat brain before cell phone exposure and then after cell phone exposure. They have been known to cause leukemia in children. I will move if the tower goes in. It is the house I grew up in and I will absolutely move. I will not expose myself or my children to a cell phone tower.

MIKE ADAMS: I live in a two-story house that was built in 1904. It has some wonderful historic windows on the north and east and I have a wonderful view of the foothills to both the north and the east. In the summertime there is a pole that is unsightly, but it's just like all the other poles there. There is a huge, beautiful Locust tree blocking the view of the pole. In the winter time of course those leaves are gone and I see the pole, but from the second floor of that house I have a beautiful view of the snow and the foothills and from the first floor I have a partial view of those foothills. An additional 20 ft. tower would take away from not only what I do see from the first floor of the north and east side of those windows, but from the second floor as well almost entirely it would be obstructed. I'm addressing Item c and d of your staff conclusions

and recommendations, that not only from my house, but lets talk about what everyone else in the entire North End has. If there going to climb Camel's Back Hill and look out onto the beautiful historic neighborhood they're going to see those gable houses and they're going to see church steeples and all of sudden now...possibly an additional cell tower that's going to stand far and above those trees and those steeples. I urge the Commission to deny this project or if they do not find it in their hearts to do so to at least defer it until we have far more information.

WENDY JONES: I am across the street from the property. My testimony seconds that from Mr. Everhart. I believe everything in the Historic District requires a lot of specific information. It requires dimensions, colors, etc. I believe T-Mobile could provide us with the information of this specific tower to give us an idea of what this tower is going to look like with the antennas attached. I understand that the drawings submitted in this application show six antennas but he is saying there is only going to be three. I believe that a drawing of that or a picture of something similar would be helpful. I also know, like Mr. Adams and Ms. McNabb stated that an elevation view whether it's a manipulated picture, a doctored picture of what this is going to look like from different views in the neighborhood would be helpful. The Locust tree that is shown on Page 14 of the application shows the tree around the telephone pole. I'd like to know how much of that tree is going to be removed for the replacement of the pole and if that tree is going to be trimmed properly or if it's just going to be whacked off to get that pole in. I'd also like to know from T-Mobile what the percent increase in coverage is going to be based on this new location because as Ms. McNabb stated this is not the first or second choice for locations and how many users will be affected by this. I'd also like to know why...there are obviously other carriers in the area. I personally have another carrier that does not seem to have this lack of coverage. I'd like to know where their towers are and how it is that they're getting by without putting cell towers in the North End up to this point. My biggest concerns are for the future of the neighborhood. Setting a precedent and allowing something in like this and what is it going to do for future applicants? I believe that this entire application is fairly unclear and incongruent with the standards that the Historic District sets forth for homeowners and people and that live there full time.

SARAH GOLDSTEIN: I had more of a question about the tower itself. I'm curious as to what the magnitude of radiation that will be exposed in the North End. Not only to the residents, but to visitors to the area. Who is responsible for monitoring that radiation to ensure that it is operated within FCC Compliance? I'm also curious about the frequency of that monitoring because we are suppose to be concerned about the health of our community. I understand that health effects can't be a concern specifically, but in terms of operating within FCC guidelines that is important for all of us. I too have concerns regarding the property values in the area. As one of my neighbors pointed out they are packing up and moving if this tower goes in. Should that be the trend in this area that could be very detrimental to myself and my husband.

COMMISSIONER SEWELL: Legal...Is there any system in place to check if a carrier is providing any 911 coverage to the residents?

TERESA SOBOTKA (Legal): I don't know exactly what is involved. I am familiar with the 911 Amendment but I don't know much more about it.

CHAIRMAN POOSER: With respect to replacing the pole....if Idaho Power wanted to replace the pole, would that ever come before us?

JULIE ARCHAMBEAULT: I would assume not. There would be no reason. Actually, I am not going to say that.....we have never received an application for something like that.

SARAH SCHAFER: Staff also advertised the change in the pole height. That is part of the legal and up for discussion today. We advertised the pole height; we advertised the attachment of the cell panels at the top, and the enclosure as well as the fencing. Those are the four items that are up for discussion. Typically we wouldn't look at it if Idaho Power were changing out the poles because it would be a maintenance issue for them to be able to maintain their lines. It's not something that we would look at if it was an increase in pole height because it's just a maintenance item. We don't regulate maintenance in the historic districts.

CHAIRMAN POOSER: If part of the application is that we have to approve the height of the pole and...we don't have Idaho Power here and if that's part of the application how can we approve that...we don't have an applicant.

SARAH SCHAFER: You do. Your applicant is T-Mobile. Idaho Power wouldn't be changing out the pole unless we were putting the antenna ray on the top. The applicant T-Mobile which is requesting the taller pole so they are the applicant for that. They are also putting on the ray and they're also putting in the structure and the fencing.

TERESA SOBOTKA (Legal): Do you have an affidavit of legal interest?

CHAIRMAN POOSER: That's what I'm wondering. Do we have any evidence that Idaho Power has acquiesce to this?

COMMISSIONER SMITH: Are we really confident that we have jurisdiction over a utility that's regulated by the FCC? I'm sitting here wondering whether we, as a Historic Preservation Commission, can tell a federally regulated utility what it can or can't do.

TERESA SOBOTKA (Legal): You do have jurisdiction. It's a limited jurisdiction. It would actually be easier for us if they just simply said you're preempted rather than you having extremely limited jurisdiction. They have not said that you're preempted. You have some jurisdiction to determine that it's congruous or make it congruous.

JULIE ARCHAMBEAULT: We have an affidavit of legal interest from the property owner of 1408 N. 14<sup>th</sup> Street, but we do not have one from Idaho Power.

CHAIRMAN POOSER: To me if Idaho Power can just change out a power pole without having us consider it I don't know why we'd consider a new pole now. It seems to me that the scope of our review is really limited to the three antennas that are going to be put on top of that pole. Is that correct or incorrect?

TERESA SOBOTKA (Legal): To be honest with you as we've been discussing for the last month what you are calling change in use maybe needs to be firmed up and tied down a little bit. Usually change out a pole means put in a new pole of similar height and diameter, etc. A 20 ft. higher pole whether or not we regularly look at those or not, I don't know. Do you feel that's significantly different to change the congruousness so that you want to look at those?

CHAIRMAN POOSER: I don't think it falls within our definition of change in use. Our definition of change of use is any change in use affecting the land or structure of where a condition use permit or administrative review is required under Title 11. Is there any administrative review or conditional use permit that's been required for this?

JULIE ARCHAMBEAULT: There is another application going forward with the Planning Department. Sarah is looking it up to see exactly what it is. There's an application that's going to follow this one that will be based on...

TERESA SOBOTKA (Legal): That's how we started out the hearing by talking about on top you looking at congruousness there was also going to be a zoning application for the tower per say. We'll also have to look at the accessory house and for the fence. That's absolutely before you. I understand you're more focused on the tower now.

JULIE ARCHAMBEAULT: I should also not that you're talking about when you're trying to decide whether you want to talk about the 20 ft. pole or the cell array. One of these says that they're going to change out the pole...a 10 ft. extension. One sheet says that the pole is currently 34 ft. tall...this sheet on Page 23 states, "*Power pole to be replaced with 10 ft. extension with feet in measurement is 54 ft.*" If the pole is being replaced with a 10 ft. extension that means the total amount of cell array and everything that has to go on top of the pole is not 6 ft. but 10 ft. tall. The pole itself from what I have in front of me it seems to me that the pole is 44 ft. and then the cell array is going to be another 10 ft.

TERESA SOBOTKA (Legal): I don't see why you'd look at the panels if...either you look at the pole and panels combined all as one or you're not going to look at it at all. I don't see how panels in and of themselves would fall into...then you're getting technical. One kind of line versus another kind of line. You're purview is over exterior features and how they fit in congruously with the District as a whole. What's located on them and unless there's something about that, that really sticks out or really would affect the aesthetic view I don't think you would have authority over just panels.

JULIE ARCHAMBEAULT: The reason we don't look at utilities is because it's almost always maintenance and this would go beyond maintenance...why we're looking at it. It

falls outside of that category of things we don't deal with. Maintenance is specifically called out for in our Matrix as something we don't deal with because you're replacing with the same materials...it's routine maintenance and this falls outside of that and so would not be covered under that part of the Ordinance.

COMMISSIONER SMITH: For counsel again...maybe for Staff. Do I understand what you're saying that if Idaho Power were to come in and decide on it's own for it's own service reasons that it needed to replace this pole with one of it's 75 ft. metal towers that it has in various places...is that or is that not under our purview? Or alternatively if they decided to put four transformers on this pole is that or is it not under our purview?

SARAH SCHAFER: There would be some review by the Planning and Zoning Department because the height of the pole exceeds some of the heights that are allowed in the zones. I don't know what the exact pole height is, but there is some ordinance in the planning section which talks about pole heights or utilities and what the materials need to be. It would be reviewed under that section if they were changing out the materials of the poles...I don't know how we'd handle that with the Historic Preservation Commission. We haven't run into it in the past. They've maintained the metal poles in the historic districts and the heights.

CHAIRMAN POOSER: Did you find that other application in front of P&Z? Is it under Title 11?

SARAH SCHAFER: It is a Conditional Use Permit and it would be my assumption you may be able to ask the applicant here. In the R1-C Zone for poles that are to meet the height requirements of the zone it requires a Conditional Use Permit. That's what it's for. It's just for the use of the pole. All of them require a Conditional Use Permit. That would kick it over to us because of the way we have outlined change of use in our ordinance.

COMMISSIONER SEWELL: Do you know what the height requirement is in an R1-C?

SARAH SCHAFER: I didn't look to see what that pole height limit is in the R1-C. I can take a look at that ordinance again and get that information for you. Just a moment.

COMMISSIONER SEWELL: I'm understanding that there are no other cell towers within the North End Historic District. Is that correct?

JULIE ARCHAMBEAULT: I actually don't know.

COMMISSIONER SMITH: Are there any cell towers in any of our historical districts?

SARAH SCHAFER: I believe so. I believe we have some co-location on some of the buildings on the downtown structures. As far as our residential districts I know there's been a couple of schools in the North End, but I don't know if there are within the historic districts because they're located on the schools which is State owned property

and wouldn't have had to go through the Historic Preservation Commission for those co-locations. As far as mono poles on facilities like that not since I've been with the City have we approved any.

TERESA SOBOTKA (Legal): We have looked at some that have gone through the co-locations at the schools, but not through Historic Preservation through Planning and Zoning because I was involved with those applications. The only one was the one we were talking about that was at the market. That's the only application in several years...Scott and Cathy can you think of any? You've been around a long time. That's the only one that's come before in years and years.

CHAIRMAN POOSER: The one outstanding question is whether there's a height limitation in an R1-C. Why don't I have the applicant come up. At this time you're going to have an opportunity to respond to any of the Commissioners questions and also public testimony if you like and to make any final remarks. You have 5 minutes for this.

TERRY COX: I'd like to remind the Commission that we keep hearing the word cell tower. This is and will not be a cell tower. Everybody knows what a cell tower looks like and this is not a cell tower. This is and always will be a power pole with attachments on it. We are not adding any poles in the District. We're simply using an existing pole with additional height. Anybody who thinks their view is going to be blocked by a pole it should be blocked now. We heard over here that he doesn't think that the trees are going to mask it. We heard over here that he thinks it will be masked until the leaves fall off. You've been there and you've got to decide is this going to be visible. The code of Boise City encourages cellular companies to look for co-locations. Under the code of Boise City this is considered a co-location. Anytime we can take an existing structure and attach to it, it is considered a co-location whether you add height or not you're using an existing structure. According to the code of Boise City this is what they encourage us to look for. This gentleman over here wants to work with the cell phone companies to find alternative forms of putting our antennas on and this is what we do in cities and states all over the country. This is a form of co-location that we use in historical districts because there is nothing else. You have no six-story buildings in this area that we can get on the roof and shine down. We look for something that's existing and try to make it work. This is what we've done here. I also want to make the Commission aware that I sent a letter out to every resident that lives within 300 ft. of this pole. I held a neighborhood meeting on June 10, 2008 at 7:45 p.m. I showed up that night and I waited for ½ hour and not one person bothered to come and talk to me. I wanted to show them pictures, ideas of what I was thinking of, express and get there concerns and not one person bothered to come out that evening and meet with me. I'm really surprised that there's that many people here tonight because when I wanted to actually discuss this and work it out with them not one of them bothered. I even sent a letter to Mr. Kevin McGowan, who Boise City says was in charge of the neighborhood committee. He didn't even bother to come. I want you to make a note that we did make an effort, we were there, we wanted to work with the people and nobody wanted to take the time to work with us on it. Under Boise City Code under co-location this is the best we could come up with. I never did say that this was not the best location. I did say that we looked at other locations

first. Other locations that maybe weren't right in a residential neighborhood as of City Park or a school. I never did say that this was not the best location. I just said we looked at every other alternative location and this seemed to be the best use...something that's existing and make it work for our purpose.

COMMISSIONER McFADDEN: I have a question on those additional locations, which I know you've done your homework, but we don't have that information here. For example you say you looked at putting a tower at Leonie Park? Is that in the North End?

TERRY COX: Do you have the address of that?

AUDIENCE MEMBER: It's several blocks north of Garfield School and a couple blocks west.

TERRY COX: A couple blocks north of Garfield School and a couple blocks west. We actually looked at maybe replacing light poles in the park with a taller light pole. Here's a picture of the school with the copulas up. We approached the School District and for the record the Boise School District is one of the few school districts that haven't actually caught on to cell towers, but about every other school district in the country...I just signed a contract with the Meridian School District. On Centennial High School we are doing an antenna structure right there at the school. Schools are actually quite popular to house these antenna structures. Whether it's a new tower or on the rooftop or whatnot. When we worked in this neighborhood we just couldn't come up with any...

COMMISSIONER McFADDEN: But you did approach the school and ask them?

TERRY COX: Yes.

CHAIRMAN POOSER: Earlier there was a question asked about whether there was anyway to know that you're required to provide service within this area to comply with the limits of the Telecom Act. Can you comment on that?

TERRY COX: Everything we do...every antenna structure we put up is registered with the Federal Government. We have to tell them what signal strength we're putting out, we have to tell them what location exactly and it's all registered with the FCC. They do spot checks and of course a company like T-Mobile, Verizon, Singular, AT & T...they're not going to put out any signal that's not regulated by the Federal Government. They just couldn't afford to do so.

CHAIRMAN POOSER: Is there some regulatory entity that has ordered you to provide or found a service deficient and has ordered you to put a cell tower in the North End?

TERRY COX: We provide signal strength data, proclamation maps when cities request them and I'm not sure that Boise City has requested a proclamation map on this one, but we do and it's easy for us to do to show exactly signal strength in areas. I actually gave one to the Planning & Zoning Commission.

COMMISSIONER SEWELL: Have there been any reports of people not being able to call 911 through T-Mobile in that area?

TERRY COX: There are a lot of reports of people not being able to use their phones period...yes.

COMMISSIONER SEWELL: But 911?

TERRY COX: Well if they can't use their phones they can't use 911. That's how we get a lot of our data is from customer complaints.

SARAH SCHAFER: You're question was in regards to what the height of the pole is that's allowed in the zone. I haven't been able to find that information while you've been talking at this time. However, it's really rather this pole meets that height or not...it's whether the additional 20 ft. is congruous with the District. Whether that pole meets the height of the zone or not would actually be before the Planning & Zoning staff under the Conditional Use Permit so what we need to determine tonight is whether that additional 20 ft. is or is not congruous with the District at this point.

CHAIRMAN POOSER: I'll give you a last chance to have any final remarks.

#### PUBLIC PORTION CLOSED

COMMISSIONER SMITH: It seems to me that we have multiple layers of problems here. I am not, with all due respect, the counsel. I'm not convinced we have any jurisdiction on two levels. A Federal jurisdiction questions and also the State Public Utilities jurisdiction questions. I don't know whether we can tell a federally regulated cell phone provider where it can or can not place one of its towers. The second question I have is I don't think we have an answer at all as to whether we can tell Idaho Power, which is a publicly State regulated utility and a Federally regulated utility, which has an easement to this property and I would imagine multiple easements where or how it can put it's poles, how tall they can be and what can be placed on them. We have those two questions. We also have a much bigger question which seems to me to be whether or not we can ever under the guidelines we operate under allow cell phone towers in the North End or any of our historical districts. I see us going down a very uncertain road here that we don't have the answers to. If we approve T-Mobiles application we will quickly get applications I'm certain from at least five other providers. We have no guidelines to determine whether or not cell phone towers are congruous at all with the historical district. We are operating in an area which we have very little guidance from anyone. I feel like we're stumbling around in the dark because we don't have enough information in front of us. The T-Mobile proposal on its face does not seem unreasonable to me if a cell phone tower ever can be congruous with a historical district. That's a question that we don't have an answer to. Additionally we have been mandated by Federal law that we have to provide certain levels of coverage and we might not have any choice as to whether it can be placed. I, with respect, disagree with the North End Neighborhood

Association. I have a hard time based on my limited experience on this Commission believing that the association will ever approve a cell phone tower in the North End and racking my brain I can't think of a place other than perhaps St. John's Cathedral or the Cathedral of the Rockies, which is tall enough to allow a pole on it and I suspect there would be extreme objections to that. We have serious issues and we don't have enough information. For that reason we don't have much choice, but to defer this until we get a fuller picture.

COMMISSIONER CHANDLER: With all due respect to Commissioner Smith I think we have a situation that can be resolved. It won't be to everybody's satisfaction. There's no question about that. There are a lot of potential slippery slopes. We need to look at what is in front of us. A relatively small structure in a backyard and there doesn't seem to be much objection to that as long as it is hidden. The other is a pole that will be taller and this seems to be the largest concern. One of the nice aspects about this is that it is in an alleyway. This is in contrast with the one we are thinking about. How many of you have driven down Warm Springs and have looked at the extremely tall power poles that are in everyone's front yard? They make this look short. The applicant has stated that there will be three instead of six panels and it will remain a wood pole. That is congruous versus a metal pole. Then reducing the number of panels, and they are still providing cell phone service. They are not adding anything they are sharing a pole.

COMMISSIONER CHANDLER MOVED TO APPROVE DRH08-00203 WITH THE SITE SPECIFIC CONDITIONS OF APPROVAL AND GENERAL CONDITIONS OF APPROVAL IN WITH THREE ADDITIONAL CONDITIONS. THE SHED HAVE HARDIPLANK LAP SIDING. THERE SHALL BE A WOOD FENCE CONSTRUCTED ALONG THE ALLEY IF NOT ALONG THE ENTIRE AREA LEASED BY THE APPLICANT. IT MUST BE SUBMITTED TO STAFF AND APPROVED PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF APPROPRIATENESS AND THERE SHALL ONLY BE THREE PANELS VERSUS THE SIX SHOWN IN THE APPLICATION.

COMMISSIONER DAWSON SECONDED THE MOTION.

CHAIRMAN POOSER: I am not concerned about the Federal regulations. I think our review is limited here. It is consistent with the guidelines. Having reviewed the property I don't think the increased height and the addition of the three antennae is a violation of our ordinance. The installation of the pole in the public right of way.

COMMISSIONER DAWSON: I was surprised Commissioner Chandler made mention of the poles on Warm Springs, I live on Warm Springs and don't notice them any longer. It has faded into the subconscious and I think this would as well.

COMMISSIONER SEWELL: I don't disagree with the discussion, but I do agree with Commissioner Smith in that I would like a little more information. I would like to know more about the coverage and see additional views of the poles; I would not support the motion, but would support a deferral.

COMMISSIONER McFADDEN: I would support the deferral as well. We owe it to the public to know what we are approving. This is an addition to the pole and the applicant was pretty clear about that, but the application was confusing....I want to make sure other locations were explored too.

ROLL CALL VOTE 3:3. MOTION DIES DUE TO LACK OF MAJORITY.

CHAIRMAN POOSER: I would entertain another motion....I think it would be appropriate to hear what additional information we would like from the applicant, staff and legal.

COMMISSIONER SMITH MOVED TO DEFER DRH08-00203 PENDING RECEIPT FROM THE APPLICANT OF THE COVERAGE INFORMATION THAT HE TESTIFIED TO, PENDING THE RECEIPT OF THE DRAWING OF THE CELL PHONE TOWER PAINTED BROWN WITH THREE PANELS, FROM LEGAL AS TO THE JURISDICTION THAT THE HISTORIC PRESERVATION COMMISSION HAS IN REGARDS TO THE SITING OF CELL PHONE TOWERS, INCLUDING BOTH FEDERAL AND STATE JURISDICTION AS TO WHAT EXACTLY OUR JURISDICTION IS TO THE SITING AND DESIGN OF THE TOWER.

COMMISSIONER SEWELL SECONDED THE MOTION.

COMMISSIONER CHANDLER: Do we need a deferral to a specific date?

JULIE ARCHAMBEAULT: The 11<sup>th</sup> is still available as is the 25<sup>th</sup>. However, it just depends on the applicant and when they could get the information. For the 11<sup>th</sup> we would need the information in immediately.

COMMISSIONER SMITH: I'll make it for the 25<sup>th</sup> Mr. Chairman.

CHAIRMAN POOSER: I would like to reopen the hearing and hear about your ability to provide the information we have requested....

#### PUBLIC PORTION REOPENED

TERRY COX: Do you just want our coverage maps?

CHAIRMAN POOSER: We would want the coverage maps, the new drawings showing the color and the panels.

COMMISSIONER CHANDLER: Also at one point there was a question as to the size of the panels because of the conflicting information on drawings as whether they're 10 ft. high...6 ft...probably what extends beyond the existing poles is probably what would be good to have some more detail on the exact dimensions.

COMMISSIONER SEWELL: If you could, show us actual photos.

TERESA SOBOTKA (Legal): The North End would like to remind you of what they think are pertinent information...if you would like they would like to reiterate.

CHAIRMAN POOSER: If I recall it were elevations from 13<sup>th</sup> and 14<sup>th</sup> Street. It would be if you're standing on 13<sup>th</sup> Street looking directly at the pole and the elevation of the pole from that direction as well as from in front of the residence.

DAN EVERHART: So we can see what it looks with the buildings and the pole. Not just the pole.

CHAIRMAN POOSER: I guess I would add that as well.

TERRY COX: I don't think you would be able to see the building from there?

COMMISSIONER McFADDEN: Something like this showing the street side elevation with the pole in the background. Isn't that what you're looking for Dan? So that we can see how maybe even where the existing poles are and how that would relate, but you'd be looking at it from the street side so these would be Harry's bar, the cleaners and whatever else is there and then the pole and how it would relate to 13<sup>th</sup> and 14<sup>th</sup>. We request those sometimes when we're looking at massing of a block and we want to make sure that something isn't sticking way up or way too small.

COMMISSIONER DAWSON: We have this rendering that was done by your company from the perspective view of Alturas Street. What we're asking for is something like this from 13<sup>th</sup> and 14<sup>th</sup>.

TERRY COX: From the ground level?

CHAIRMAN POOSER: Yeah...ground level...street level.

COMMISSIONER DAWSON: Yes.

TERRY COX: But from 13<sup>th</sup> Street where the building sits at I don't think you're going to see the building at all from 13<sup>th</sup> Street.

JULIE ARCHAMBEAULT: If the applicant would like to work with Staff we could explain to him what you mean by elevation. I get what you're talking about. Just a street with the poles.

CHAIRMAN POOSER: The street façade basically. Not a detailed street façade, but showing the massings with...

JULIE ARCHAMBEAULT: With an elevation rather than a rendering and perspective.

CHAIRMAN POOSER: Yes. I guess my question to you is with coverage information, more information on the panels...the elevations we've just spoken about...how long is it going to take you to get that information together and get it to staff?

TERRY COX: 10 days.

CHAIRMAN POOSER: Would that put us on the 25<sup>th</sup>? Are you going to be available to attend August 25<sup>th</sup>? It will be an evening hearing.

TERRY COX: Yeah.

PUBLIC PORTION CLOSED

CHAIRMAN POOSER: On the table I have motion to defer this application to August 25, 2008 to allow the applicant to submit some additional information as well as legal.

SARAH SCHAFER: Do you want to make your motion to include all those additional elevations that we just discussed? Currently the motion doesn't include that information.

COMMISSIONER SMITH: I'll include those.

COMMISSIONER SEWELL: Concur.

ROLL CALL VOTE 5:1. MOTION CARRIES WITH COMMISSIONER CHANDLER AGAINST.