

**SANTA CLARA CITY COUNCIL MEETING
WEDNESDAY, JULY 26, 2017
MINUTES**

THE CITY COUNCIL FOR THE CITY OF SANTA CLARA, WASHINGTON COUNTY, UTAH, met for a Regular Meeting on Wednesday, July 26, 2017 at 5:00 p.m. in the City Council Chambers of the Town Hall at 2603 Santa Clara Drive, Santa Clara, Utah.

Notice of the time, place and agenda of the meeting was provided to the Spectrum and to each member of the governing body by emailing a copy of the Notice and Agenda to the Spectrum and, along with any packet information, to the mayor and each council member, at least two days before the meeting.

Present: Mayor Rick Rosenberg
Council Members: Jerry Amundsen, Ken Sizemore and Mary Jo (Tode) Hafen
City Manager: Edward Dickie
City Recorder: Chris Shelley

Others Present: Jack Taylor, Public Works Director; Corey Bundy, Building Official; Matt Ence, City Attorney; Bob Routson; Melissa Reagan, Sherman & Howard, Verizon Wireless; Adam C. Dunn, Dunn Law Firm, Sunbrook Residents; Cindy Frei; Nick Lang; Richard Edwards; Selena Nez; Hans Hafen; Jared White; Ryan Anderson; Jeff Buehner; Rick Hafen; Jerald J. Nodvik

1. **Call to Order:** Mayor Rosenberg called the meeting to order at 5:03 p.m.

2. **Opening Ceremony:**

- Pledge of Allegiance: Ken Sizemore
- Opening Comments: Ken Sizemore

- Councilman Jarett Waite and Councilman Herb Basso were excused from the meeting.

3. **Communications and Appearances:**

A. General Citizen Communications:

1. Jerald J. Nodvik submitted a document to the Council and asked them to please take the time to read it. He said he feels that it is the most important message that would be delivered to the Council this year. He gave the document to Ed Dickie, City Manager.

4. **Working Agenda:**

A. Public Hearing(s): None.

B. General Business:

1. Recognize Dresden Empey. Presented by Mayor Rosenberg.

- Mayor Rosenberg said that Dresden was unable to attend the meeting so he asked for a motion to table this item until August 9, 2017.

Motion to Table Item #1 Recognition of Dresden Empey until the August 9, 2017 City Council Meeting.

Motion by Tode Hafen.

Seconded by Jerry Amundsen with all members present voting aye.

2. Introduce Selena Nez-New Employee with Bldg. Department. Presented by Corey Bundy, Building Official.

- Corey Bundy thanked the Council for the new Building Department Secretary, Selena Nez, and he said they appreciated having a full-time person. Selena grew up in St. George and she is married and has two children. She was previously employed at Green Valley Spa as a retail manager and salon director.

3. Appeal Hearing of Planning Commission's approval of Conditional Use Permit for Verizon Cell Tower. Presented by Matt Ence, City Attorney.

- Matt Ence stated that the Council has received a significant amount of material. There has been a lot of information involved in this item. There have been two different applications now from Verizon. Verizon had originally submitted an application at this same site for a previous tower concept, which was a 100-foot tower. That went through the process of being approved by the Planning Commission and was ultimately denied on appeal by the City Council. Verizon filed a new application at the same site with a modified design. They requested a 60-foot tower and provided a significant amount of additional information that the City was not provided previous to that. The City in reviewing and preparing to respond to the second application retained the services of CityScape Consultants, Inc., Rick Edwards and his group, which have been advising us with respect to the technical aspects of the application. This is similar to the application that was previously reviewed by the City Council but it is not the same. We have the benefit this second go around to having the advice of this professional advisor. The Planning Commission meeting was a long meeting, about 4 hours, on this item. The Planning Commission did a thorough review and received presentations from Verizon, the City's professional advisor and others who were present at the hearing that night. Ultimately the Planning Commission made the decision to approve the Conditional Use Permit requested by Verizon for the cell tower at this site. He said he was going to summarize for Council the details of the motion that was made and approved. The motion was made by Mike Day and as part of his motion he made a number of findings which were supported by Planning Commission some of which were based on requirements of Federal law and some of which were based on requirements of our City Ordinance. The first was that Verizon establish that there is a significant gap in service coverage that would be corrected with a tower at this site. Second, that the proposal to fill the gap was the least intrusive means in doing so considering the other alternatives that were reviewed. The Planning Commission also found that the use was desirable and would contribute to the well-being of the City and it would not be detrimental to the health, safety, welfare, aesthetics, or improvements in this area of the City and that they

comply with the City's zoning regulations. The Planning Commission found that the tower would blend sufficiently with the surrounding area in such a manner as to be unnoticeable, that no other location was technically feasible for this use, that Verizon has submitted sufficient technical evidence showing a clear need for the facility, that the proposed site resulted in fewer or less severe environmental impacts than any of the alternative sites. There were a couple of conditions set in conjunction with motion that Verizon would have to comply with including that they would have to work with Staff on the final design of the tower which could include some sort of camouflage or screening technique, however that was also balanced with the consideration that the City doesn't want to see additional tower facilities in this part of town if at all possible. There was a significant discussion about making the facility one that could bear colocation by other service providers. As part of that discussion the approval was for a 60-foot tower but with recognition that Verizon, in order to facilitate colocation, could increase that height to 80 feet. That was partly in light of the fact that there are Federal regulations that allow Verizon to do that anyway in certain circumstances even without the City's approvals. Another condition was that Verizon would sign a Facilities Maintenance Agreement, which they have accepted at least in form. Based on some concerns of neighboring property owners, the Planning Commission also listed a condition of approval that the tower would have to be sited at least 100 feet from any neighboring property except upon written agreement of the neighboring property owners. He stated that Adam Dunn is at the meeting tonight representing the appellants who have appealed the decision of the Planning Commission. The appeal filed by Mr. Dunn in behalf of his clients requesting that the City Council review the decision of the Planning Commission in this context the Planning Commission is the Land Use Authority for granting Conditional Use Permits so the position of the City Council tonight is that the Council is reviewing as an appeal body a decision of the Land Use Authority. Because of that the City Council's job is to review the Planning Commission's decision de novo. What that means is the Council is reviewing it from scratch. Council can give deference to the discussion and decisions of the Planning Commission if they choose to but they have no obligation to and they can reach an independent decision. It is the burden of the appellant to convince the City Council that the Planning Commission's actions should be overturned. They will be making presentations tonight with their arguments on that point. Our ordinance provides that in these circumstances the City Council does not need to make a decision at the meeting. They are only required to issue a written decision within 15 days of the hearing. The Council's option tonight is to deliberate, consider the evidence brought before them by those that present to the Council. We also have the option of going into a close session if Council so chooses after the open hearing is complete. He said that he anticipates that we'll come back at one of the City Council's next meetings and have the Council approve a written decision based on Council's ultimate review of the things presented today. Verizon will begin with their presentation and then the appellants will give their presentation and from that point we will proceed as the Mayor and Council would like to seek information.

- Corey Bundy said that he would like to recognize that the City's Representative, Rick Edwards, with CityScape is in attendance and that he is available if the Council wants any information from him.

- Richard Edwards, CityScape Consultants, stated that they are working for the City of Santa Clara. He said there is some confusion on the automatic increase of height and width of the facility. He said they concurred with Verizon that 60 feet would work for

their needs. He said they also recommended the use of a consumer facility camouflage for another reason that a facility that has an approved antenna can be automatically increased in height by 20 feet or 2% whichever is greater unless it is a substantial change. The reason they recommended camouflage is any changes in that would be a substantial change. He said they recommended the water tank.

- Mayor Rosenberg said there has been some citizens requesting to speak on this. He asked them to hold their comments until the end of both presentations. He stated that Verizon would give their presentation first. Then the appellant, Mr. Dunn, will give his presentation and if time permits there will be comments from citizens who have asked to speak on this and then the Council will go into Executive Session to discuss this and make a decision.

- Melissa Reagan, Attorney at Sherman and Howard representing Verizon Wireless, also introduced Jared White, Verizon Site Consultant. She showed the Council a power point presentation. She thanked the Mayor and City Council members and the Staff. She said the Staff and the City Attorney have put a lot of time and effort into this. Verizon is requesting that the City Council will uphold and approve the Planning Commission's approval of Verizon's application for a Conditional Use Permit. There was substantial evidence on the record at the Planning Commission hearing of how Verizon demonstrated not only that they have met all of the legal requirements but also established all of the code requirements under the City's Ordinance as well as establishing that Verizon complied and this should be approved under the Utah State statute. This is a critical site for Verizon as there is a significant gap in both capacity and coverage and that was demonstrated by Verizon through substantial amount of evidence and also been affirmed by CityScape, the independent consultant hired by the City. The demand for wireless and mobile capabilities for mobile devices is exponentially growing. The demand for wireless services is going to increase by 650% by 2018. 70% of all 911 calls are made from mobile devices now. 49% of households here are wireless only. It is critical that not only can people use the luxury of the phone but that they can make phone calls. A lot of public emergency services are relying phones and data in their vehicles to be able to process information, to be able to find addresses, to be able to use a navigation system and get where they need to go to provide services. The demand is saturating all of Verizon's facilities. This facility is designed to be another "door for user to get through" to be able to use their devices. Without this there will remain a substantial gap in services and under the Federal Telecom Act Verizon Wireless is required to fill that gap in service. She said that they have met all the Federal, State and local requirements. She said that they don't even need to discuss whether Federal preemption applies here because Verizon has already satisfied the City's Ordinance and the Utah State statute. The Santa Clara code requires that they show that this be effectively unnoticeable and they took a lot of photo simulations to try and demonstrate what the tower will look like from various vantage points. She said they received information from appellants as to where they wanted to see what this was going to look like and Jared worked to get additional photo simulations. Verizon has also provided some photos of actual water tanks that have been constructed that are 60-70 feet and what those might look like here. Verizon is willing to work with the City. If it needs to be a concealed water tank they are fully capable of doing that. They are willing to do whatever it takes to make it not noticeable. She said that Verizon has also provided substantial evidence that there are not any other locations that are technically feasible or available. They have to satisfy three requirements in order to make sure a site is there: a willing landlord, meet all the

code requirements, and it has to work from an RF perspective. She said they examined 11 alternative sites. They are all in the presentation. They were all reviewed and discussed at the Planning Commission hearing. She said that if there was an alternative facility that would have worked, they wouldn't have come back to the City with this same application. Verizon has also provided significant evidence that this is going to provide a benefit to Santa Clara residents. It's going to provide better coverage and it's going to offload from existing sites that it will make those sites better for Santa Clara residents as well. The Utah State statute actually has a statute that says, "a conditional use permit shall be approved if reasonable conditions are proposed or can be proposed to mitigate reasonable detrimental effects of a proposed use". She said that was well established in the Planning Commission hearing. She said this isn't a discretionary standard. She talked about the Federal Telecommunications Act which says that local jurisdictions have discretion over aesthetics and safety but where the telecommunications company can demonstrate a significant gap in coverage and that this is the least intrusive means then the local jurisdiction shall not have the effect of prohibiting the provision of personal wireless services. She said they provided, at the Planning Commission hearing, extensive documentation for the substantial need for this site. She said that in June 2015 the FCC passed an order of regulation that includes the definition of Internet Mobile services and personal wireless services. She said that personal wireless services include data. She said in this case there is both a significant gap in coverage and capacity and if this was presented to the Court they are confident especially within the 10th Circuit that that would be upheld.

- Jared White, Verizon Site Consultant, showed slides of the site to the Council. He showed maps of the current coverage and the coverage after the site is built. There has been a 74% increase in the use in the last 4 months. The average number of devices using any certain cell tower was 12,000 devices a day. That is why this facility is needed.

- Matt Ence said that since two sites in particular have been addressed quite a bit, it would be helpful for the Council if Jared addressed the background on the Arrowhead site and the Sunbrook site.

- Jared White said that the two sites that worked for the coverage perspective are Arrowhead Elementary and Sunbrook. The problem with Arrowhead Elementary is much closer to the houses that surround Arrowhead than the houses that surround this site. The only feasible locations at Arrowhead are the back of the property or the very front portions of the property and it would be much, much closer to those houses than it is to these at this site. Washington School District, for that reason, has already provided written notification to the City that they will not lease Verizon space at Arrowhead Elementary. They are also concerned about using their playground for this site. The next site is the St. George golf course. There were easement issues with that site. Verizon cannot get those easements and have provided letters to the City from owners of that property that state they will not abandon easements. Verizon has provided emails and letters to the City from St. George City Golf Course that state they are not interested in the site. They have just recently said maybe they would be interested but it is not legal to push Verizon back and start this over on a maybe when there is so many things that Verizon has already shown won't work including the easements and St. George City's responses to Verizon repeatedly that they are not interested in it even if at the last minute, they said they would maybe discuss it. Further, both sites are closer to homes than the location Verizon is asking for now. No matter where they wanted to move it, they cannot make everyone happy. He said that is why they try and select sites based on the city's

codes, the needs of the engineers, the available resources, the available power because by placing sites in the right locations it's the best way to minimize impacts because less sites is the best option. He talked about other sites that were eliminated and why. He said that Verizon has offered to do a water tank. He said they are fine with that but there are downsides to the option. Its visual profile is so much larger than the tower. He somewhat disagreed that 3 cell carriers could fit inside the water tank. He explained why. The tank would have to be over 30 feet in height to allow for 3 carriers. He said they feel like this is a far more visually intrusive option. He said that poles blend in and people get used to seeing them. He said that it is their opinion that the mono-pole is the less visually intrusive option. He asked the City to consider a number of options. He said that the closest residential home to this tower would be 650 feet. He said they have provided visual analysis for this proposed site. He said they have provided a lot of photo simulations from different areas near this site. He said that every photo that the City or appellants have provided, they have done a photo simulation for. They have also provided actual photos of towers of the same design so there could be a visual comparison. He said there is no other way to deliver the services that people need. The other site cannot continue to support the growth. It has been maxed out. The only way to fix this problem is with a new facility.

- Adam Dunn, Representing Mineral Smith who is principle developer of Sunbrook and Mary Beth Sposi, showed a map of Sunbrook and talked about the vantage point from the river. He talked about the view corridor. He said that millions of dollars went into the development of Sunbrook. He said that one of their main concerns is the effect on that view corridor. He said that they take issue with what the Planning Commission did. He said they have effectively approved an 80-foot tower. In effect, it could be the approval of a 100-foot tower under the Section 6409. That is a concern because last year this Council denied the application for a 100-foot tower, which is essentially, what Planning Commission has approved. He reviewed the decision made last year by the Council to deny the 100-foot tower. In paragraph nine it talks about this being in a residential agricultural zone. Santa Clara's ordinances require a setback. He said that the state code says the City "shall approve" but it says "shall" and the City can impose reasonable parameters and he thinks a setback of this kind is extremely reasonable. He talked about the location of the tower. It is right near the property border of a St. George parcel. He thinks a 100-foot setback is appropriate because of the impact on the neighbors. He said all the discussion has been about servicing Santa Clara. He said that CityScape put in their report that a 50-foot antennae elevation would be equivalent to approximately 100 feet at Frei farm (the Arrowhead location) and would provide a greater capacity relief to more of Santa Clara. He said the location would be better. He said that Verizon has made comment that the school district would not be willing. He's not sure that is the case. He said he doesn't know if it was reasonable explored. He said he thinks there could be a willing landlord. He said that much of who Verizon wants to help is not Santa Clara. He quoted the Council from the decision made last year: "there is virtually no natural screening for the proposed 100-foot tower". He talked about how a 100-foot tower would obstruct views of the mountains. He said that the tower would be readily apparent and it's not essentially non-noticeable. He talked about the proposed public trail that will be very near the site of the tower. He said he agreed with Jared White about the water tower and he said it is hideous and that his clients would hate it. He said that Verizon has said that Federal law doesn't really matter because they have met the conditions of Santa Clara ordinances. He said he doesn't think they have especially with

the approval that the Planning and Zoning Commission have made. He said that Council has found as a conclusion of law this proposed use is so incompatible with surrounding properties that the detrimental effects to the aesthetics and property in the area cannot be substantially mitigated by imposing conditions to achieve compliance with the ordinance. He said that was the Council's finding. They haven't done much except drop it 40 feet. It is still incompatible with the surroundings. It is still noticeable. It is also not consistent with the General Plan. He quoted the Council's decision from last year, "no evidence in the record suggest that conditions could be imposed that would make a tower at this location effectively unnoticeable". The proposed tower site is on or very near a location that is intended for a future public trail as part of the City's comprehensive trail system. He concluded that he doesn't think they have complied with Santa Clara ordinances and he thinks it is odd that they have applied in Santa Clara and not St. George. He talked about the different location options. One of the locations was in St. George City and Verizon said it is not allowed at that site according to St. George City ordinances. He said if there is a significant gap then Federal law comes in with preemption then it doesn't really matter. He said that them saying city ordinance doesn't allow it is not sufficient if they made a prima facie case that there is a significant gap. He talked about other sites being rejected because they are right up against property lines. He said that this site is right up against a property line. He thinks that Santa Clara ordinance prevents the installation of a pole at this location. He said he thinks this would be a fun legal case. He said that in 2015 the FCC said they got it wrong. Telecommunication services includes internet. It's not the FCC that has authority to decide what preempts local law and what doesn't. He said that Verizon said that Internet should be basis for preemption. He said that the court case that has been cited that says it should include Internet. The AT&T case from the 10th Circuit came after the FCC regulations. He said that it was stated that the coverage gap around the selected site was significant because the gap covers a populated and well-travelled area. The signals from other towers interfere with one another and cause issues with establishing or making telephone calls. It doesn't talk about Internet capacity. The issue was not addressed head on. The Internet capacity is not what was intended for Federal preemption of local law. Local law should still govern. He said Council should still have the choice of what goes in this community when we are talking Internet. He showed two slides that were produced by Verizon. He said he hasn't seen explicit reports on calls that were dropped. He hasn't seen data that shows what the call drop percentage is. He showed a graph showing what data is needed and that phone calls need almost no data. He said that what matters is our community. He asked why Verizon chose this site. He said maybe they got a great deal on a lease. They are talking a lot about this gap. He doesn't know if there is a significant gap. He said in behalf of his clients they adamantly oppose any tower and they think it violates Santa Clara ordinance and that it is not effectively unnoticeable and there has not been sufficient reasonable due diligence at other sites. He said they do feel to maintain the view corridor this is not the location. It's not required by Federal law, it's not required at all.

- Mayor Rosenberg said that there are several citizens that have requested to speak. He admonished them to keep their comments new, in content. This is not a Public Hearing. We are not seeking public comment. We are seeking content relative to a decision, particularly new content.

- Bob Routsong said he lives in Sunbrook and he has provided an overview, which he showed to the Council. He said that last year the City Council denied Verizon's

application based primarily on the ill effects of aesthetics and the potential to reduce property values as indicated in the appraiser's statement. He said he gave a copy of the appraisal to the Council. He said although Verizon has lowered the tower it is all the same conditions and they still exist. Nothing has really changed. He showed an aerial view to the Council. He said he went to the St. George planning department and they provided him this aerial view. He asked about the property line. He said the point is that Hafen objected that it was too close to his property so the Planning Commission said it has to be 100 feet from any property line. He asked Corey what the qualifier was.

- Corey Bundy quoted the motion made by Michael Day that said that the tower must be located no closer than 100 feet to the neighboring property line except upon written agreement of the neighboring property owner.

- Bob Routsong said he contacted Ken Hafen who objected and said that in no way has he given any agreement.

- Mayor Rosenberg asked to clarify if it was Ken Hafen.

- Bob Routsong said that Hafen is the one that owns the property with that barn.

- Mayor Rosenberg asked if it is Rick Hafen.

- Bob Routsong said he didn't know his first name. He said he indicated to him that he is not in agreement to have the tower any closer. He mentioned a document that he has that is signed by Keith Frei. This was dated after the Council's denial last year. He said that in the letter Keith Frei says that he has been approached by Verizon in relation to a possible cellular facility on the Sunbrook Golf Course south of his property. Verizon has said they would need an access and utility easement from him and he said he is not willing to grant the easement. He asked if that was the same property.

- Jared White said no.

- Bob Routsong said that Verizon has commented about not finding alternate locations. He said he would like to present to the Council an email that he sent to Gary Esplin, the St. George City Manager where he inquired as to the alternate location in the maintenance area. He said that area had an access road. He said that Gary Esplin said that the City's Director of Golf or the City's Economic Development Specialist had contact with Verizon representatives about the possibility of locating a tower near the City Golf Maintenance Facility and the city indicated through these gentlemen that they are not interested believing it would create a negative visual to the golf course and adjacent residents. He said that Gary Esplin said they reached out to Verizon after Santa Clara City Planning Commission approved the location to see if they might consider the site at the maintenance facility. He said Verizon indicated that they were too far along in the process to consider this site. Mr. Esplin told him that he was not in the loop on the original request. He said that this suggests to him the Verizon has not really done due diligence to answer this questions and he feels that this would be a more suitable site because it does not really effect the residents. He talked about the view the residents have and therefore aesthetics is important and he believes this will adversely affect their property values and they are opposed to it and asks the Council to deny it.

- Jeff Buehner said he lives on Claude Drive. He said he spent over \$1 million on his home. He said he noticed how quickly the school district said no and they accepted it. When the golf course said no they accepted that. The guy that said no to the easement was accepted. He said it is always the residents. He said they sunk their fortunes into their homes. He said he represents everyone on that street and they are scared to death that this is going to go through and impact their property values. He said he is pleading with Council to not do anything that negatively impacts their property values. He said he

hopes Council cares about them. He said that Verizon is acting like they have explored every option and this is the only option and if they don't get this option people will possibly not have cell coverage. He said it rings dishonesty with him. He accused Verizon of not doing their homework and told them they need to find a better site. He said this is the wrong site and they haven't done enough to find the right site and asked Council to deny this on the basis of it being the Council's job to protect the residents.

- Hans Hafen, 1245 Old Farm Road, said he is representing the owners of the Hafen property immediately to the south of the proposed site. His main concern is that the Council follow the recommendation of the Planning Commission and require that the facility be at least 100 feet from the property owners. He said it will not be unnoticeable from their prospective from their property. He said they would prefer not to have it be a water tower. It would be much larger and noticeable than a single pole.

- Mayor Rosenberg asked Hans if Verizon contacted them about going through their property with the easement for the Sunbrook golf course.

- Hans Hafen said not to his knowledge. They may have talked to Rick. He said his understanding was they were unable to get an easement from the Frei's.

- Mayor Rosenberg asked Rick Hafen if Verizon contacted him about an easement.

- Rick Hafen said no.

- Ryan Anderson, Cynthia Lane, said that a group of them are starting dirt work and he showed on the map where that is being done. He said it is going to be a subdivision with 57 lots. The preliminary plat was approved by St. George City. The most valuable lots overlook the golf course. The tower will negatively impact those financially. He said he highly recommends the Council not approve this.

- Rick Hafen, 2766 Red Mountain Drive, said he is representing the property just south of the proposed tower and he has a number of concerns. He said at the Public Hearing before the Planning Commission he raised the issue that the application is flawed and he believes it is flawed because it is not signed by the property owner. It is only signed by Verizon. The application requires the signature of the property owner. It does not comply with the application and it is defective. The proposed location of the tower is 18 feet from his property line. He said that is unacceptable. There is the potential of failure and damaging the adjoining property and having it 18 feet from the property line is irresponsible. He said the impact to their property is much greater than the impact to the property where the tower is proposed. Their property is on 3 sides of this proposed property. Lava Flow Road, which is designated on the plat, is a public road. The Utah statute says that where a public road has been used by the public for 10 years it is a public road. He said he doesn't think it has ever been abandoned so it is a public road and he believes that a utility can't be prohibited from going down there. He thinks there could be a possibility of locating a power line easement down there to go to the facility that would not have to have the Frei's approval. He said the property owners will generate an income for leasing the property to Verizon and yet it adversely affects the adjacent property owners and that is not equitable.

- Matt Ence said the Council can make a motion at any time now to adjourn to Executive Session. He said that if there is any discussion that the Council is comfortable at having they can do that in an open session. He said that for the record if there is a motion to go into Executive Session the basis for that would be the likelihood of potential litigation to follow the Council's ultimate decision and so that would be the justification for that.

- Tode Hafen asked Rick Hafen if the road he was talking about was Lava Flow.

- Mayor Rosenberg said that is a public road and has been for a long time. It's not

dedicated. It is a public road by use. He said that on the City Road Master Plan it changes to an extension of Claude.

- Jared White said they did a lot of research on this. They tried to get that road. That was his initial location.

- Mayor Rosenberg said he would like to hear the information relative to the public right of way if there is one or if it can be established relative to that road.

- Jared White said their initial first choice for the site was the Hafen's property. He said they thought that Lava Flow was a public road as well. He said it is a much cleaner access, much cleaner utilities so as they surveyed the property they determined that the road is prescriptive easement so it's not a dedicated road. Prescriptive easements can be used by the public for access but for a private person to occupy it or to access it for private property, Verizon can't do that and have been blocked out of several sites for this exact same instance in locations throughout the country. He said they did a tremendous amount of research to establish that.

- Mayor Rosenberg asked if Jared contacted Ryan Anderson. He said the road is located on Anderson's.

- Jared White said that when you read the survey lines it references an old canal and things like that that don't exist and so their surveyor could not establish exactly where it went based on public records so in order to insure access they would need an easement from Mr. Anderson and from the Hafens and the Frei's for a portion of the road. Because of the way that it's not very well recorded, in order to establish an actual right or easement, they would need an easement from all of those parties.

- Melissa Reagan said they don't have an easement that they can actually deed to Verizon so the way the Utah law works is that if this is a prescriptive easement the City would have to go and establish that this is an open and notorious use for at least 20 years and then they would get a legal prescriptive easement but even then, we would have to have the owner's agreement and if ownership changed we may not have access anymore to the prescriptive easement.

- Mayor Rosenberg asked about their surveyor not being able to establish the boundary.

- Jared White said that the surveyor said it was difficult to tell exactly where the road is in relation to the boundaries. It was referenced to the canal that isn't there anymore.

- Matt Ence said he thinks Rick Hafen is saying that this is a public easement, not a prescriptive easement. Under Utah law that is established by 10 years of historic use and once it's established, it's established. It's not a dedicated right of way. He reminded the City Council that they have dealt with this before on the Mel Taylor property and in that situation, it was the City's belief that that was a public access and so we agreed with some property owners who were the beneficiaries of that that the City would actually pursue legal action to open up that right of way and make it clear through court action that the public could access that. It is a little bit different from the prescriptive right that has been referenced. Until there is a court ruling it's not a certainty.

- Mayor Rosenberg reminded everyone that it is located in St. George City.

- Ken Sizemore wanted to know if the applicant or the appellant have any responses that they want to make that would clarify their stances based on the public comment made. Is there anything they want to clarify?

- Jared White said that the easement is all speculative. He said the Hafen's were willing to do the exact same thing when they were the ones that were going to get the revenue. He said the nature of cell towers is there is always a person that gets the money, Verizon that gets the revenue, the public that gets the coverage and the property owners that are

impacted by it that don't get those. That is the case of every single cell site because only one property owner gets picked. But this doesn't change the laws or the rules. He said the reason the appeal happened is because Council said they didn't look at other locations so Verizon came in and met with the City and the City gave them a list of locations and then the appellants gave them a list of locations and they reviewed them and provided substantial data for all of those locations. He said they wanted the site with the least resistance as well. There is not a better site. He said they try to be very objective from a coverage perspective but no matter where they move this; there would be this same meeting with a different group of people. He said they have established legal reasons why they can't, easement reasons why they can't, coverage reasons why they can't. They are willing to make it shorter and to comply in every way. The City and the appellants and no one has been able to show him a better location. He said that they get the concerns but it doesn't change the fact that they feel that they meet the code. He said they understand that they need the setback of 100 feet based on the condition from the Planning Commission and they will work with the Frei's to amend their lease to get that space. He said the City setbacks are defined in the City's code and they can't impose that on Verizon. They designed the site and submit it to the City and lease their property based off of the City's codes and the setbacks that they tell them they have to have. He said they will do their very best to work out an agreement with either the Hafen's or Frei's or some way to get consent for that but they also challenge that that's a legal way to impose that condition when they design it off of the City's code of the setback.

- Jerry Amundsen asked that outside of the easement issue, what are the problems or the issues that Jared White finds with being in the golf course maintenance area.

- Jared White said that the biggest problem is that they had approached St. George multiple times and got a not interested response or no response. It wasn't until the day before the Planning Commission hearing that St. George said they would discuss with him. He said that is not enough to make them back out and start again. That area is actually closer to houses.

- Tode Hafen asked if that site is better.

- Bob Routsong said that in the maintenance area there is a lot of trees and it would be camouflaged better. It wouldn't be as obtrusive. He said the residents wouldn't be as objectionable to it.

- Ryan Anderson said the trees would camouflage 80% of the tower. It would be less objectionable.

- Bob Routsong said that Jared White said that the proposed location is the best location. That may be true but that's not the issue. The question is what will be adequate to provide the coverage and it may not be the best but it would be adequate to solve the current problem.

- Adam Dunn said that without seeing rendering they are unable to say for sure but he thinks it would be far less objectionable.

- Jared White said if they could find him a spot that has adequate coverage and where people aren't mad and has a place that he can get power and a place that he can get easements he would take that. He said that a year ago, and he spent a year looking at every single location that everyone asked him to look at. He spent a year documenting proof that this is the area that was needed.

- Mayor Rosenberg asked if the golf course site works.

- Jared White said that the golf course works.

- Mayor Rosenberg asked what he needed in the way of easements.

- Jared White said they needed easements for fiber optics, for power and for access and they need a commitment from St. George City instead of a maybe they will consider it.
- Mayor Rosenberg asked Ryan Anderson when his streets and utilities going into his subdivision
- Ryan Anderson said they are putting in sewer right now.
- Mayor Rosenberg asked Jared if he could deliver those easements to him and accesses and he could get an easement and a site from St. George and easements from Mr. Anderson then the access and easement corridor is covered.
- Melissa Reagan said the concern is that they can't get the CUP in St. George. She said if they could make it work and they didn't have to go through the CUP process and they didn't have to be there, they would do it. The problem is they are going to be in the same CUP hearing in St. George and there are residents that said on record that Sunbrook Golf Course wouldn't be an acceptable site so they are going to be in the same type of hearing that they are having right now. They have messages in writing that says that St. George City will not do it. At this point in time this is not an alternative.
- Mayor Rosenberg asked what their timeline is.
- Jared White said a year ago. He said the biggest problem is starting over and the environmental review process itself takes about 4 months. He said Verizon will make their argument that even if the Mayor gets all these things we can show that we went through a great deal of due diligence to try and obtain them. It's too late now. We are so far down this road he thinks Verizon would fight that. From a legal perspective, we have followed every possible outcome, we did everything we were asked to do by the City Council by the Planning Commission. We went above and beyond. He said that they researched as many properties as was suggested. He said they feel like they have met the code and presented the visual representations and have established the need for the site and feel they are in an incredibly secure position if it came down to that. He said they feel that Verizon and Verizon's legal department at this juncture feels that they have done as far as the thoroughness of this application for this very reason. They knew they would be here today.
- Mayor Rosenberg said he would now stop the public comments and asked everyone to sit down.
- Matt Ence said that it is Council's responsibility to make a decision on the appeal before them. He said that he thinks he speaks for Staff that they would love to see this go to Sunbrook but the reality of the Council tonight is they have to take action on what is before them.

Motion to move into Executive Session to discuss potential litigation involving the decision.

Motion by Ken Sizemore, seconded by Jerry Amundsen.

Voting Aye: Ken Sizemore, Jerry Amundsen and Tode Hafen.

Voting Nay: None

Motion Carried.

- Mayor Rosenberg asked if Claims and Minutes can be taken care of first so Staff could go home.
- Matt Ence said that is fine. He said they can finish up the rest of the business in the open meeting first.

Amended Motion to move into Executive Session after the open business because Council will be discussing potential litigation involving the decision.

Motion by Ken Sizemore, seconded by Jerry Amundsen.

Voting Aye: Ken Sizemore, Jerry Amundsen and Tode Hafen.

Voting Nay: None

Motion Carried.

5. Reports:

A. Mayor / Council Reports

Jerry Amundsen:

- None.

Tode Hafen:

- Wanted to know what to do about the County Fair and inviting the people and making sure everything is clarified. She said they have a Grand Marshall and the person for the Pioneer Award and does she need to notify them again. She said she probably needs to call Wendy. We need to decide whether the whole Council will be there.
- Mayor Rosenberg said there will probably be a time when they will all be recognized there.
- Tode Hafen said we need to decide, out of support, do we all go there.
- Mayor Rosenberg asked Council if they want to consider rescheduling the City Council Meeting for August 9 to allow the Council to attend that fair and support the opening since they are spotlighting Santa Clara.
- Tode Hafen said that she thinks they should and that the Council should be supportive of the fair.
- Ed Dickie said that there are a couple of items on there but they can be moved. He said one is the proclamation that the Mayor has been asked to do and it's in support of the schools. He said they could have a Special Meeting.
- Ken Sizemore asked if the August 2 Work Meeting could be made a Special Meeting.

Motion to call a City Council Special Meeting on August 2, 2017 to cover the items from the August 9, 2017 City Council Meeting agenda and then move into a Work Meeting that same night. The August 9, 2017 Regular City Council Meeting would be cancelled.

Motion by Tode Hafen, seconded by Jerry Amundsen.

Voting Aye: Ken Sizemore, Jerry Amundsen and Tode Hafen.

Voting nay: None

Motion Carried.

- Mayor Rosenberg asked Chris to make sure to let everyone know about that change.

6. Approval of Claims and Minutes:

- July 12, 2017 City Council Meeting Minutes
- Claims through July 26, 2017

Motion to Approve the Regular City Council Meeting Minutes from July 12, 2017 and claims through July 26, 2017.

Motion by Jerry Amundsen, seconded by Tode Hafen.

Voting Aye: Ken Sizemore, Jerry Amundsen and Tode Hafen.

Voting nay: None

Motion Carried.

7. Calendar of Events

- August 2, 2017 City Council Work Meeting
- August 2, 2017 City Council Special Meeting
- August 13-16, 2017 UAMPS

8. Executive Session:

- Entered Executive Session at 7:15 p.m.
- Reconvened at 8:35 p.m.

9. Adjournment:

Motion to adjourn by Tode Hafen.

Seconded by Jerry Amundsen with all members present voting aye.

Meeting Adjourned at 8:35 p.m.

Chris Shelley – City Recorder

Date Approved: _____