

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3  
4 **VERIZON WIRELESS,**

5 **Appellant,**

6 **v.**

7 **CITY OF TACOMA, a Washington**  
8 **municipal corporation, through its**

9 **LANDMARKS PRESERVATION**  
10 **COMMISSION,**

11 **Respondent.**

**HEX NO. 2017-022**  
**(HDR19-0007)**

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW,**  
**AND ORDER**

12 **THIS MATTER** came on for hearing before JEFF H. CAPELL, Hearing Examiner for  
13 the City of Tacoma (the “City”), on October 31, 2019, in Tacoma. The hearing was held in the  
14 City Council Chambers of the Tacoma Municipal Building, 747 Market Street, Tacoma,  
15 Washington. The Examiner briefly visited the site that is the subject of this appeal—100 South  
16 9<sup>th</sup> Street, Tacoma, Washington—the day before the hearing.

17 Appellant Verizon Wireless (“Appellant” or “Verizon”) appeared at the hearing through  
18 Rick Cardoza, Project Manager, LDC, Inc., along with Matthew Painley (“Painley”), a Verizon  
19 Wireless Radio Frequency Engineer. The City and its Landmarks Preservation Commission  
20 (“LPC”) was represented by Deputy City Attorney Steve Victor, with the assistance of Laura  
21 Hoogkamer, the City’s Assistant Historic Preservation Officer (herein “Hoogkamer”). Two

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- 1 -

**ORIGINAL**

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1 additional City witnesses testified, Jeff Williams (“Williams”) and Lysa Schloesser  
2 (“Schloesser”) who are present members of the LPC, both of whom participated in the LPC  
3 decision being appealed.

4 During the hearing, both parties made reference to the “Spectrum Act,” which is a  
5 commonly used name for certain sections (primarily section 6409) of the Middle Class Tax  
6 Relief Act and Job Creation Act,<sup>1</sup> and the Telecommunications Act of 1996 (collectively herein  
7 the “Federal Laws”).<sup>2</sup> As a result of these seemingly competing references, the Examiner  
8 requested that the parties put in writing their respective positions regarding any application of  
9 these Federal Laws to this appeal and submit them in memo or brief form by November 15,  
10 2019. The record was held open for the parties’ submissions and initially closed upon receipt of  
11 the parties submissions on the date just noted.

12 The Examiner re-opened the record, by his own request, on November 19, 2019, asking  
13 that the parties submit any prior hearing examiner decisions dealing with the Subject Property  
14 (defined below) regarding the rooftop telecommunications equipment that are in their  
15 possession, as well as information regarding the LPC’s review of the expansion/modification of  
16 the rooftop equipment in 2014 (as such was mentioned at the hearing). Verizon previously  
17 submitted a 2011 LPC decision approving the “Installation of not more than six cell antennas  
18 and its [sic] associated equipment onto the rooftop...” Verizon later confirmed that it was not  
19 able to find any previous hearing examiner decisions on the Building (defined below) and the  
20 Verizon equipment. The City did not provide any LPC information from the 2014  
21 modifications to the Verizon equipment (nor did Verizon).

<sup>1</sup> Found at 42 U.S.C. § 1344(a).

<sup>2</sup> Found at Title 47 U.S.C.

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1 From the evidence and testimony presented, the Examiner enters the following:

2 **FINDINGS OF FACT:**

3 1. The Bowes Building (aka the “Tacoma Savings and Loan Building”), located at  
4 100 South 9<sup>th</sup> Street in Tacoma, Washington (the “Subject Property” or the “Building”), is a  
5 privately owned, commercial building in the north end of Tacoma’s downtown core built in  
6 1909. Testimony described the Building as “low-profile,” “narrow,” and generally “small.” Its  
7 location on South 9<sup>th</sup> Street puts it at or near the bottom of one of the many steep inclines that  
8 constitute the Tacoma peninsula’s rise up from the waters of the Puget Sound. *Hoogkamer*  
9 *Testimony, Williams Testimony, Schloesser Testimony; Ex. R-9.*

10 2. The Building appears to have been nominated locally for historic status on the  
11 Tacoma Register of Historic Places in 1979. *Ex. R-9.* The recent LPC process leading to this  
12 appeal refers to the Building as “an individual landmark on the Tacoma Register of Historic  
13 Places.” *See e.g., Ex. R-3.*<sup>3</sup> The Building is also referenced as being a significant example of  
14 Beaux Arts Architecture, and as having been designed by prominent Tacoma architect Fredrick  
15 Heath. *See e.g., Ex. R-9.*

16 3. Cardoza testified that Verizon first installed rooftop telecommunications  
17 equipment (hereafter generically “RTE”) on the Building sometime after a 2007 to 2008  
18 timeframe, and that such was installed only after the LPC denied a Certificate of Approval  
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20

21 <sup>3</sup> Hoogkamer testified that she thinks the Building is federally listed as well, but the City did not point to anything in the record that bears this out conclusively. Whether the Building is federally listed is not critical to this appeal. In its search for the prior Hearing Examiner decision that Verizon erroneously referenced during the hearing, the Hearing Examiner’s Office did find LPC Meeting Minutes from August 27, 2008 (the “8/27/2008 Minutes”), which make reference to the Subject Property being “on the Washington State and National Registers.”

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1 (“COA”), but the Hearing Examiner reversed that denial on appeal.<sup>4</sup> Cardoza’s testimony was  
2 unable to be corroborated by anything in City Records. While it is clear that at some point RTE  
3 was approved for installation on the Building, it is not clear from the evidence presented in the  
4 record of this appeal (or from available City records generally) when that approval first took  
5 place, although it can be confirmed that it was no later than 2011.<sup>5</sup>

6 4. Cardoza further testified that Verizon last modified the RTE in 2014. His  
7 understanding is that this modification never went to the LPC for its review and approval.  
8 Schloesser testified that such was not the case, and that the LPC did review and approve the  
9 2014 modification to the RTE, although no written record of this review and approval was  
10 submitted by the LPC/City even after it was requested. While having the historical provenance  
11 of the RTE fully sorted would be preferred, it is not essential to deciding the issue(s) presented  
12 by this appeal.

13 5. In any event, the RTE has been functioning on the rooftop of the Building for  
14 many years as part of Verizon’s communications network in the downtown Tacoma area. The  
15 RTE is on the rooftop of the Building under the auspices of a lease that Verizon has with the  
16 owner of the building. *Cardoza Testimony*. Cardoza testified that the lease has approximately  
17 20 years remaining in its effective term.

18  
19 <sup>4</sup> A Hearing Examiner decision in this time frame would have been made by a predecessor to the present  
20 Examiner. The 8/27/2008 Minutes interestingly seem to reference an even earlier denial of a similar proposal on  
the way also to denying the 2008 Verizon application by motion and vote of the LPC. The stated reason for the  
2008 denial was due to visual impacts the equipment would have on the views of the Building.

21 <sup>5</sup> After the hearing, Hearing Examiner Office staff made a search of extant records along with a request to other  
City departments. No 2007~2008 Hearing Examiner decision was found regarding the Building. Staff did come up  
with the 8/27/2008 Minutes, as well as LPC Meeting Minutes from January 12, 2011 and February 9, 2011 (the  
“2/9/2011 Minutes”). In the 2/9/2011 Minutes, the LPC approved the installation of RTE as set forth therein, and  
this appears possibly to have been the first approval of RTE on the Building. This decision was finalized in a

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1           6.     Dating back to 2008, Verizon has desired to have, and to update the RTE on the  
2 Building based on Radio Frequency (“RF”) justification studies it has performed. *Painley*  
3 *Testimony, Ex. A-7, Ex. A-8, See also 8/27/2008 Minutes.* Verizon refers to its location on the  
4 Building as the “TAC Wheeler site.” *Painley Testimony, Ex. A-7, Ex. A-8.* Verizon’s RF  
5 studies have shown the TAC Wheeler site to be vital to Verizon’s network coverage and  
6 capacity in the area. *Id.* The requested COA under appeal here, and the revisions proposed to  
7 the RTE thereunder, are designed to allow Verizon to increase its capacity (i.e., greater call  
8 volume and data transmission) in the area served by its TAC Wheeler facilities (the RTE).  
9 *Cardoza Testimony, Painley Testimony, Ex. A-7, Ex. A-8.* Verizon’s testimony regarding its  
10 need for the expanded RTE to address current capacity deficiencies has not been challenged by  
11 the City/LPC. *Id.*

12           7.     The process leading to the current appeal began in earnest at the LPC’s April 24,  
13 2019 meeting. *Cardoza Testimony, Williams Testimony, Schloesser Testimony; Ex. R-1,*  
14 *Ex. R-2.* Verizon’s proposal was listed as “replacing six existing antennas and six remote radio  
15 units (RRU) and adding three 5G panel antennas and three combined antenna/RRUs, two  
16 overvoltage protectors (OVP) and two hybrid cables on the rooftop.” *Cardoza Testimony; Ex.*  
17 *R-3.* At this meeting, LPC members expressed concerns about “[t]he placement [and height] of  
18 the [proposed] antennas, asking if they could be placed lower and farther back from the edge.”  
19 *Id.* Ultimately, the meeting ended with the LPC deferring a decision and asking that Verizon  
20 “[r]eturn[ ] at a future date with more information about the feasibility of lowering and moving  
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formal decision memo from the City’s Historic Preservation Officer on February 10, 2011. This decision memo was submitted by Verizon as part of its post hearing materials.

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1 panels for less visibility.” *Ex. R-1*. Among other things, Verizon gleaned from this meeting that  
2 the LPC was concerned about too much “daylight” (i.e., open visibility) being present between  
3 the panels proposed on the rooftop, and that the LPC did not want Verizon to make repeated  
4 return trips to the LPC with RTE modification requests at short intervals.<sup>6</sup> *Cardoza Testimony*.

5 8. Between this first meeting and Verizon’s return trip to the LPC on August 14,  
6 2019, Verizon revised its design and proposal to incorporate *more* facilities in order potentially  
7 to decrease the need for a sooner return in the future. *Cardoza Testimony*. The LPC’s meeting  
8 minutes remark that “the updated proposal was made to include all new technologies to avoid  
9 future addition of equipment to the building.” *Ex. R-6*. That notwithstanding, the listing of  
10 equipment for Verizon’s proposal in all of the August 2019 documentation (the LP Packet [*Ex.*  
11 *R-4*], the LPC Minutes [*Ex. R-6*], and the Decision being appealed [*Ex. R-8*]), all read the same  
12 as what was considered the previous April. Cardoza testified, however, that Verizon had added  
13 three more panel antennas for MIMO (multiple input, multiple output), three 5g antennas and  
14 three 5g RRUs. The additions were intended to enable AWS-3 and CBRS frequency bands at  
15 the TAC Wheeler site. *Cardoza Testimony*. Cardoza testified additionally that the positioning  
16 of the various panel antennas had been revised to reduce daylight visibility between the panels  
17 as much as possible, but he acknowledged that from a size, height, and numbers standpoint, the  
18 overall proposal had increased.

19 9. At the August 14, 2019 LPC meeting, Verizon presented its expanded design with  
20 only one of the antennas having been lowered in height from where it was positioned in the  
21

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<sup>6</sup> The parties’ testimony was in agreement that Verizon’s last modification took place in 2014. For historic preservation professionals, five years no doubt seems like a very short time in the grand scheme. Contrarily, to those in the technology fields, five years must seem like an aeon.

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1 April 2019 design. *Ex. R-5*. At least one commissioner commented, “If you can’t lower them  
2 all, what’s the point.” *Id.* Another commissioner mused about whether the new proposal was  
3 “all that much worse than what was there before,” while others characterized it as a significant  
4 and obvious change saying that the RTE “is bad now, and this [proposal] only makes it worse.”  
5 *Id.* There were also pointed comments made that Verizon should look to place its RTE  
6 elsewhere (i.e., relocate it off the Building).<sup>7</sup> *Id.* Discussion at both the August 2019 LPC  
7 meeting and testimony at the hearing made it clear that the LPC’s concern about the RTE rests  
8 squarely on the height of the RTE and its visibility from the rooftop of the Building.<sup>8</sup>  
9 Ultimately, the August 2019 LPC meeting resulted in a unanimous vote by the commissioners  
10 present to deny the COA. *Ex. R-5, Ex. R-6*. The LPC decision was based on application of the  
11 federal Secretary of the Interior's Standards for the Rehabilitation of Historic Buildings (the  
12 “Federal Rehab Standards”), paragraph 9, which provides as follows:

13 New additions, exterior alterations or related new construction shall not destroy  
14 historic materials that characterize the property. The new work shall be  
15 differentiated from the old and shall be compatible with the massing, size, scale,  
and architectural features to protect the historic integrity of the property and its  
environment.

16 Hoogkamer testified that the City/LPC considers any change that modernizes or even modifies  
17 an historic building in any way to be a rehabilitation, and therefore, the City/LPC applies the  
18 Federal Rehab Standards to all applications.<sup>9</sup> The LPC’s specific decision language in this  
19 instance stated:

20 \_\_\_\_\_  
21 <sup>7</sup> Hoogkamer reinforced this sentiment in her testimony at the hearing.

<sup>8</sup> Which concern seems to be consistent with all LPC reviews dating back to 2008.

<sup>9</sup> On questioning from the Examiner, Hoogkamer was unsure if the TMC defined “rehabilitation” as it applies to this appeal. At the time, the Examiner was also unsure. As it turns out, TMC 13.07.030 defines “rehabilitation” thusly: “Rehabilitation” means the act or process of making possible a compatible use for a property through

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- 1 1. The proposal did not meet Standard 9 as it was not compatible with the  
2 massing, size, scale, and architectural features to protect the historic integrity of  
3 the property and its environment.
- 4 2. The Commission commented that as this was a smaller, three-story building,  
5 the proposal was not compatible in massing and scale. *Ex. R-8.*

6 The decision was clarified at the hearing in the testimony of Williams and Schloesser, which  
7 made it clear that the height of the RTE, and the resulting visibility of the RTE from the street  
8 and surrounding neighborhood are the basis of the LPC's denial.

9 10. At the August 2019 presentation to the LPC, Verizon represented that its design  
10 could go no lower and still achieve the increased capacity that Verizon is seeking. *Ex. R-5.* At  
11 the hearing, in response to questioning, Painley testified similarly that the height of the  
12 proposed RTE could not go lower and still achieve Verizon's capacity needs. That  
13 notwithstanding, a few minutes later, Cardoza testified that after the LPC issued its denial,  
14 Verizon had come up with an alternative design that would lower the height of the proposed  
15 RTE, but that Verizon wanted a decision on the appeal as presented rather than go back to the  
16 LPC with this new design proposal first. Cardoza further testified that Verizon has some  
17 concerns about this alternative lower proposal due to LPC restrictions from 2011 regarding  
18 attachment to the parapets of the Building. Finally, in its post-hearing submission regarding the  
19 applicability of federal laws, Verizon stated "[t]here currently is not an alternative design that is  
20 available to Verizon based on LPC actions to date." This was stated immediately following  
21 Verizon's renewed mention of the 2011 LPC concerns regarding the Building's parapets, and

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repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values."

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1 appears to be based on Verizon's presumed limitation regarding them drawn from the 2011  
2 LPC decision.

3 11. At the Examiner's request, both parties submitted post-hearing memos regarding  
4 the Federal Laws mentioned briefly at the hearing.<sup>10</sup> Verizon's memo had sections purporting  
5 to address all of the following:

- 6 1. Telecommunications Act of 1996
- 7 2. Spectrum Act - 6409
- 8 3. FCC 18-133 – Small Wireless Facilities. (*Listed here exactly as presented in Verizon's memo*)

9 After its brief discussion of each of the above, Verizon included a "Comments" section  
10 seemingly attempting to draw a conclusion on its preceding assertions. As will be discussed in  
11 more detail in the Conclusions of Law section below, Verizon's conclusions were equivocal in  
12 each instance.

13 12. For its part, the City's memo addressed "Section 6409(a) of the Spectrum Act,  
14 "Section 332(c)(7) of the Communications Act,"<sup>11</sup> and a Federal Communications Commission  
15 ("FCC") Order now codified at 47 C.F.R. § 1.6100. The City's memo concluded by contending  
16 that "[f]ederal law does not affect the outcome of this appeal."

17 13. Any conclusion herein which may be more properly deemed or considered a  
18 finding is hereby adopted as such.

### 19 CONCLUSIONS OF LAW

- 20 1. The Hearing Examiner has jurisdiction in this matter pursuant to Tacoma

21 \_\_\_\_\_  
<sup>10</sup> These submissions are in the record, but are not considered exhibits and are not referenced as such.

<sup>11</sup> Also referred to as the "Telecommunications Act."

1 Municipal Code (“TMC”) 1.23.050 and TMC 13.05.047.

2 2. Under TMC 13.05.047.G.4, the Hearing Examiner is to “consider” the following  
3 criteria in reviewing a decision of the LPC:

4 a. The purposes, guidelines, and standards for the treatment of historic properties  
5 contained in this Title, and the goals and policies contained in the Historic  
6 Preservation Element of the Comprehensive Plan;<sup>12</sup>

7 b. The purpose of the ordinance under which each Historic Special Review or  
8 Conservation District is created;

9 c. For individual City landmarks, the extent to which the proposal contained in the  
10 application for Certificate of Approval would adversely affect the specific features  
11 or characteristics specified in the nomination to the Tacoma Register of Historic  
12 Places;

13 d. The reasonableness, or lack thereof, of the proposal contained in the application  
14 in light of other alternatives available to achieve the objectives of the owner and  
15 the applicant; and

16 e. The extent to which the proposal contained in the application may be necessary  
17 to meet the requirements of any other law, statute, regulation, code, or ordinance.

18 Each of these criteria will be discussed, as applicable, in turn below.

19 3. In addition to the foregoing review criteria, TMC 13.05.047.G.4 instructs the  
20 Hearing Examiner to “[g]ive weight to the determination and testimony of the consensus of the  
21 Landmarks Preservation Commission...”<sup>13</sup> The foregoing notwithstanding, the Hearing  
Examiner’s review is *de novo*. TMC 1.23.060.

4. Appellant Verizon has the burden of demonstrating that the LPC’s denial of

<sup>12</sup> Hereinafter referred to simply as the “Comp Plan.”

<sup>13</sup> The LPC is composed of individuals having expertise in architecture (three positions), historic preservation (four positions), a Tacoma Arts Commission appointee, and three “At-Large” positions. TMC 1.42.040.

1 Verizon's request for a COA was in error or otherwise inconsistent with applicable standards  
2 and, therefore, should be reversed. *TMC 1.23.070.C.*

3 5. The LPC's denial centered squarely on the identical language of Federal Rehab  
4 Standard 9 and TMC 13.07.095.A.1.i,<sup>14</sup> which states:

5 New additions, exterior alterations, or related new construction shall not destroy  
6 historic materials that characterize the property. The new work shall be  
7 differentiated from the old and shall be compatible with the massing, size, scale,  
and architectural features to protect the historic integrity of the property and its  
environment.<sup>15</sup>

8 Regardless of whether they were added in an attempt to lengthen any return period to the  
9 LPC,<sup>16</sup> Verizon's additions to the RTE are new additions under Federal Rehab Standard 9 and  
10 TMC 13.07.095.A.1.i. As such, the additions must "be compatible with the massing, size,  
11 scale, and architectural features" of the Building. As the LPC's discussion (*Exs. R-2 and R-5*)

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13 <sup>14</sup> In other words, the LPC found no other provisions of the Federal Rehab Standards or the TMC that Verizon's  
proposal violated.

14 <sup>15</sup> For what it is worth, the Examiner finds the City's universal application of the Federal Rehab Standards to any  
15 change to an historic building to be slightly awkward and perhaps not the intention of the TMC regardless of  
16 current practice. TMC 13.07.095.A.1 introduces the City codification of the Federal Rehab Standards indicating  
17 that they "[a]re to be applied to *specific rehabilitation projects* in a reasonable manner..." [Emphasis added] After  
18 codifying the Federal Rehab Standards, TMC 13.07.095.A.2 states that "For specific projects that involve  
Restoration, Preservation, or Reconstruction, the Secretary of the Interior's Standards for Rehabilitation,  
19 Restoration, Preservation, and Reconstruction, may be applied as appropriate to the proposed project." This  
20 provision seems to indicate that the other federal standards, i.e., those for Restoration, Preservation, and  
Reconstruction may have a better application for some projects and perhaps not every change to an historic  
building should necessarily be considered a rehabilitation. Admittedly, the definition of rehabilitation at TMC  
13.07.030 appears to be very broad. That notwithstanding, in Verizon's proposal to modify the RTE, no part of the  
Building itself is being rehabilitated in a lay definition sense. The RTE seem somewhat akin to Abraham Lincoln's  
stovepipe hat. The hat goes on top. Wearing it changes nothing permanent about the historically significant person  
below, and the hat can be removed without damage to the wearer. The hat may be seen as an aesthetically  
undesirable affectation to the dignified historic wearer, but it ultimately does nothing to change the historic person  
underneath, much as the RTE do not affect the Building in any irreversible fashion.

21 <sup>16</sup> It should be noted that the LPC cited no authority for requiring Verizon to not come back "repeatedly" to obtain  
further modifications to the RTE other than the LPC's personal preferences. Technology changes, often rapidly.  
Other than complying with applicable laws, nothing should prevent Verizon from being heard regarding additional  
modifications. The LPC is governed by applicable laws the same as any applicant before it, personal predilections  
notwithstanding.

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1 and hearing testimony clearly indicate, the LPC's denial was solely due to the proposal's  
2 increased visibility on the rooftop of the Building as a function of increased size and mass. All  
3 testimony and evidence seemed to indicate that increased size and mass that would not impact  
4 views would not matter to the LPC, although that hypothetical was not asked or otherwise  
5 directly addressed. Giving all due deference to the LPC, three of the four views presented in  
6 Exhibit A-5—Northeast View (Looking Southwest), Northwest View (Looking Southeast), and  
7 the Fireman's Park and A Street view<sup>17</sup>—do not present a significant enough visual change to  
8 warrant denying the COA. The Southwest view (from Court A and 939 Court Parking),  
9 however, is a different story. The visible change here is significant enough to support the  
10 LPC's denial.

11 6. Turning now to the considerations in TMC 13.05.047.G.4, the Examiner  
12 concludes as follows:

13 **6.a. TMC 13.05.047.G.4.a.—The purposes, guidelines, and standards for the**  
14 **treatment of historic properties contained in this Title, and the goals and policies**  
**contained in the Historic Preservation Element of the Comprehensive Plan.**

15 The purposes, guidelines, and standards for the treatment of historic properties  
16 contained in TMC Title 13 are many and varied. The primary purpose statements regarding  
17 historic preservation found in Title 13 are set forth at TMC 13.05.045 and TMC 13.07.020.  
18 Add to that mix the purposes, guidelines, and standards from the Historic Preservation Plan

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21 \_\_\_\_\_  
<sup>17</sup> Although the photos from Fireman's Park and A Street are somewhat interesting because the RTE seem to washout in the background buildings farther south producing a somewhat camouflaging effect.

1 element of the Comp Plan, and the field gets many times broader.<sup>18</sup> As with many policy  
2 statements, the broader they get, the more there is that potentially conflicts. TMC 13.07.020  
3 presents the most usable and concise summary statement of the many and varied purposes,  
4 guidelines and standards of the TMC and the Comp Plan and reads as follows:

5 The purpose of this chapter is to:

6 A. Preserve and protect historic resources, including both designated City  
7 landmarks and historic resources which are eligible for state, local, or national  
8 listing;

9 B. Establish and maintain an open and public process for the designation and  
10 maintenance of City landmarks and other historic resources which represent the  
11 history of architecture and culture of the City and the nation, and to apply historic  
12 preservation standards and guidelines to individual projects fairly and equitably;

13 C. Promote economic development in the City through the adaptive reuse of  
14 historic buildings, structures, and districts;

15 D. Conserve and enhance the physical and natural beauty of Tacoma through the  
16 development of policies that protect historically compatible settings for such  
17 buildings, places, and districts;

18 E. Comply with the state Environmental Policy Act by preserving important  
19 historic, cultural, and natural aspects of our national heritage; and [sic]

20 F. To promote preservation compatible practices related to cultural, economic and  
21 environmental sustainability, including: conservation of resources through  
retention and enhancement of existing building stock, reduction of impacts to the  
waste stream resulting from construction activities, promotion of energy  
conservation, stimulation of job growth in rehabilitation industries, and promotion  
of Heritage Tourism;

G. To contribute to a healthy population by encouraging human scale  
development and preservation activities, including walkable neighborhoods; and

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<sup>18</sup> The Historic Preservation Plan element of the Comp Plan is essentially the City's all-encompassing policy statement on historic preservation and spans 158 pages.

1 H. Integrate the historic preservation goals of the state Growth Management Act  
2 and the goals and objectives set forth in the City's Comprehensive Plan and  
regulatory language.

3 As discussed a bit at FN 15 above, the RTE on the building, and the LPC's approach to  
4 approvals at this location are a somewhat interesting case because the RTE are an attached, and  
5 ultimately removable addition to the Building that does not alter the Building itself, except  
6 perhaps visually. The RTE, at present, and even as proposed, do nothing to cause actual,  
7 physical harm to the historic resource that is the Building/Subject Property (*subsections A, D,*  
8 *E, F and H of TMC 13.07.020* above).<sup>19</sup> In fact, the RTE does not alter any historic aspect of  
9 the building physically whatsoever. The presence of the RTE on the rooftop does change the  
10 Building's overall appearance, however, because the RTE is/are visible.

11 Similarly, the ongoing preservation of the Building is neither harmed nor enhanced  
12 structurally by the presence of the RTE (*Id*). Alternatively, allowing the latest and best RTE to  
13 be installed on the Building can certainly be seen as "Promot[ing] economic development in  
14 the City through the adaptive reuse of historic buildings,..." and no doubt the income that the  
15 owner of the Building receives from Verizon's leased presence on the rooftop contributes to the  
16 capital that enables the Building's prolonged preservation (*subsections C and F* above). All  
17 that is to say that the presence of the RTE on the Building and allowing their expansion can be  
18 seen as in harmony with some purposes, guidelines, and standards for the treatment of historic  
19 properties, and not in harmony with others. If this criterion were the lynchpin of this decision,  
20 perhaps a more in depth weighing of the pros and cons of purposes, guidelines, and standards

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<sup>19</sup> Subsections B ("Establish and maintain an open and public process...") and G ("To contribute to a healthy population") do not have much application here.

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1 would be warranted. This criterion is not the core of the decision in this appeal, however. As it  
2 stands this criterion can be considered a neutral wash.

3 **6.b. TMC 13.05.047.G.4.b.—The purpose of the ordinance under which each**  
4 **Historic Special Review or Conservation District is created.**

5 This criterion is not applicable here. The LPC’s authority in this particular COA  
6 application comes from the Building being individually listed on the Tacoma Register of  
7 Historic Places, not from the Building being located in an Historic Special Review or  
8 Conservation District.

9 **6.c. TMC 13.05.047.G.4.c.—For individual City landmarks, the extent to which**  
10 **the proposal contained in the application for Certificate of Approval would**  
11 **adversely affect the specific features or characteristics specified in the nomination**  
12 **to the Tacoma Register of Historic Places.**

13 This criterion is the flipside to TMC 13.05.047.G.4.b. It is directly applicable to the  
14 Building/Subject Property because it is an individually listed “City landmark[ ].” As is likely  
15 the case with most historic buildings, the specific features or characteristics specified in the  
16 nomination to the Tacoma Register of Historic Places for this individual City landmark have  
17 their greatest ties to actual architectural features of the building. *FoF 1 and FoF 2*. In the  
18 Nomination Form for the Building/Subject Property,<sup>20</sup> some mention is made regarding the  
19 surrounding neighborhood and the Building’s relationship to that area historically as well.

20 As has already been discussed, the RTE do not alter, damage, or otherwise physically  
21 affect any specific features or characteristics of the structure of the Building as specified in the  
22 nomination to the Tacoma Register of Historic Places. The RTE do, however, affect the overall

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<sup>20</sup> *Ex. R-9.*

1 visual appearance of the Building, and Verizon's proposed new additions will appreciably add  
2 to that visual impact, at least from southerly vantage points (i.e., the view from Court A and  
3 939 Court Parking referenced at CoL 5). To the extent that these visual impacts, even though  
4 not a permanent, unremovable part of the historic Building, *can* be further mitigated, they  
5 *should* be.<sup>21</sup> This goes hand-in-hand with the next criterion.

6 **6.d. TMC 13.05.047.G.4.d.—The reasonableness, or lack thereof, of the proposal**  
7 **contained in the application in light of other alternatives available to achieve the**  
8 **objectives of the owner and the applicant.**

9 Throughout the course of the two LPC meetings (April and August 2019) and the  
10 hearing, much discussion and testimony focused on whether the visibility of the RTE could be  
11 reduced in Verizon's proposal while still achieving Verizon's objectives. At its April 2019  
12 meeting, the LPC specifically called on Verizon to explore the availability of lower, and  
13 therefore less visible, configurations. Verizon only lowered the height of one of its proposed  
14 masts. Verizon's August 2019 proposal, which is the one on appeal here, was loaded up, so to  
15 speak, in Verizon's attempt to lengthen the period between this LPC request and any  
16 subsequent request to modify the RTE. This approach was not unreasonable given the LPC's  
17 comments regarding its preference that Verizon not make repeat requests at what the LPC  
18 perceived to be short intervals. *FoF 7*. The reasonableness of the loaded up approach does not  
19 change the visual impacts arising from the new additions and the increase in size of the RTE  
20 that results, however.

21 \_\_\_\_\_  
<sup>21</sup> Testimony at the hearing showed both that (a) Verizon is used to mitigating visual impacts through screening,  
and (b) that the LPC has an uncodified preference to avoid the use of screening because it is seen as adding mass,  
size, and scale.



1 Throughout this same period, the LPC has proposed relocation of the RTE to another  
2 location. While it may be the LPC's preference essentially to backtrack and have no RTE on  
3 this Building, in light of (a) Verizon's investment in the RTE as presently constituted on the  
4 Building, (b) the term remaining on Verizon's lease, and (c) Verizon's RF studies, outright  
5 relocation is not a reasonably available alternative based on the record presented.

6 At the hearing, Cardoza did indicate that Verizon had an alternative design that it came  
7 up with after the LPC's August 2019 denial that would reduce the height of the RTE. If this  
8 alternative design can achieve Verizon's objectives while decreasing the visual impacts on  
9 which the LPC based its denial, the alternative design needs to be considered under TMC  
10 13.05.047.G.4.d, and the LPC should give that alternative design serious consideration in light  
11 of this decision. The Examiner understands Verizon's concerns regarding "use of the parapets"  
12 stemming back to the 2011 LPC approval. Eight years have passed since that approval, and the  
13 LPC's present denial rests squarely on added height and visibility. With the alternative lower  
14 design before the LPC, the LPC and Verizon may very well find an avenue for compromise.

15 In any event, in light of the south facing material change in visual impacts presented by  
16 the proposal under appeal, TMC 13.05.047.G.4.d dictates that Verizon's lower alternative  
17 design needs to be considered as an alternative to the present proposal that the LPC denied.  
18 This criterion weighs against Verizon's requested reversal without having first sufficiently  
19 considered the new, alternative design.

20 6.e. TMC 13.05.047.G.4.e.—The extent to which the proposal contained in the  
21 application may be necessary to meet the requirements of any other law, statute,  
regulation, code, or ordinance.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

1                    *Application of the Federal Laws*

2                    Without the parties' brief mention at the hearing of the Federal Laws, this criterion  
3 would have had no application here and been without any support in the record. The discussion  
4 that follows comes from the parties' post hearing memos. Cardoza stated in closing at the  
5 hearing that he would make Verizon's best case for the application of the Federal Laws to both  
6 replacement antennas and small cell facilities. Verizon's memo is taken in that light.

7                    As mentioned above, in its memo, Verizon supplied content from various sections of  
8 the Federal Laws followed by "Comments." After referencing content from the  
9 "Telecommunications Act of 1996" that disallows local regulations from prohibiting or having  
10 the effect of prohibiting the provision of telecommunications services, Verizon posits that it  
11 has established "the need for the site" through its RF studies. Verizon's need has not been  
12 questioned. Verizon's level of need, however, does not equate to a prohibition of services even  
13 if the RTE are not updated based on present technological needs. Verizon is providing  
14 telecommunications services from the TAC Wheeler site and presumably can continue to do so,  
15 just not at its optimal capacity level if the LPC's denial stays in place. If being frozen at current  
16 capacity constitutes a prohibition, Verizon did not prove that such is the case under applicable  
17 laws as applied to the facts here by a preponderance of the evidence as required by TMC  
18 1.23.070.

19                    In its memo's second section, Verizon turns to the Spectrum Act and its concept of  
20 what is, and is not, a "Substantial Change." While this is informative, Verizon does not supply  
21 any analysis of this content against its existing/proposed RTE. Verizon then concludes in its

1 “Comments” section that (a) “Verizon *believes* the site *may* qualify as a 6409 ‘Eligible  
2 Facility...’” [emphasis added], and (b) “Verizon believes the proposal does not meet the  
3 criteria of the FCC’s definition of a ‘Substantial Change.’”<sup>22</sup> Verizon’s beliefs aside, in order  
4 for the Examiner to reverse the LPC’s denial based on any other law, statute, regulation, code,  
5 or ordinance, there must be evidence and analysis that rises to a preponderance showing such a  
6 reversal to be warranted. That analysis—matching the facts present to applicable laws—is  
7 missing here. The Examiner evaluates the parties’ evidence and arguments, but he does not  
8 supply missing analysis not presented by the parties themselves.

9 In its last section addressing Small Wireless Facilities, Verizon begins by saying  
10 “There are 2 potentially applicable FCC Clarifications and Rules that *might apply* per  
11 reference to 5G or Small Wireless Facilities equipment in the record...” [emphasis  
12 added] Whether these “FCC Clarifications and Rules” apply is for Verizon to argue and  
13 support that argument convincingly, applying facts supported by a preponderance of the  
14 evidence to applicable laws. Verizon has not done so here. As a result, the Examiner  
15 concludes that the criterion set forth at TMC 13.05.047.G.4.d is not met and does not  
16 provide grounds for reversing the LPC’s decision.

17 7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

18 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing  
19 Examiner enters the following:

20  
21 <sup>22</sup> Verizon has an additional statement in this Comments section regarding existing concealment elements which is puzzling. At the hearing and previously at LPC meetings, Verizon brought up the subject of screening for the RTE and was shot down quickly, as already referenced above. There was no evidence offered regarding any existing screening with the RTE at present.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

**ORDER**

1  
2 The Landmarks Preservation Commission’s decision denying a certificate of approval  
3 (COA) to Verizon’s proposed revisions and additions to its rooftop telecommunications  
4 equipment (the RTE) at the Bowes Building located at 100 South 9<sup>th</sup> Street in Tacoma,  
5 Washington (the Building) is upheld because the visual impacts from southern vantage points  
6 resulting from increases to the mass, size, and scale of the RTE are no longer compatible  
7 enough with the mass, size, scale and architectural features of the Building (TMC  
8 13.07.095.A.1.i.) to be approved as presented, and because Verizon has not fully explored a  
9 potentially reasonable alternative that may be able to achieve its objectives (TMC  
10 13.05.047.G.4.d.) while reducing mass, size and scale incompatibility present in the project as  
11 proposed.

12 Given the foregoing, Verizon’s application for a COA is remanded to the LPC in order  
13 for Verizon to present its alternative design for consideration. The remand shall be considered  
14 an extension and continuation of the process begun in April of 2019 and any waiting period,  
15 and reapplication filing or fees that might otherwise apply are waived. In the event that Verizon  
16 chooses not to present the alternative design to which it alluded at the hearing, the LPC’s denial  
17 of a COA shall stand and be considered the City’s final decision on this COA application.

18 **DATED** this 5th day of December, 2019.

19   
20 \_\_\_\_\_  
21 **JEFF H. CAPELL, Hearing Examiner**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

- 20 -  
**ORIGINAL**

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