

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 PAMALA JOY and
5 KELLY MARCOTULLI,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF ASHLAND,
11 *Respondent.*

12
13 LUBA No. 2022-001

14
15 FINAL OPINION
16 AND ORDER

17
18 Appeal from City of Ashland.

19
20 Sean T. Malone filed the petition for review.

21
22 No appearance by City of Ashland.

23
24 RUDD, Board Member; RYAN, Board Member, participated in the
25 decision.

26
27 ZAMUDIO, Board Chair, did not participate in the decision.

28
29 AFFIRMED

06/13/2022

30
31 You are entitled to judicial review of this Order. Judicial review is
32 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a planning commission approval of a site design review and conditional use permit authorizing installation of a wireless communication facility.

FACTS

The applicant applied for city approval of a site design review and conditional use permit (CUP) authorizing placement of a wireless communication facility (WCF) on the Southern Oregon University campus. The applicant proposed replacing an existing 73.9-foot-tall light standard at Raider Stadium with a new light standard containing lights at 73.9 feet and wireless telephone service equipment above the lights, at 95 feet. “A 450 square foot lease area on the ground below the tower would contain ground equipment housed within a pre-fabricated walk-in cabinet on a ten-foot by 18-foot concrete pad with landscape screening and fencing.” Record 8.

Pursuant to Ashland Municipal Code (AMC) 18.4.10.040(A)(4), “[WCFs] shall be installed at the minimum height and mass necessary for its intended use. A submittal verifying the proposed height and mass shall be prepared by a licensed engineer.” In support of its application, the applicant submitted an alternative site study. As part of its review, the city engaged a third-party reviewer to evaluate the applicant’s alternative site study. The city’s third-party

1 reviewer opined that an 85-foot-tall WCF at the subject property was sufficient
2 to meet the applicant's coverage objectives.

3 On September 17, 2021, the city's staff advisor approved the application
4 subject to conditions. Record 9. Petitioners appealed the staff advisor's decision
5 to the planning commission. On October 12, 2021, the planning commission held
6 a *de novo* hearing on the application. At the applicant's request, the record was
7 left open to present additional evidence or argument. The planning commission
8 meeting was continued to November 9, 2021, at which time the planning
9 commission convened for deliberations.

10 The planning commission adopted findings explaining that

11 "[t]he issues raised included personal health effects (i.e. electro-
12 sensitivity, ringing in the ears, disorientation[, s]leeplessness,
13 agitation, etc.) particularly in proximity to schools; harm to flora and
14 fauna, including pollinators; increased fire risk; questions of
15 architectural compatibility and adverse impacts to the character of
16 the city; lack of necessity (i.e. internet speeds and cell phones
17 function well enough now); weakening of rights to petition
18 government for redress of future grievances; and adverse impacts to
19 property values." Record 12.

20 The planning commission approved the application subject to conditions, which
21 included that the WCF

22 "be limited to no more than an 85-foot antenna tip height and the
23 replacement stadium light standard shall be constructed to match the
24 existing stadium light standard in design and material treatment (i.e.
25 concrete, painted in a matching, non-reflective color) to better blend
26 with the existing stadium lights and mitigate the visual impacts of
27 the installation." Record 19.

1 This appeal followed.

2 **THIRD ASSIGNMENT OF ERROR**

3 **A. Background**

4 AMC 18.4.10.040(B) sets out the city’s design hierarchy for WCFs,
5 explaining that

6 “[t]he following preferred designs are a stepped hierarchy, and the
7 standards shall be applied in succession from subsection [1 to 5],
8 with the previous standard exhausted before moving to the
9 following design alternative. *For the purpose of chapter 18.4.10,*
10 *feasible is defined as capable of being done, executed or effected;*
11 *possible of realization.* A demonstration of feasibility requires a
12 substantial showing that a preferred design can or cannot be
13 accomplished.

14 “1. Collocation. Where possible, the use of existing [WCF] sites
15 for new installations shall be encouraged. Collocation of new
16 facilities on existing facilities shall be the preferred option.
17 Where technically feasible, collocate new facilities on pre-
18 existing structures with [WCFs] in place or on pre-existing
19 towers.

20 “2. Attached to Existing Structure. If [collocation] is not feasible,
21 [WCFs] shall be attached to pre-existing structures, when
22 feasible.

23 “3. Alternative Structure. If [collocation and attachment to an
24 existing structure] are not feasible, alternative structures shall
25 be used with design features that conceal, camouflage, or
26 mitigate the visual impacts created by the proposed [WCFs].

27 “4. Freestanding Support Structure. If [collocation, attachment to
28 an existing structure, and an alternative structure] are not
29 feasible, a monopole design shall be used with the attached
30 antennas positioned in a vertical manner to lessens the visual
31 impact compared to the antennas in a platform design.

1 Platform designs shall be used only if it is shown that the use
2 of an alternate attached antenna design is not feasible.

3 “5. Lattice towers are prohibited as freestanding wireless
4 communication support structures.” (Underscoring in
5 original; emphasis added.)

6 Petitioners’ third assignment of error is, in part, that the planning commission’s
7 conclusion that alternative sites were not available for the applicant’s WCF is not
8 supported by substantial evidence, that is, evidence a reasonable person would
9 rely upon to make a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855
10 P2d 608 (1993). Petitioners also argue that the planning commission
11 misconstrued the law when evaluating the feasibility of alternative sites.

12 We will remand a local land use decision that is unsupported by substantial
13 evidence in the whole record or that misconstrues the applicable law. ORS
14 197.835(9)(a)(C), (D).

15 **B. First Subassignment of Error**

16 The planning commission addressed the design hierarchy in detail:

17 “[T]he Design Standards in AMC 18.4.10.040 include a ‘stepped
18 hierarchy’ which is to be applied in succession to consider WCF
19 placement options. The first design option is collocation. If it is
20 proven not to be feasible, the next option considered is attaching the
21 installation to an existing structure. If that proves not to be feasible,
22 an alternative structure can be considered, and finally if other
23 options have all proven not to be feasible, a free-standing support
24 structure is the last option. Lattice towers are explicitly prohibited.
25 The applicant is required to exhaust each previous standard,
26 demonstrating that it is not feasible before moving to the next step
27 in the preferred design hierarchy. Feasible is defined as ‘*capable of*
28 *being done, executed or effected; possible of realization.*’ A
29 demonstration of feasibility requires a substantial showing that a

1 preferred design can or cannot be accomplished. Here, the Planning
2 Commission finds that the applicant has proposed to replace an
3 existing concrete stadium light standard with a taller concrete light
4 standard supporting lights at their current height with the WCF
5 above as an alternative structure, and the applicant must accordingly
6 document that neither collocation nor attachment to an existing
7 structure are feasible.” Record 9-10 (emphasis in original).

8 Petitioners argue that the applicant’s alternative site analysis was based on
9 targeted service objectives related to a 95-foot WCF and, therefore, does not
10 serve as substantial evidence that alternative sites are not available for an 85-foot
11 WCF, the height approved by the planning commission.¹ Petition for Review 37.
12 According to petitioners, absent an alternative site analysis assuming a WCF
13 height of 85 feet, the planning commission’s conclusion that alternative sites
14 were not feasible is not supported by substantial evidence. We disagree.

15 The planning commission explained:

16 “In considering the feasibility of collocation, the application must
17 document that alternative sites have been considered and are
18 technologically unfeasible or unavailable, demonstrate that a
19 reasonable effort was made to locate collocation sites that meet the

¹ Petitioners argue:

“[[T]he alternative site analysis should be based on an antenna height of 85 feet, not 95 feet, because, as noted by the third-party reviewer, ‘the applicant’s argument against a height reduction of ten feet (to an 85-foot high antenna tip height) is unsupported other than by a percent change in service in an undefined area since the specific ‘target area’ is undefined for purposes of comparing a four percent change in coverage.’” Petition for Review 35-36 (footnote omitted) (quoting Record 10).

1 applicant's service coverage area needs, and to document the
2 reasons collocation can or cannot occur. Relief from collocation as
3 the first-step in the hierarchy of design preference may be granted if
4 the evidence contained within the application supported by
5 independent third party analysis demonstrate collocation is not
6 feasible because one or more of the following conditions exist at
7 prospective collocation sites: a) a significant service gap in coverage
8 area; b) sufficient height cannot be achieved by modifying existing
9 structure or towers; c) structural support requirements cannot be
10 met; and d) collocation would result in electronic, electromagnetic,
11 obstruction, or other radio frequency interference." Record 10.

12 The alternative site analysis explained why collocation was not possible at *any*
13 height in the area considered; therefore, the difference between 95 feet and 85
14 feet was not a relevant factor for collocation. Record 943. The record shows
15 service area coverage of 99.89 percent at the proposed site with a 95-foot WCF
16 and coverage of 95.83 percent at the proposed site with an 85-foot WCF, a four
17 percent difference. Record 988. With respect to existing structures and alternative
18 sites, the alternative site analysis identified the height achievable at each studied
19 site and reported coverage levels ranging from a low of 44.57 percent to a high
20 of 57.88 percent. Record 943-47. The coverage at 85 feet at the subject property
21 is 95.83 percent and the best coverage provided at an alternative site is 57.88
22 percent.

23 The record reflects a reduction in coverage of 38 to 51 percent at
24 alternative sites, compared to an 85-foot-tall WCF at the subject property. This
25 is substantial evidence that it is not "feasible," that is, that it is not "capable of

1 being done, executed or effected; possible of realization,” to attach the proposed
2 WCF to an existing structure and meet coverage needs.² AMC 18.4.10.040(B).

3 The first subassignment of error is denied.

4 **C. Second Subassignment of Error**

5 Petitioners’ second subassignment of error is that, “because the applicant’s
6 collocation study/alternative site analysis was not based upon what was feasible
7 and the Planning Commission’s findings under the collocation study/alternative
8 site analysis was not based upon what is feasible, the Planning Commission
9 misconstrued AMC 18.4.10.040.” Petition for Review 36-37.

10 The planning commission found

11 “that the applicant has provided the code-required collocation
12 study/alternative site analysis, and further finds that as required by
13 ordinance the City has retained the services of independent third
14 party reviewer William P. Johnson, an RF Engineering Consultant,
15 who has reviewed the application materials to ensure that the site
16 approvals are based on an objective need.” Record 10.

17 Petitioners argue:

18 “[T]he third-party review did not implement the AMC language
19 regarding ‘feasibility.’ Instead, the third-party reviewer’s
20 conclusion, which was adopted by the Planning Commission in its
21 findings alleged that ‘[t]he proposed 95-foot height appears
22 *reasonable* for a site situated as proposed[.]’ Despite, again,
23 identifying the wrong height, the standard is not whether the height

² This is consistent with the definition of “feasible” in *Webster’s* as “capable of being done, executed, or effected : possible of realization.” *Webster’s Third New Int’l Dictionary* 831 (unabridged ed 2002) (boldface in original).

1 ‘*appears reasonable.*’ Instead, the standard is ‘feasible,’ which is
2 expressly defined in the code, and which neither the third-party
3 review, nor the findings expressly find is satisfied.” Petition for
4 Review 37 (emphases in Petition for Review; footnote omitted)
5 (quoting Record 1220).

6 First, the third-party reviewer did not improperly consider the reasonableness of
7 the proposed 95-foot WCF. AMC 18.4.10.040(C), Colocation Standards,
8 provides:

9 “1. The collocation feasibility study shall meet all of the
10 following requirements.

11 “a. Document that alternative sites have been considered
12 and are technologically unfeasible or unavailable.

13 “b. *Demonstrate that a reasonable effort was made to*
14 *locate collocation sites that meet the applicant’s*
15 *service coverage area needs.*

16 “c. Document the reasons collocation can or cannot occur.

17 “2. Relief from collocation under this section may be granted at
18 the discretion of the approval authority if the application and
19 independent third party analysis demonstrate collocation is
20 not feasible because one or more of the following conditions
21 exist at prospective collocation sites.

22 “a. A significant service gap in coverage area.

23 “b. *Sufficient height cannot be achieved by modifying*
24 *existing structure or towers.*

25 “c. Structural support requirements cannot be met.

26 “d. Collocation would result in electronic,
27 electromagnetic, obstruction, or other radio frequency
28 interference.” (Emphases added.)

1 The planning commission did not misconstrue the code by applying a
2 reasonableness standard. Rather, as the planning commission explained,

3 “[i]n reviewing the applicant’s alternative site analysis and
4 collocation study, Johnson has concluded that:

5 “* * * * *

6 “• The proposed 95-foot height appears reasonable for a site
7 situated as proposed, and as one would expect a height
8 reduction tends to decrease RF coverage. However, the
9 applicant’s argument against a height reduction of ten feet (to
10 an 85-foot high antenna tip height) is unsupported other than
11 by a percent change in service in an undefined area since the
12 specific ‘target area’ is undefined for the purpose of
13 comparing a four percent change in coverage.” Record 10.

14 The third-party review therefore concluded that, although a 95-foot WCF would
15 be reasonable for the proposed coverage, an 85-foot WCF also provided
16 reasonable coverage. “After review of the alternate sites presented by the
17 applicant, the independent third party reviewer agreed with the applicant’s
18 determination that, of the alternative sites considered in their analysis, the
19 proposed site was the *only technically viable alternative.*” Record 10 (emphasis
20 in original). The third-party reviewer agreed that, based upon the sites studied,
21 the subject property was the only one able to meet the identified need. This is
22 consistent with a conclusion that other sites were not “feasible,” which, again, is

1 “defined as capable of being done, executed or effected; possible of realization.”³
2 AMC 18.4.10.010(B). In addition, contrary to petitioners’ assertion, the planning
3 commission did make a feasibility finding:

4 “While testimony and exhibits provided at the appeal hearing
5 question whether the applicants had adequately established the need
6 for the proposed facilities, the Planning Commission finds that the
7 materials provided by the applicant and the review of these materials
8 by the city’s independent expert William Johnson provided
9 substantial evidence demonstrating that *alternative sites were*
10 *considered and found to be technologically unfeasible or*
11 *unavailable*, and further demonstrated that a reasonable effort was
12 made to locate collocation sites meeting the applicant’s service
13 coverage area needs, and demonstrating that collocation cannot
14 occur.” Record 11 (emphasis added).

15 The second subassignment of error is denied.

16 The third assignment of error is denied.

17 **SECOND ASSIGNMENT OF ERROR**

18 Project opponents argued below that “[t]he Middle Class Tax Relief and
19 Job Creation Act of 2012’ does not allow state or local governments to deny
20 modifications to an existing cell tower if the modifications do not ‘substantially
21 change the physical dimensions’ of the cell tower.” Record 115 (underscoring in
22 original). Petitioners’ second assignment of error is that the planning

³ The third-party review noted that, if the city was aware of other sites that should be studied, it should identify them. Record 1220. The city did not identify additional sites. Record 711.

1 commission's findings are inadequate because they do not address the
2 implications of the Middle Class Tax Relief and Job Creation Act of 2012.

3 First, we conclude that the planning commission did address the issue.
4 Petitioners maintain that, as a result of this federal law, “[p]roject opponents
5 would be precluded and preempted from having any meaningful impact on the
6 application” and that “[t]he current approval is the only opportunity in which the
7 increases in height can be considered, and, indeed, the City must address the
8 potential effects of increasing the height at this time in relation to the approval
9 criteria” because there will not be a future opportunity to participate. Petition for
10 Review 31. The planning commission adopted findings stating, “The Staff
11 Advisor found, and the Planning Commission concurs, that the concern that
12 approval of a [WCF] will weaken rights to petition government for redress of
13 future grievances does not relate to any approval criteria or standards and is not
14 applicable to the current request.” Record 14. Petitioners do not challenge or
15 otherwise address this finding. We will affirm a local government decision where
16 a petitioner fails to acknowledge or challenge the findings adopted to address the
17 issues petitioner attempted to raise below. *Dion v. Baker County*, 72 Or LUBA
18 307, 314-15 (2015).

19 Second, petitioners argue that, “to the extent that the findings implicitly
20 address the above issue, those findings misconstrue the legal conclusions
21 identified above and are not based upon substantial evidence.” Petition for
22 Review 31. Petitioners’ arguments assume that the planning commission

1 disagreed with petitioners that federal law could require that the city allow some
2 currently nonexistent, future modification to the WCF. We see nothing in the
3 above finding that disagrees with petitioners' description of the potential impact
4 of the federal law. Rather, the planning commission found that its review was
5 limited to the application before it. The planning commission made adequate
6 findings and we do not address this assignment of error further.

7 The second assignment of error is denied.

8 **FIRST ASSIGNMENT OF ERROR**

9 **A. Background**

10 AMC 18.5.4.050(A) sets out the approval criteria applicable to CUPs and
11 requires, in part,

12 “[t]hat the conditional use will have no greater adverse material
13 effect on the livability of the impact area when compared to the
14 development of the subject lot with the target use of the zone,
15 pursuant with subsection 18.5.4.050.A.5, below. When evaluating
16 the effect of the proposed use on the impact area, the following
17 factors of livability of the impact area shall be considered in relation
18 to the target use of the zone.

19 “a. Similarity in scale, bulk, and coverage.

20 “b. Generation of traffic and effects on surrounding streets.
21 Increases in pedestrian, bicycle, and mass transit use are
22 considered beneficial regardless of capacity of facilities.

23 “c. Architectural compatibility with the impact area.

24 “d. Air quality, including the generation of dust, odors, or other
25 environmental pollutants.

26 “e. Generation of noise, light, and glare.

- 1 “f. The development of adjacent properties as envisioned in the
2 Comprehensive Plan.
- 3 “g. Other factors found to be relevant by the approval authority
4 for review of the proposed use.” AMC 18.5.4.050(A)(3)
5 (underscoring in original).

6 Petitioners’ first assignment of error is that “[t]he City misconstrued applicable
7 law and made inadequate findings not based on substantial evidence under AMC
8 18.5.4.050(A)(3).”⁴ Petition for Review 4.

9 **B. Adequacy of Findings**

10 Findings must “(1) identify the relevant approval standards, (2) set out the
11 facts which are believed and relied upon, and (3) explain how those facts lead to
12 the decision on compliance with the approval standards.” *Heiller v. Josephine*
13 *County*, 23 Or LUBA 551, 556 (1992). The structure of the final decision is (1) a
14 description of the application, (2) identification of the applicable approval
15 criteria, (3) a summary of the procedural history, (4) findings, and (5) the
16 decision. It is within this structure that the planning commission made a finding
17 concerning what it viewed as the most common basis for opposition to WCFs
18 generally, stating:

⁴ Petitioners identify three subassignments under the first assignment of error. The headings for the subassignments do not identify an assignment of error but, rather, describe subject areas such as “Subassignment 1 – Livability, Architectural Compatibility, and Development of Adjacent Properties in relation to aesthetics, character of the area, and property devaluation,” with multiple, often overlapping arguments made under each subassignment. Petition for Review 8 (underscoring in original). For purposes of clarity, we do not use petitioners’ designation of subassignments in this opinion.

1 “It is important to emphasize that the concern most often raised in
2 comments opposed to WCF installations—*the environmental health*
3 *impacts associated with such installations*—is explicitly precluded
4 from consideration in local decisions by federal law provided that
5 the installation meets FCC standards. As such, applications must be
6 carefully considered in terms only of applicable local land use
7 regulations including requirements for design review approval in
8 light of specific approval criteria and design standards.” Record 12
9 (emphasis in original).

10 The planning commission also found that the bulk of the comments received after
11 the mailing of the Notice of Complete Application had to do with the
12 environmental and health impacts of WCFs. *Id.* The planning commission went
13 on to find that

14 “[a]ppellants’ evidence regarding adverse effects to livability were
15 focused on concerns about the potential for adverse health effects
16 from exposure to non-ionizing electromagnetic radiation from the
17 proposed cellular facility. As discussed below, the consideration of
18 those types of concerns are pre-empted by federal law and may not
19 be considered by the Planning Commission.” Record 17.

20 Petitioners disagree with the characterization of their evidence as “focused on
21 concerns about” environmental and health effects, and argue that “project
22 opponents were overwhelmingly concerned about livability, aesthetics, views,
23 architectural compatibility, and character of the area, all of which directly
24 implicated property devaluation.” Petition for Review 15. Later, petitioners argue
25 that

26 “the finding that project opponents’ allegations related to livability
27 * * * were solely related to adverse health effects is not supported
28 by substantial evidence, as indicated by the overwhelming number
29 of comments, studies, articles from project opponents; admissions

1 by the Planning Commission; admissions by the third-party
2 consultant; and admissions by the applicant.” Petition for Review
3 18.

4 While petitioners’ arguments address “project opponents” broadly, the
5 challenged finding addresses “appellants” specifically, meaning petitioners.
6 Moreover, while the planning commission’s finding that the majority (not all, as
7 suggested by petitioners) of the comments received after the mailing of the Notice
8 of Complete Application had to do with environmental and health impacts may
9 or may not be a correct tally of the comments, petitioners identify, and we see,
10 no basis for remand even if the quantification is somehow inaccurate. Petitioners
11 also argue that the planning commission did not properly consider evidence of
12 property devaluation because it erroneously considered such evidence an element
13 of WCF health impacts, which are outside its scope of review. However, as
14 discussed below, the planning commission did adopt findings addressing the
15 alleged property devaluation.

16 Petitioners also argue that the findings are inadequate

17 “(a) because * * * the findings fail to address issues of livability,
18 aesthetics, views, architectural compatibility, and character of the
19 area; (b) because [the] findings fail to address the articles and studies
20 [regarding property valuation] submitted by Alan Rathsam during
21 the open record period; and (c) because the findings fail to address
22 whether these issues fall within the category of ‘other relevant
23 factors.’” Petition for Review 18.

24 First, petitioners argue that the findings fail to discuss the link between
25 property devaluation and issues of livability, views, aesthetics, character of the
26 area, and architectural compatibility. Petition for Review 19. “When evaluating

1 the effect of the proposed use on the impact area, the [code-identified] factors of
2 livability of the impact area shall be considered in relation to the target use of the
3 zone.” AMC 18.5.4.050(A)(3). Those code-identified factors include a catch-all
4 category of “[o]ther factors found to be relevant by the approval authority for
5 review of the proposed use.” AMC 18.5.4.050(A)(3)(g). The planning
6 commission found that,

7 “[i]n terms of architectural compatibility, the criterion specifically
8 speaks to architectural compatibility with the impact area which is
9 the area within 200 feet of the subject property. In this instance, the
10 applicant proposes to reconstruct a concrete light standard which is
11 already in place at Raider Stadium with a concrete standard designed
12 to match the existing structure with lights at the existing 73.9-foot
13 height and the wireless facilities installed above that, to an antenna
14 tip height of 95 feet. The Commission notes that the Staff Advisor
15 determined that reconstructing the light standard in concrete to
16 match the existing standard and others already in place at the
17 stadium could be found to be architecturally compatible with the
18 impact area.” Record 13.

19 Petitioners do not address the above architectural compatibility finding. This
20 finding addresses views, aesthetics, and character of the area, all elements of
21 livability as reflected by architectural compatibility. We see no reason why the
22 discussion of how property values might be impacted by the presence of the WCF
23 must be addressed in this section of the findings. We discuss the property value
24 findings below.

25 Second, petitioners argue that, “[d]espite considering aesthetics, property
26 devaluation, and other similar issues, the findings do not squarely address what

1 'other factors' are considered 'relevant by the approval authority for review of
2 the proposed use.' The findings are simply not precise as to whether these 'other
3 factors' are 'relevant' or not." Petition for Review 22. Petitioners argue that,
4 although the planning commission found that there was no "demonstration made
5 that the loss of property values was an applicable approval criterion or standard,"
6 the planning commission failed to address whether the loss of property values
7 was an approval criterion under the "other relevant factors" category. *Id.* at 22-
8 23. As discussed below, the planning commission discussed the potential impact
9 of the WCF on property values. Petitioners have not identified a basis for remand
10 where the planning commission discussed the impact on property values, even if
11 the planning commission did not conclude that the impact on property values is
12 an "other relevant factor" approval criterion.

13 Third, petitioners argue that livability, as required by the CUP criteria, is
14 addressed, in part, through the "[s]imilarity in scale, bulk, and coverage" factor,
15 and that a planning commission finding that the WCF is similar in scale to
16 existing stadium lights in the area is not supported by substantial evidence. AMC
17 18.5.4.050(A)(3)(a); Record 12. Petitioners argue that the findings fail to address
18 comments that the proposed WCF was significantly taller than other light
19 standards in the area, citing an opponent's testimony that, at 95 feet in height,
20 nothing similar exists in the area. Petition for Review 25-26 (citing Record 847).
21 The planning commission found that

22 "reducing the height to 85-feet in combination with constructing a

1 new concrete light standard to match the existing 73.9-foot concrete
2 light standard in design and material treatment will better blend with
3 the existing stadium lights than would a ten-foot taller standard, and
4 a condition to this effect was attached to the original staff decision.”⁵
5 Record 14.

6 The planning commission made an adequate finding addressing scale.

7 Fourth, petitioners argue that, under federal law, the city may be unable to
8 deny a future request to increase the WCF’s height. We addressed this argument
9 in our resolution of the second assignment of error and we do not address it
10 further.

11 Lastly, petitioners argue that the planning commission’s findings
12 addressing property valuation impacts failed to address documents addressing
13 property devaluation that were submitted after the staff advisor made the initial
14 decision. Petition for Review 19. Petitioners argue, “If the Planning Commission
15 concluded, based on only two studies, that ‘the competing studies do not provide
16 a clear or definite demonstration that proximity to wireless facilities will in fact
17 reduce property value,’ then the Planning Commission failed to address all
18 relevant evidence submitted.” *Id.* at 20.

19 As we explained above, the planning commission did not identify property
20 devaluation as an “other relevant factor” in evaluating livability or discuss it in
21 the context of architectural compatibility. The planning commission did,

⁵ Notably, installation of a WCF on an alternative structure is required to have design features that camouflage, conceal, or mitigate the visual impact. AMC 18.4.10.040(B)(3).

1 however, make findings concerning property devaluation. With respect to
2 potential reduction in property values, the planning commission found that one
3 of the initial public comments cited a 2004 study finding that proximity to a WCF
4 reduced home prices by 15 percent on average and that the applicant responded
5 with a 2012 study concluding that proximity to a WCF had no apparent impact
6 on home values or sales prices. Record 14. The planning commission noted that
7 the 2004 study cited by opponents concluded, “Generally, the closer a property
8 is to the tower, the greater the decrease in price. the effect of proximity to a tower
9 reduces price by 15% on average. This effect is reduced with distance from the
10 tower and is negligible after 1,000 feet.” Record 16. The planning commission
11 found that, after reviewing the 2004 and 2012 valuation studies,

12 “[t]he Staff Advisor determined that there was not a definitive
13 demonstration that proximity to wireless facilities reduces property
14 values nor was there a clear tie to the applicable criteria, and further
15 found that *the facility was proposed to be placed where a light
16 standard is already in place at the stadium, approximately 496 feet
17 from Walker Avenue and 677 feet from Wightman Street, which is
18 more than double the 170-190 foot required setbacks from adjacent
19 residential.*” Record 14 (emphasis added).

20 The planning commission also found that the applicant

21 “provided a summary of the 2018 Valbridge Study which looked at
22 homes in Boston, Dallas, Phoenix and Raleigh in multiple sub-areas
23 in each city between 2015 and 2018. Home sale values demonstrated
24 *no measurable difference* for homes within one quarter mile (1,320
25 foot) radius ‘sphere of influence of the cell tower’ or for homes
26 within a one-half to one-mile radius outside the ‘sphere of influence
27 of the cell tower.’ No measurable difference was defined as less than
28 a one percent difference and a nominal difference was defined as

1 between one and three percent. Summarizing the data, the Valbridge
2 Study found that in Boston, Dallas and Raleigh, cell towers within a
3 quarter mile radius did not have a negative impact on property
4 values, while in Phoenix, four of five sub-areas studied had no
5 measurable difference and one sub-area had a nominal difference
6 (i.e. a one- to three-percent reduction).” Record 16.

7 We agree with petitioners that the planning commission’s findings do not
8 specifically address a variety of documents related to property valuation that were
9 submitted after the staff advisor’s initial decision. However, even assuming that
10 the planning commission did not consider the additional evidence submitted,
11 petitioners fail to establish remandable error. The planning commission found,

12 “in agreement with the Staff Advisor’s original decision, that the
13 competing studies do not provide a clear or definitive demonstration
14 that proximity to wireless facilities will in fact reduce property
15 values, nor was there a clear demonstration made that the loss of
16 property values was an applicable approval criterion or standard. *In*
17 *addition, the WCF proposed here is to be placed where a number of*
18 *light standards are already in place at the stadium, and will be*
19 *approximately 496 feet from Walker Avenue and 677 feet from*
20 *Wightman Street. This is well beyond the 170- to 190-foot setback*
21 *required from adjacent residential areas, and the Commission does*
22 *not consider this to be in close proximity to the nearest homes.”*
23 Record 17 (emphasis added).

24 The planning commission concluded, in the context of a dispute over the impact
25 of WCFs *on the value of proximate properties*, that the proposed WCF is *not in*
26 *close proximity to the nearest homes*. Petitioners do not challenge or otherwise
27 address that finding, and they have not established a basis for remand.

28 The first assignment of error is denied.

29 The city’s decision is affirmed.