



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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Date: March 6, 2014
To: Interested Person
From: Andrew Gulizia, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 14-108989 AD

GENERAL INFORMATION

Representative: George Pierce,
Ryka Consulting
918 S Horton St, Suite 1002
Seattle, WA 98134
(206) 523-1941

Applicant: Nathan Dunn
New Cingular Wireless PCS, LLC (dba AT&T Mobility)
19801 SW 72nd Ave
Tualatin, OR 97062

Property Owner: PMP Properties, LLC
9220 SW Barbur Blvd #119-306
Portland, OR 97219

Site Address: 3610 N Suttle Rd

Legal Description: TL 1600 3.89 ACRES SEE R323419 (R951320521), SECTION 32 2N 1E
Tax Account No.: R951320520
State ID No.: 2N1E32DA 01600
Quarter Section: 1826
Neighborhood: St. Johns, contact Justin Sundling at justinsundling@gmail.com.
Business District: Columbia Corridor Association, contact Peter Livingston at 503-796-2892.

District Coalition: North Portland Neighborhood Services, contact Mary Jaron Kelley at 503-823-4099.

Plan District: None
Zoning: IHc, h – Heavy Industrial zone with Environmental Conservation and Aircraft Landing overlay zones

Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

This industrial site contains telecommunications antennas attached to an existing tower with accessory equipment on the ground. Pursuant to Zoning Code Section 33.274.040.9, landscaping was required for previous building permits for telecommunications equipment. The Zoning Code allows the landscaping to be placed anywhere on the site. However, the landscaping shown on previous building permit site plans was either not installed or was subsequently removed. In order to resolve this outstanding issue, the applicant is requesting an Adjustment to remove the landscaping requirement for this facility.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The 9.4-acre site is located on the southwest corner of N Suttle Road and N Portland Road. The site is developed with multiple industrial buildings. Neighboring properties are developed with industrial uses.

Zoning: The IH zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance.

The Aircraft Landing (“h”) overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. Because this proposal does not involve new structures or vegetation, the requirements of the “h” overlay are not applicable.

The Environmental Conservation (“c”) overlay zone is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development must meet environmental standards or are subject to environmental review. No new development or modifications are proposed for the portion of the site within the “c” overlay.

Land Use History: City records indicate that prior land use reviews include the following:

- LUR 91-00738 EN. In 1991, the City approved an Environmental Review application for excavation and pipe construction on this site.
- CU 061-90. In 1990, a Conditional Use approval was issued for a Radio Frequency Transmission Facility to be attached to the water tower on this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed February 6, 2014. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services;
- Bureau of Transportation Engineering;
- Water Bureau;
- Fire Bureau;
- Site Development Section of BDS;
- Life Safety Review Section of BDS; and
- Bureau of Parks-Forestry Division

Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

- A.** Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The applicant is requesting an Adjustment to the landscaping requirement for a Radio Frequency Transmission Facility. The purpose of the development standards for Radio Frequency Transmission Facilities is stated in Zoning Code Section 33.274.040.A:

Purpose. *The development standards:*

- *Ensure that Radio Frequency Transmission Facilities will be compatible with adjacent uses;*
- *Reduce the visual impact of towers and accessory equipment in residential and open space zones whenever possible;*
- *Protect adjacent populated areas from excessive radio frequency emission levels; and*
- *Protect adjacent property from tower failure, falling ice, and other safety hazards.*

The Radio Frequency Transmission Facility is in the interior of a large (9.4-acre) industrial property. The facility is surrounded on all sides by buildings on the subject property, so neither the base of the tower nor the accessory equipment that would be screened by landscaping are visible from the street, from any neighboring property, or from any residential or open space zone. Surrounding properties are also developed with industrial uses and contain little landscaping.

Since the request is specific to the landscaping requirement and no changes to the antennas or to the tower structure are proposed, neither radio frequency levels nor safety issues related to the tower are relevant to this application.

Based on these reasons, the proposal to remove the landscaping requirement equally meets the intent of the regulation and this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Because the site is located in the IH zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area.

Street Classifications

The site fronts on N Suttle Road and on N Portland Road. The classifications of these streets, as identified in the Transportation Element of the Comprehensive Plan, are as follows:

Street	Traffic	Transit	Bikeway	Pedestrianway	Freight
N Suttle Rd	Local Service	Local Service	Local Service	Local Service	Freight District
N Portland Rd	Major City Traffic	Community Transit	Off-Street Path	Off-Street Path	Main Railroad Line

Because the Adjustment only applies to the landscaping requirement for an existing telecommunications facility, the application would result in no changes to the density or intensity of any land use and would result in no changes to traffic levels or demand for transit, bike, pedestrian, or freight facilities. Therefore, this aspect of the approval criterion is not applicable.

Desired Character of Area

The “desired character” of an area is defined in Zoning Code Section 33.910.030 as the preferred or envisioned character based on the purpose statement or character statement of the base zone and any adopted area plans. The subject site is located within the IH zone, but is not located within any adopted area plan.

The character statement for the IH zone in Section 33.140.030.D reads:

This zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development.

The industrial area surrounding this site is extensively paved and contains little formal landscaping. As discussed in the findings for criterion A, landscaping near the Radio Frequency Transmission Facility on this site would provide no aesthetic benefit visible from the street or from neighboring properties. In any case, the landscaping requirement for Radio Frequency Transmission Facilities in Section 33.274.040.9 is for aesthetic screening of equipment and towers, and is not “the minimum necessary to assure safe, functional, efficient, and environmentally sound development.”

Based on these findings, the proposal is found to be consistent with the desired character of the area as expressed in the character statement for the IH zone. This aspect of the criterion is met.

Summary

As the classifications of adjacent streets are found to be irrelevant, and the proposal conforms to the desired character of the area, this criterion is met.

- C.** If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: As only one Adjustment is being requested, this criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic or historic resource designations mapped on the subject site, this criterion is not applicable.

- E.** Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings: As discussed in the findings above, the proposal has no adverse impacts on the surrounding industrial area. As there are no identified adverse impacts for which mitigation would be required, this criterion is not applicable.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental

Conservation overlay zone). Although a portion of this site contains a “c” overlay, no new development or ground disturbance is proposed within or near the overlay. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The proposal to remove the landscaping requirement for a Radio Frequency Transmission Facility equally meets the intent of the regulation and is consistent with the industrial character of the area. The applicant has demonstrated that the applicable approval criteria have been met. Since the approval criteria are met, the proposal should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to waive the landscaping requirement of Zoning Code Section 33.274.040.9 for the Radio Frequency Transmission Facility on this site.

Staff Planner: Andrew Gulizia



Decision rendered by: _____ **on March 4, 2014.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 6, 2014

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on January 23, 2014, and was determined to be complete on February 3, 2014.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 23, 2014.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: June 3, 2014.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 20, 2014**, at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **March 21, 2014**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to:

Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

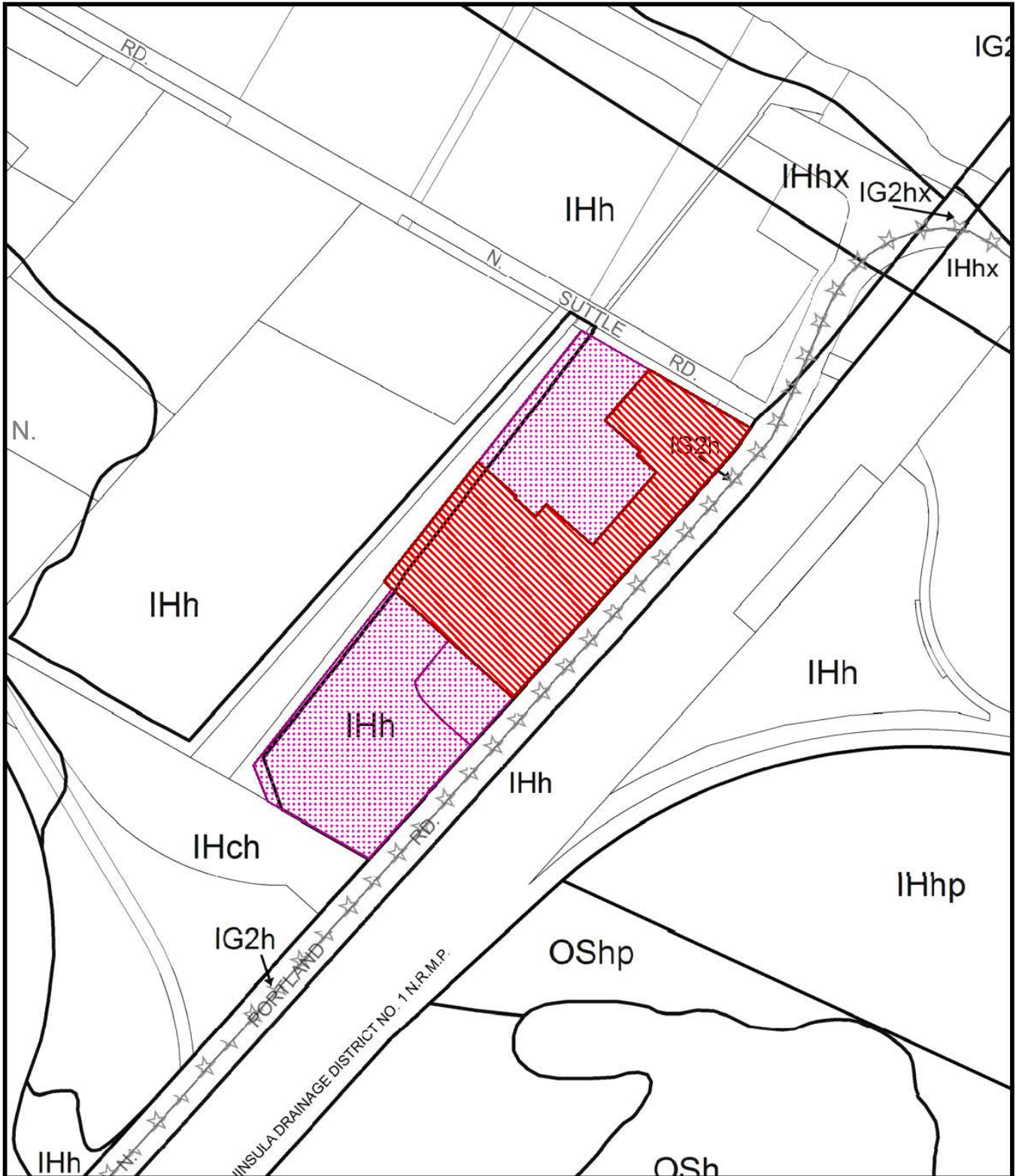
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Landscape Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
 - 7. Bureau of Parks-Forestry Division
- F. Correspondence – none received
- G. Other:
 - 1. Original LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site
 Also Owned



File No. LU 14-108989 AD
 1/4 Section 1826
 Scale 1 inch = 267 feet
 State_Id 2N1E32DA 1600
 Exhibit B (Jan 29, 2014)

