



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

**NOTICE OF A PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND LAND USE HEARINGS OFFICER'S DECISION**

CASE FILE: LU 11-125536 CU AD: Verizon at Mt. Scott Fuel Company
WHEN: Wednesday, January 11, 2012 at 2:00 PM
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

Date: December 2, 2011
To: Interested Person
From: Sylvia Cate, Land User Services, 503-823-7771

A public hearing will be held to consider an **appeal** of the Hearings Officer's decision to **deny** a Conditional Use and Adjustment for a wireless telecommunications facility at 6904 SE Foster Road. The Hearings Officer's decision of denial has been appealed by **Verizon**. At the hearing City Council will consider the appeal. You are invited to testify at the hearing.

This will be an On-the-Record hearing, one in which new evidence cannot be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

GENERAL INFORMATION

File No.: LU 11-125536 CU AD (HO 4110025)

Applicants: Galen E. and Clay E. Tyler, Listed Property Owners
Mt. Scott Fuel
6904 SE Foster Road
Portland, OR 97206-4548

Appellant: **Verizon Wireless**, Lessee
5430 NE 122nd Avenue
Portland, OR 97230

**Applicants'
Representatives:** Phil Grillo, Attorney
Davis Wright Tremaine LLP
Suite 2300
1300 SW Fifth Avenue
Portland, Oregon 97201-5630

Laura Hopfer, Applicant's Agent and Main Contact
Ridge Communications Inc.
252 A Avenue, Suite 200
Lake Oswego, OR 97034
503 577 8710

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Sylvia Cate

Site Address: 6904 SE Foster Road

Legal Description: TL 12400 3.85 ACRES LAND & IMPS SEE R335883 (R992170511), SECTION 17 1S 2E

Tax Account No.: R992170510

State ID No.: 1S2E17BA 12400

Quarter Section: 3537

Neighborhood: Mt. Scott-Arleta

Business District: Foster Area

District Coalition: Southeast Uplift

Plan District: None

Zoning: CGb: General Commercial with a Buffer overlay

Land Use Review: Type III, Conditional Use and Adjustment

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 8:59 a.m. on October 3, 2011, in Room 2500A, 1900 SW 4th Avenue, Portland, Oregon, and closed at 11:35 a.m. The record was held open until 4:30 p.m. on October 10, 2011 for new written evidence and until 4:30 p.m. on October 17, 2011 for Applicants' final argument. The record was closed at that time.

Testified at the Hearing:

Sylvia Cate, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201
Laura Hopfer, 5775 Jean Road, Suite 210, Lake Oswego, OR 97035
Neal Sutton, 4542 SE 60th Avenue, Portland, OR 97206
Marcel Hermans, 6910 SE Raymond Court, Portland, OR 97206
Shannon O'Connor, 4934 SE 67th Avenue, Portland, OR 97206
Phyllis Shelton, 7033 SE Mitchell Street, Portland, OR 97206
Courtney Erskine, 4930 SE 66th Avenue, Portland, OR 97206
Walt Nichols, 7519 SE Harold Street, Portland, OR 97206
Matt Cooper, 7030 SE Raymond Court, Portland, OR 97206
Chris Hill, 7120 SE Raymond Court, Portland, OR 97206
Liz McKeever, 4904 SE 67th Avenue, Portland, OR 97206
Eric Joy, 5016 SE 68th Avenue, Portland, OR 97206
Max Trisler, 4904 SE 67th Avenue, Portland, OR 97206

Proposal: Verizon Wireless proposes to construct a 45-foot tall monopole for a wireless telecommunications facility on real property generally described as 6904 SE Foster Road (the "Site"). The proposal includes up to a total of 12 antennas hosted on the monopole, with an initial start of nine antennas. A fenced accessory equipment compound is proposed to be located at grade adjacent to the monopole, with electrical equipment cabinets located on a concrete slab, and an emergency generator included within the equipment area (collectively the wireless associated improvements shall hereafter be referred as the "Facility").

The Applicants also request an Adjustment to waive the required landscaping buffer due to development and conditions on the Site which will partially screen the Facility from view. The Applicants note that the Site, which is used by a commercial business that stockpiles and sells crushed rock, bark dust and similar materials, already has an existing 6-foot high site-obscuring fence and concrete wall inside the fencing along the south, east and west property lines, and suggests that the existing building will screen the facility from views.

Ordinarily, the proposed monopole would be allowed by right, as it is in a commercial zone, meets the maximum height allowed in the commercial zone and is more than 50-feet away from a residential zone. However, the proposed monopole is within 2,000 feet of an existing, 45-foot tall monopole. Verizon contends that it is not able to collocate on that existing monopole, and thus proposes a new facility.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.815.225.C.1 through 6, Conditional Use approval criteria
- 33.274.040.C, Mandatory Development Standards
- 33.805.040.A through F, Adjustment

REVIEW BODY DECISION

Denial of:

- A Conditional Use; and
- An Adjustment to waive landscaping as required at 33.274.040.9.a.[1] & [2]

Decision Mailed: November 3, 2011

APPEAL

The Hearings Officer's decision of denial has been appealed by Verizon Wireless. According to the appellants' statement, the appeal of the Hearings Officer's decision is based on arguments that:

The hearings officer's decision incorrectly interpreted the approval criteria in PCC 33.815.225 and PCC 33.274. Also, the hearings officer's decision incorrectly determined that the application is not supported by substantial evidence in the record. Finally, the hearings officer's decision failed to make findings concerning the applicant's compliance with PCC 33.805.040. The application meets all the relevant criteria in PCC 33.815.225, 33.274 and 33.805.040, and should have been approved.

Review of the case file: The Hearings Officer's decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, # 5000, Portland OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some of the information over the phone.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

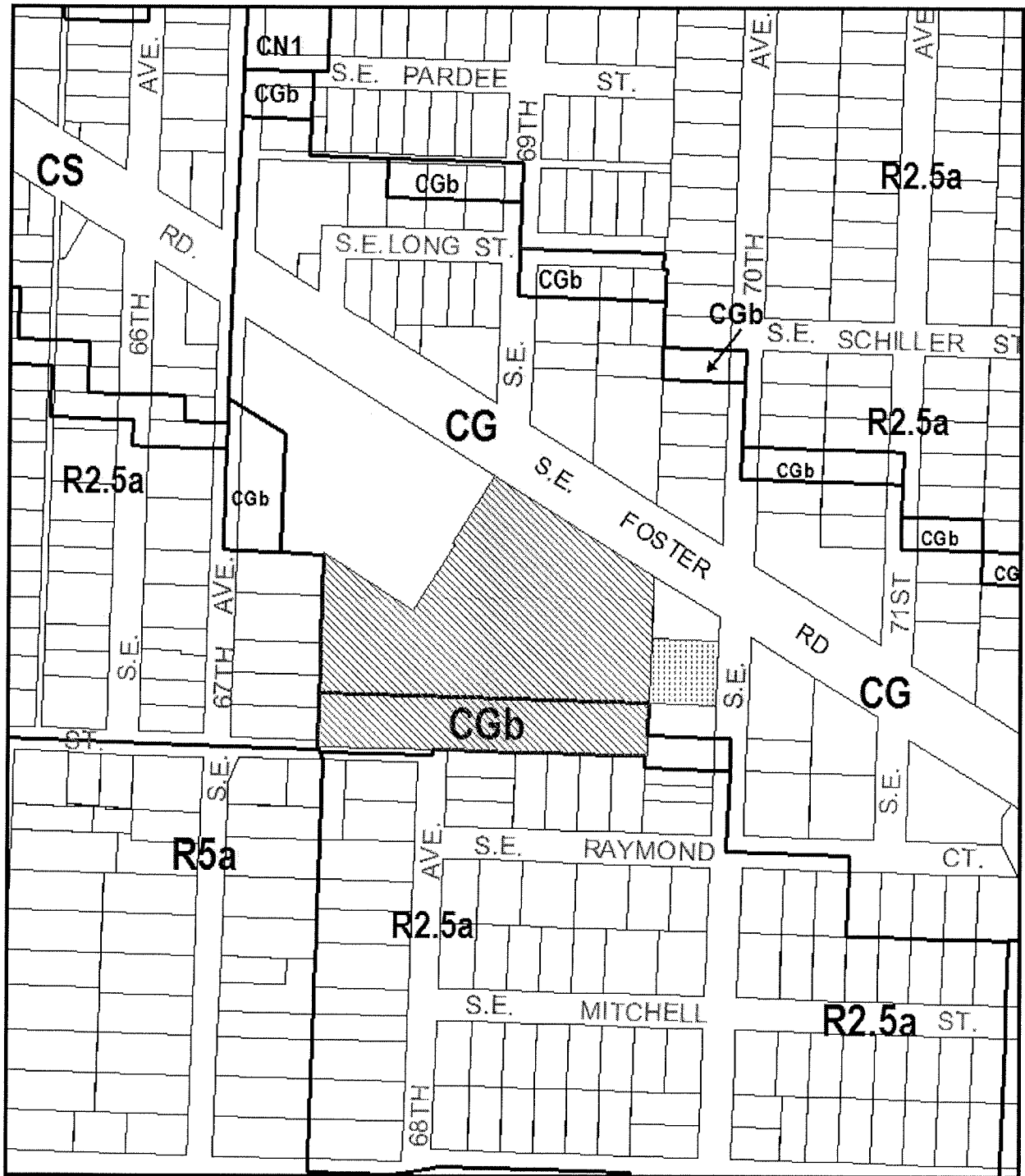
If you choose to provide testimony by electronic mail, please direct it to the Council Clerk (kmoore-love@ci.portland.or.us). Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.



If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plan
3. Elevations
4. Appeal Statement
5. City Council Appeal Process

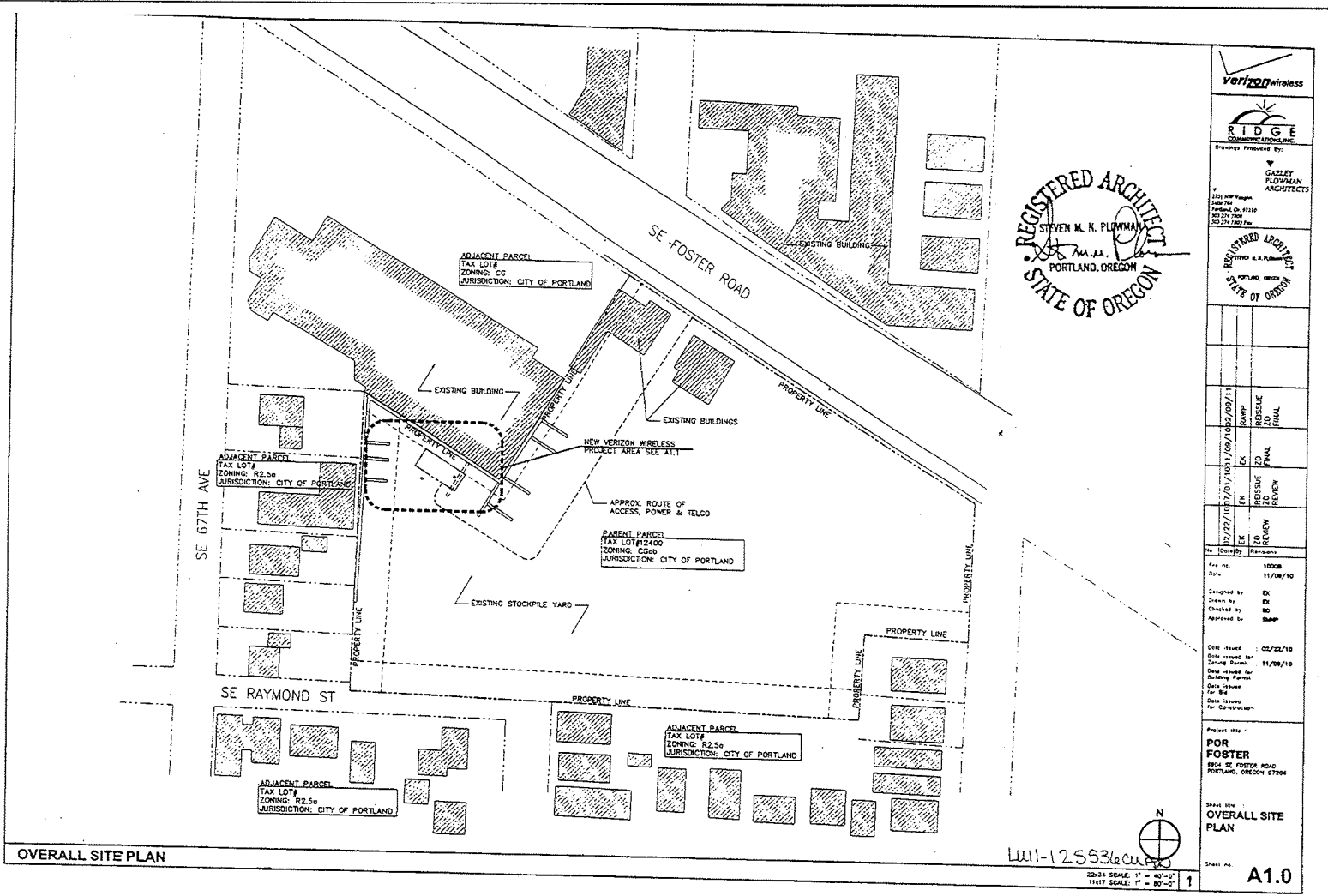


ZONING

-  Site
-  Also Owned



File No. LU 11-125536 CU,AD
 1/4 Section 3537
 Scale 1 inch = 200 feet
 State_Id 1S2E17BA 12400
 Exhibit B (Apr 08,2011)



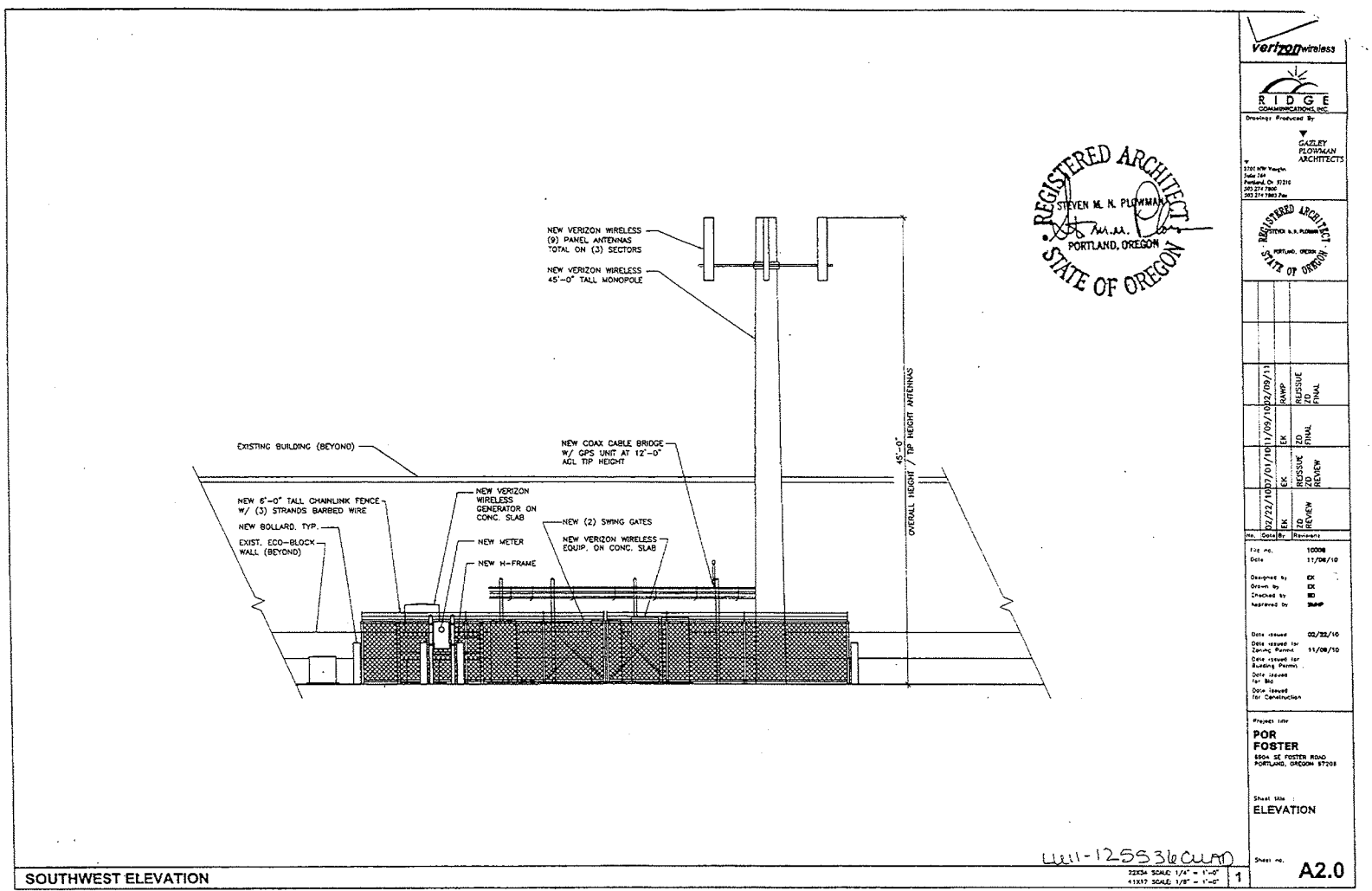
Verizon Wireless																	
RIDGE CONSULTING ENGINEERS																	
Drawings Produced By: GAZLEY FLOYMAN ARCHITECTS																	
1221 NW 17th Suite 700 Portland, OR 97209 503.274.7500 503.274.1000 Fax																	
REGISTERED ARCHITECT STEVEN M. K. PLUMMER PORTLAND, OREGON STATE OF OREGON																	
<table border="1"> <tr> <td>NOV 11 2010</td> <td>ISSUE</td> <td>2D</td> <td>FINAL</td> </tr> <tr> <td>NOV 11 2010</td> <td>REVIEW</td> <td>2D</td> <td>FINAL</td> </tr> <tr> <td>NOV 11 2010</td> <td>REVIEW</td> <td>2D</td> <td>FINAL</td> </tr> <tr> <td>NOV 11 2010</td> <td>REVIEW</td> <td>2D</td> <td>FINAL</td> </tr> </table>		NOV 11 2010	ISSUE	2D	FINAL	NOV 11 2010	REVIEW	2D	FINAL	NOV 11 2010	REVIEW	2D	FINAL	NOV 11 2010	REVIEW	2D	FINAL
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Date 11/09/10																	
Designed by DK																	
Drawn by DK																	
Checked by BK																	
Approved by BK																	
Date issued 02/22/10																	
Date issued for Permit Review 11/09/10																	
Date issued for Building Permit																	
Date issued for BE																	
Date issued for Construction																	
Project title																	
POR FOSTER																	
8504 SE FOSTER ROAD PORTLAND, OREGON 97204																	
Sheet title																	
OVERALL SITE PLAN																	
Sheet No. A1.0																	

OVERALL SITE PLAN

1111-125536-0110

2524 SCALE: 1" = 40'-0"
11417 SCALE: 1" = 80'-0"

EXHIBIT C-1
site plan
8x10



Drawn by
GAZLEY FLOWMAN ARCHITECTS

2300 NW Vaughn
 Suite 100
 Portland, OR 97210
 503.274.7800
 503.274.7802 fax



NO.	DATE	BY	REVISION
1	02/22/10	BRAMP	ISSUE FOR PERMITS
2	07/22/10	BRAMP	ISSUE FOR PERMITS
3	07/22/10	BRAMP	ISSUE FOR PERMITS
4	07/22/10	BRAMP	ISSUE FOR PERMITS

NO.	DATE	BY	REVISION
1	11/09/10	DE	DESIGNED
2		DE	DRAWN
3		BRAMP	CHECKED
4		BRAMP	APPROVED

Date issued: 02/22/10
 Date issued for Permit: 11/09/10
 Date issued for Building Permits:
 Date issued for Bid:
 Date issued for Construction:

Project site:
POR FOSTER
 850A SE FOSTER ROAD
 PORTLAND, OREGON 97203

Sheet title:
ELEVATION

Sheet no.: **A2.0**

SOUTHWEST ELEVATION

Well-125536.cuan

22X34 SCALE: 1/4" = 1'-0"
 11X17 SCALE: 1/8" = 1'-0"

1

EXHIBIT C-2
 elevation
 8x10



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



Type III Decision Appeal Form

LU Number: 11-125536 CUAD

FOR INTAKE, STAFF USE ONLY

Date/Time Received <u>11/16/11 2:11</u>	<input checked="" type="checkbox"/> Action Attached
Received By <u>[Signature]</u>	Fee Amount <u>\$5000</u>
Appeal Deadline Date <u>11/17/11</u>	<input type="checkbox"/> [N] Fee Waived
<input checked="" type="checkbox"/> Entered in Appeal Log	Bill # <u>3292645</u>
<input checked="" type="checkbox"/> Notice to Auditor	<input type="checkbox"/> [N] Unincorporated MC
<input checked="" type="checkbox"/> Notice to Dev. Review	

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

The appeal must be filed by the deadline listed in the Decision

Development Site Address or Location 6904 SE Foster Road

Date November 16, 2011 Land Use Number LU 11-125536 CU AD (HO 41100 25)

Appellant's Name Verizon Wireless, c/o Laura Hopfer, Ridge Communications

Street Address 5775 SW Jean Rd., Suite 210

City Lake Oswego State OR Zip Code 97034

Day Phone (503) 577-8710 FAX (503) 850-4739 email laura.hopfer@ridgecommunicate.com

Appellant's Interest in the case (applicant, neighbor, etc.) lessee, wireless carrier

Appellant's Statement Please describe how the proposal meets or does not meet approval criteria, or how the City erred procedurally. The statement must address specific approval criteria or procedures and include the appropriate code citation(s).

The hearings officer's decision incorrectly interpreted the approval criteria in PCC 33.815.225 and PCC 33.274. Also, the hearings officer's decision incorrectly determined that the application is not supported by substantial evidence in the record. Finally, the hearings officer's decision failed to make findings concerning the applicant's compliance with PCC 33.805.040. The application meets all the relevant criteria in RCC 33.815.225, 33.274 and 33.805.040, and should have been approved.

Appellant's Signature [Signature]

To file this appeal, take the following to the Development Services Center

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland
 - Fee waiver for ONI Recognized Organizations approved
 - Fee waiver for low income individual approved (attach letter from Director)
 - Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

CASE NO. 11-125536 CUAD
EXHIBIT Fee 1

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

The appeal must be filed by the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1600, Portland, Oregon, between 8:00 a.m. and 3:00 p.m. on Tuesday through Friday. On Mondays, and between 3:00 - 4:30 p.m. on Tuesday through Friday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

Type III Appeal Hearing Procedure

A Type III Decision may be appealed only by the applicant, the owner, or those who have testified in writing or orally at the hearing, provided that the testimony was directed to a specific approval criterion, or procedural error made. It must be filed with the accompanying fee by the deadline listed in the decision. The appeal request must be submitted on the Type III Appeal Form provided by the City and it must include a statement indicating which of the applicable approval criteria the decision violated (33.730.030) or what procedural errors were made. If the decision was to deny the proposal, the appeal must use the same form and address how the proposal meets all the approval criteria. There is no local Type III Appeal for cases in unincorporated Multnomah County.

Appeal Hearings for Type III Decisions are scheduled by the City Auditor at least 21 days after the appeal is filed and the public notice of the appeal has been mailed.

Appellants should be prepared to make a presentation to the City Council at the hearing. In addition, all interested persons will be able to testify orally, or in writing. The City Council may choose to limit the length of the testimony. Prior to the appeal hearing, the City Council will receive the written case record, including the appeal statement. The City Council may adopt, modify, or overturn the decision of the review body based on the information presented at the hearing or in the case record.

Appeal Fees

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original application fee. The fee amount is listed in the decision. The fee may be waived as follows:

Fee Waivers (33.750.050)

The director may waive required fees for Office of Neighborhood Involvement (ONI) Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

A. ONI Recognized Organizations Fee Waiver

Neighborhood or business organizations recognized by the City of Portland Office of Neighborhood Involvement (ONI) or Multnomah County are eligible to apply for an appeal fee waiver if they meet certain meeting and voting requirements.

These requirements are listed in the Type III Appeal Fee Waiver Request for Organizations form and instruction sheet available from the Bureau of Development Services Development Services Center, 1st floor, 1900 SW 4th, Portland, OR 97201. Recognized organizations must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it prior to the appeal deadline to be considered for a fee waiver.

B. Low Income Fee Waiver

The appeal fee may be waived for an individual who is an applicant in a land use review for their personal residence, in which they have an ownership interest, and the individual is appealing the decision of their land use review application. In addition, the appeal fee may be waived for an individual residing in a dwelling unit, for at least 60 days, that is located within the required notification area. Low income individuals requesting a fee waiver will be required to certify their annual gross income and household size. The appeal fee will only be waived for households with a gross annual income of less than 50 percent of the area median income as established and adjusted for household size by the federal Department of Housing and Urban Development (HUD). All financial information submitted to request a fee waiver is confidential. Fee waiver requests must be approved prior to appeal deadline to be considered for a fee waiver.

An information sheet on how to apply for a fee waiver for a low income individual is available at the Development Services Center, 1900 SW 4th Avenue, 1st floor, 503-823-7526

Information is subject to change

LU 11-125536 CU AD

131/340/MAYOR/AMY RUIZ

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PORTLAND, OR 97204

BES/DEV SERVICES
106/1100

KURT KRUEGER
PBOT
106/800

DAWN KRANTZ
PORTLAND FIRE BUREAU
472/100

DOUG MORGAN
DEVELOPMENT SERVICES
299/5000

WATER BUREAU PERMITS
106/601

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LU 11-125536 CU AD

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PORTLAND, OR 97206

PHIL GRILLO
DAVIS WRIGHT TREMAINE LLP
1300 SW FIFTH AVE
SUITE 2300
PORTLAND, OR 97201-5630

LU 11-125536 CU AD
TO BE SENT 12/2/2011
33 LABELS