

## CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade  
1221 S.W. 4th Avenue, Room 140, Portland, Oregon 97204  
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May 3, 2012

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

**RE: LU 11-125536 CU AD**

Appeal of Verizon Wireless, lessee against the Hearings Officer's decision to deny a conditional use and adjustment for a wireless telecommunications facility at Mt Scott Fuel Company, 6904 SE Foster Road (Hearing; LU 11-125536 CU AD)

To Whom It May Concern:

Enclosed is a copy of the Order of Council on LU 11-125536 CU AD. This Order must be recorded with the Multnomah County Recorder within 10 days of receipt of this letter. **Please send a check for \$46.00 made payable to the Multnomah County Recorder, indicating the file number on your check and Send to: The City of Portland, Office of the City Auditor, 1221 SE 4<sup>th</sup> Ave. Room 140, Portland, OR 97204-1900**

City Council's decision is the final review process available through the City. You may appeal this decision to the Oregon Land Use Board of Appeals (LUBA) by filing a Notice of Intent to Appeal with the Board within 21 days of the date of decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have appeared orally or in writing during the City's proceedings on this land review. The Board's address is: Public Utility Commission Building, 550 Capitol Street NE, Suite 235, Salem, OR 97310-2552. You may call the Land Use Board of Appeals at 1-503-373-1265 for further information on filing an appeal.

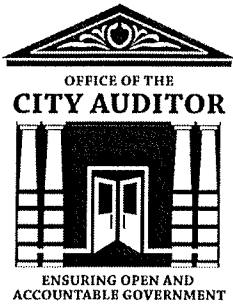
Yours sincerely,  
LaVonne Griffin-Valade  
Auditor of the City of Portland

By:

Karla Moore-Love, Council Clerk

Encl.

Cc: Phil Grillo, Attorney, Davis Wright Tremaine LLP  
Verizon Wireless



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### NOTICE OF FINAL DECISION

TO: All Interested Persons  
DATE: May 3, 2012  
RE: LU 11-125536 CU AD

Appeal of Verizon Wireless, lessee against the Hearings Officer's decision to deny a conditional use and adjustment for a wireless telecommunications facility at Mt Scott Fuel Company, 6904 SE Foster Road (Hearing; LU 11-125536 CU AD)

Enclosed is a copy of the Order of Council on LU 11-125536 CU AD approving the appeal of Verizon Wireless against Hearings Officer's decision to deny a conditional use and adjustment with the condition to move the location closer to the southeast side of the building or to another location on the site that is further away from residences. If you wish to obtain a copy of the City Council's findings and conclusions, contact Karla Moore-Love, Council Clerk at (503) 823-4086 or by email at: [Karla.Moore-Love@portlandoregon.gov](mailto:Karla.Moore-Love@portlandoregon.gov)

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Encl.

**ORDER OF COUNCIL ON APPEAL OF  
VERIZON WIRELESS, LESSEE, AGAINST THE HEARINGS OFFICER'S DECISION TO DENY  
A CONDITIONAL USE AND ADJUSTMENT FOR A WIRELESS TELECOMMUNICATIONS  
FACILITY AT MT SCOTT FUEL COMPANY, 6904 SE FOSTER ROAD (HEARING; LU 11-125536  
CU AD)**

**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 122<sup>nd</sup> Avenue  
Portland, OR 97230

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

**Site Address:** 6904 SE Foster Road

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

**Neighborhood:** Mt. Scott-Arleta

**Zoning:** CGb: General Commercial with a Buffer overlay

**Land Use Review:** Type III, Conditional Use and Adjustment

**Original 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.

Following a public hearing and subsequent open record period, the Hearings Officer issued his decision denying a Conditional Use and an Adjustment to waive landscaping as required at 32.274.040.9.a. [1] & [2]. On November 16, 2011, Verizon Wireless appealed the Hearings Officer's decision to the City Council.

The appeal hearing before the City Council was opened in the Council Chambers, 1221 SW 4<sup>th</sup> Avenue on January 11, 2012 at approximately 2:00 p.m. At the conclusion of the public hearing and after hearing public testimony, Council determined it was appropriate to reopen the record for this application so that all interested parties could submit new information and new argument, and continued the hearing to March 1, 2012 at 2:00 p.m. On March 1, 2012 at 2:00 p.m., Council voted 3-1 to tentatively approve the appeal with the condition to move the location closer to the southeast side of the building or to another location on the site that is further away from residences and directed findings be prepared for April 4, 2012 at 9:30 a.m. On April 4, 2012 at 9:30 a.m., Council voted 5-0 to continue the hearing to April 26, 2012 at 3:00 p.m. On April 26, 2012 at 3:00 p.m., Council voted 4-1 to adopt findings and a final decision upholding the appeal of Verizon Wireless, overturning the Hearings Officer's decision and approved a Conditional Use and an Adjustment to waive landscaping as required at 33.274.040.9.a.[1] & [2] for a wireless telecommunications facility consisting of a 45-foot tall monopole and accessory equipment located at grade near the base of the monopole, with conditions.

## DECISION

Based on evidence in the record and adoption of the Council's Findings and Decision in **Case File LU 11-125536 CU AD** and by this reference made a part of this Order, **it is the decision of Council** to grant the appeal of Verizon Wireless and overturn the Hearings Officer's decision with conditions. The effect of the Council's decision is:

Approval of:

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

for a wireless telecommunications facility consisting of a 45-foot tall monopole and accessory equipment located at grade near the base of the monopole, subject to the following conditions:

- A) As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the four required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE – Case File LU 11-125536 CU AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B) The applicant must place all of the accessory equipment, except for the electrical service meter within an equipment building and the emergency generator screened by a matching wall.

C) The applicant shall install street trees and ground cover in the public ROW along the frontage of the site on SE Foster Road, subject to the review and approval of the Portland Bureau of Transportation Engineering.

D) The applicant shall relocate the facility from the originally proposed area behind the adjacent building, to around the corner and alongside the southeast façade of that building. Alternatively, any location on the site that is closer to SE Foster Road, farther away from residences, and east of the southeast façade of the adjacent building, will satisfy this condition.

**IT IS SO ORDERED:**

MAY 03 2012

Date



\_\_\_\_\_  
Mayor Sam Adams  
Presiding Officer at Hearing of  
April 26, 2012  
3:00 p.m. Session

LU 11-125536 CU AD

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**LU 11-125536 CU AD**

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LU 11-125536 CU AD  
TO BE SENT 12/2/2011  
ORDER MAILED: 05/ /2012