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CITY OF PORTLAND
Office of the City Auditor
1221 SW Fourth Avenue, Room 140
Portland, OR 97204-1900

I hereby certify this Land Use Document No. LU 11-125536 CU AD – Order of Council to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on May 9, 2012.

LAVONNE GRIFFIN-VALADE
Auditor of the City Of Portland
By *Gayla Jennings*
Deputy

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131/140/Auditor's Office

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**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 122nd 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 4th 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