



**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](http://www.portlandonline.com/bds)

**Date:** February 13, 2009  
**To:** Interested Person  
**From:** Dave Skilton, Land Use Services (503-823-0660)  
dave.skilton@ci.portland.or.us

**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 this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

**CASE FILE NUMBER: LU 08-191192 CU DZM – ROOFTOP  
RADIO FREQUENCY TRANSMISSION FACILITIES**

**GENERAL INFORMATION**

**Applicant:** Shurgard Institutional Fund, Owner  
PO Box 25025  
Glendale, CA 91201-5025  
  
Kevin Maki, Lessee  
Clearwire Us Llc  
4400 Carillon Point  
Kirkland, WA 98033

**Representative:** Steven Topp, Consultant (503-708-7337)  
12566 SW Bridgeview Ct.  
Tigard, OR 97223

**Site Address:** 1620 NE Sandy Boulevard

**Legal Description:** TL 2300 IMPS ONLY ALSO SEE -0290, SECTION 35 1N 1E  
**Tax Account No.:** R941350291  
**State ID No.:** 1N1E35DB 02300A1  
**Quarter Section:** 3032

**Neighborhood:** Kerns, contact Michael Whitmore at 503-233-0305.  
**District Coalition:** Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

**Zoning:** CGdm, General Commercial with Design and Main Street Corridor overlay zoning.

**Case Type:** CU DZM, Conditional Use with Design Review and Modifications requested

**Procedure:** Type II, an administrative decision with appeal to the Design Commission.

**Proposal:**

The applicant is requesting Design Review and Conditional Use approvals for a proposal to install a new Radio Frequency Transmission Facility on the roof of the existing building on the property, as follows:

- four panel antennas and two microwave dishes flush mounted to the walls of existing penthouse structures, within radio frequency transparent shrouds; and
- two antennas on a single, shrouded tripod mounted on the roof surface.

Design Review is required because the antennas would not be exclusively mounted to existing penthouse structures.

Conditional Use Review is required because the proposal is for Radio Frequency Transmission Facility within 50 feet of a residential property line.

**Relevant Approval Criteria:**

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

- |                           |  |
|---------------------------|--|
| ▪ 33.815 Conditional Uses | ▪ 33.460 Main Street Corridor Overlay Zone |
| ▪ 33.825 Design Review    | ▪ Community Design Guidelines              |

**ANALYSIS**

**Site and Vicinity:** The Shurgard Building, a cast-in-place, reinforced concrete structure probably dating from the first third of the twentieth century, was built for and has been continuously used as a storage facility. The building is plain and utilitarian in character and, based on an array of protruding concrete beam brackets, appears to have been designed with later additions on the east and north in mind. It occupies a prominent location on the south side of NE Sandy Boulevard, in the block between NE 16<sup>th</sup> and NE 17<sup>th</sup> Avenues. At six stories, and with two fifteen-foot tall penthouses on the roof, it is among the tallest structures in the vicinity, although there are four and five story structures within a few blocks. The building is also situated near the top of a gentle rise in the area's topography, making it a desirable site for locating radio transmission facilities requiring distant line-of-sight connectivity.

The neighborhood around the site is mixed in character. To the south and east are several blocks of single family residences mixed with a few commercial structures. Further south this residential pattern is interrupted by the commercial corridor of E Burnside Street before resuming beyond. To the north and west are more commercial properties, some multi-family residential development, and open space in the form of the ball fields associated with Benson High School. Beyond this lies Sullivan's Gulch and the I-84 corridor.

**Zoning:** The General Commercial (CG) zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market.

The Design (d) overlay zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The Main Street Corridor (m) overlay zone encourages higher density residential uses by allowing greater building heights, reducing required building coverage for residential development; and allowing more flexibility in site design. The intent of the zone is to provide

transit-supportive levels of residential and mixed-use development along identified main streets.

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

1. LUR 93-010578 AD (reference file 93-00579): Approving a 540 square foot wall sign, with conditions;
2. LUR 00-006712 CU (reference file 00-00157): Approving a radio transmission facility on an existing penthouse, with conditions; and
3. LU 05-130148 CU: Approving a radio transmission facility on an existing penthouse.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **January 8, 2009**. The following Bureaus have responded with no issues or concerns:

- Portland Water Bureau;
- Life Safety (Building Code) Section of the Bureau of Development Services.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on January 8, 2009. A total of eight written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal, as follows:

- On January 19, 2009, Jean Rogers, 128 NE 16<sup>th</sup> Avenue wrote in opposition to the proposal. The grounds on which Ms. Rogers raised objections are: the health impacts of the proposed transmissions and the diminishment of her property’s value. She also had specific technical questions about the proposed installation.
- On January 27, and February 3, 2009, Jeremy Ginzberg, 1623 NE Couch, wrote in opposition to the proposal on the basis that the proposal moves the building further out of character with the residential and low-rise commercial character of the neighborhood. He also made passing reference to alleged health impacts.
- On January 27, 2009, Eric Haas, 1622 NE Couch, wrote in opposition to the proposal on aesthetic and health-related grounds.
- On January 27, 2009, Emma Wood, 1622 NE Couch, wrote in opposition to the proposal on aesthetic and health-related grounds.
- On January 27, 2009, Erin Donovan, 1617 NE Couch, wrote in opposition to the proposal on aesthetic grounds.
- On January 29, 2009, Christina Files, 1617 NE Couch, wrote in opposition to the proposal on aesthetic and health-related grounds, and with concerns about diminishment of her property’s value.
- On January 29, 2009, Michael Whitmore, representing the Kerns Neighborhood Association as its Land Use Chairman, wrote in opposition to the proposal on grounds that: a) it will adversely effect neighborhood character; b) there is no demonstrated need for the facility; c) it might lead to development of more radio frequency transmission facilities in the area; and d) there is no benefit to the public or the neighborhood.
- On January 30, 2009, Dr. Anna Loomis, 35 NE 17<sup>th</sup> Avenue, wrote in opposition to the proposal on aesthetic and health-related grounds, and with concerns about neighborhood character.

**Staff Response:** Concerns about the proposal fall into three categories: health-related, property-value related, and aesthetic.

Health-related concerns. The location of the proposed equipment is in compliance with 33.274 Radio Frequency Transmission Facilities, which includes standards regarding the required distance of telecommunications equipment from habitable space. Staff is aware of studies that suggest possible links between telecommunications equipment and health problems. However, the decision must be based on applicable guidelines, in this case the *Community Design Guidelines*, a document which does not include consideration of health effects. Furthermore, federal law prohibits the City of Portland from considering health effects in the siting of telecommunications equipment.

Property-value concerns. Several of the letters state that the proposal will diminish property values in the neighborhood, but they do not indicate how this conclusion was reached. As with the previous item, this concern is not addressed in the applicable approval criteria, and would therefore not be taken into consideration even if it were supported by facts.

Aesthetic concerns. Staff concurs with concerns about the size and location of the “radio frequency transparent” screening shrouds proposed to conceal the equipment and has worked with the applicant to eliminate most of them and reduce the size of the remaining one. This approach also allowed the elimination of one of the two proposed tripod-mounting stands for the antennas. See findings for additional details.

## ZONING CODE APPROVAL CRITERIA

### (1) Chapter 33.815, Conditional Uses

#### 33.815.010 Purpose

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

#### 33.815.225 Radio Frequency Transmission Facilities

These approval criteria allow Radio Frequency Transmission Facilities in locations where there are few impacts on nearby properties. The approval criteria are:

- A. Approval criteria for facilities operating at 1,000 watts ERP or less, proposing to locate on an existing building or other non-broadcast structure in an OS or R zone or in a C, E, or I zone within 50 feet of an R zone:
  - 1. The visual impact of an antenna must be minimized. For instance, it can be hidden behind a compatible building feature such as a dormer, mounted flush to the facade of the building and painted to match, mounted on a structure designed with minimal bulk and painted to fade into the background, or mounted by other technique that equally minimizes the visual impact of the antenna;

**Findings:** All of the proposed equipment, except one antenna installation, will be attached to existing penthouse structures and painted to match the buildings color, a treatment that would normally be exempt from review. The one remaining installation, supported on a tripod on the roof, will be masked in a false chimney structure of radio frequency transparent material in order to minimize its visual impact.

*This criterion is therefore met.*

2. Accessory equipment associated with the facility must be adequately screened. If a new structure will be built to store the accessory equipment, the new structure must be designed to be compatible with the desired character of the surrounding area and be adequately screened; and

**Findings:** The equipment facility associated with the installation will be shelf-mounted to the west side of the easterly penthouse structure, where it will be completely out of view from the street.

*This criterion is therefore met.*

3. The regulations of Chapter 33.274, Radio Frequency Transmission Facilities are met.

**Findings:** The relevant regulations and standards for this proposal as discussed below, are the development standards of Chapter 33.274 - Radio Frequency Transmission Facilities. As discussed in detail under 33.274.040, all applicable regulations are met.

*This approval criterion is therefore met.*

## **DEVELOPMENT STANDARDS**

### **33.274.040 Development Standards Radio Frequency Transmission Facilities**

Amended by Ord. No. 165376, effective 5/29/92.)

#### **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.

**B. When standards apply.** Unless exempted by 33.274.030, above, the development standards of this section apply to all Radio Frequency Transmission Facilities. Applications to modify existing facilities regulated by this chapter are only required to meet the standards of Paragraphs C.3, C.4, C.5, C.6, and C.9 in addition to any previous conditions of approval. Increasing the height of a tower is not considered modification of an existing facility.

#### **C. General requirements**

1. Tower sharing. Where technically feasible, new facilities must co-locate on existing towers or other structures to avoid construction of new towers. Requests for a new tower must be accompanied by evidence that application was made to locate on existing towers or other structures, with no success; or that location on an existing tower or other structure is infeasible.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed. Therefore, this criterion is not applicable.

2. Grouping of towers. The grouping of towers that support facilities operating at 1,000 watts ERP or more on a site is encouraged where technically feasible. However, tower grouping may not result in radio frequency emission levels exceeding the standards of this chapter.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed. Therefore, this criterion is not applicable.

3. Tower finish. For towers not regulated by the Oregon Aeronautics Division or Federal Aviation Administration, a finish (paint/surface) must be provided that reduces the visibility of the structure.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed. Therefore, this criterion is not applicable.

4. Tower illumination. Towers must not be illuminated except as required for the Oregon State Aeronautics Division or the Federal Aviation Administration.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed. Therefore, this criterion is not applicable.

5. Radio frequency emission levels. All existing and proposed Radio Frequency Transmission Facilities are prohibited from exceeding or causing other facilities to exceed the radio frequency emission standards specified in Table 274-1, except as superseded by Part 1, Practice and Procedure, Title 47 of the Code of Federal Regulations, Section 1.1310, Radio Frequency Radiation Exposure Limits.

Table 274-1 Radio Frequency Emission Standards [1]			
Frequency Range	Mean Squared Electric ( $E^2$ ) Field Strength ( $V^2/m^2$ ) [2]	Mean Squared Magnetic ( $H^2$ ) Field Strength ( $A^2/m^2$ ) [3]	Equivalent Plane-Wave Power Density ( $mW/cm^2$ ) [4]
100 KHz – 3 MHz	80,000	0.5	20
3 MHz – 30 MHz	4,000 ( $180/f^2$ ) [5]	0.025 ( $180/f^2$ )	$180/f^2$
30 MHz – 300 MHz	800	0.005	0.2
300 MHz – 1500 MHz	4,000 ( $f/1500$ )	0.025 ( $f/1500$ )	$f/1500$
1500 MHz – 300 GHz	4,000	0.025	1.0

Notes:

[1] All standards refer to root mean square (rms) measurements gathered by an approved method.

[2]  $V^2/m^2$  = Volts squared per meter squared.

[3]  $A^2/m^2$  = Amperes squared per meter squared.

[4]  $mW/cm^2$  = Milliwatts per centimeter squared.

[5]  $f$  = Frequency in megahertz (MHz).

**Findings:** The proposed facility will operate within the frequency range of 1500 to 300GHz. The Effective Radiated Power for the facility is less than 100 watts. See Exhibit A

*This criterion is met.*

*Staff note: The Federal Telecommunications Act of 1996 prohibits a local government from denying a request to construct such facilities based on “harmful radio frequency emissions” as long as the wireless telecommunications facility meets the standards set by the FCC. Furthermore, the Act required the FCC to adopt standards for radio*

*frequency emissions from wireless telecommunications by August, 1996. In a rule making procedure, the FCC adopted standards effective August 1, 1996, which are virtually the same as those reflected in Table 274-1. Because this land use review was submitted after those standards took effect, this conditional use review cannot be denied solely on the issue of harmful radio frequency emission levels.*

6. **Antenna requirements.** The antenna on any tower or support structure must meet the minimum siting distances to habitable areas of structures shown in Table 274-2. Measurements are made from points A and B on the antenna to the nearest habitable area of a structure normally occupied on a regular basis by someone other than the immediate family or employees of the owner/operator of the antenna. Point A is measured from the highest point of the antenna (not the mounting device) to the structure, and Point B is measured from the closest point of the antenna to the structure.

<b>Table 274-2</b> <b>Distance Between Antenna and Habitable Area of Structure</b> (Where f is frequency in megahertz.)			
Effective Radiated Power	Frequency (MHz)	Point A: Minimum Distance From Highest Point of Antenna To Habitable Area of Structure (feet)	Point B: Minimum Distance From Closest Portion Of Antenna To Habitable Area of Structure (feet)
< 100 watts		10	3
100 watts to 999 watts		15	6
1,000 watts to 9.999 Kw	< 7	11	5
	7 - 30	$f/0.67$	$f/1.5$
	30 - 300	45	20
	300 - 1500	$780/\sqrt{f}$	$364/\sqrt{f}$
	> 1500	20	10
10 Kw plus	< 7	17.5	8
	7 - 30	$f/0.4$	$f/0.91$
	30 - 300	75	33
	300 - 1500	$1300/\sqrt{f}$	$572/\sqrt{f}$
	1500	34	15

**Findings:** The antennas will operate at less than 100 watts ERP, and thus the top of the antennas are required to be at least 10 feet from habitable space (Point A) and the bottom of the antennas are required to be at least 3 feet from habitable space (Point B), per Table 274-2. The building is used for storage, and there is no “habitable area normally occupied on a regular basis”.

*This criterion is therefore not applicable.*

7. **Setbacks.** All towers must be set back at least a distance equal to 20 percent of the height of the tower or 15 feet, whichever is greater, from all abutting R and OS zoned property and public streets. Accessory equipment or structures must meet the base zone setback standards.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed.

*This criterion is therefore not applicable.*

8. Guy anchor setback. Tower guy anchors must meet the main building setback requirements of the base zone.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed.

*This criterion is therefore not applicable.*

9. Landscaping and screening. The base of a tower and all accessory equipment or structures located at grade must be fully screened from the street and any abutting sites as follows:

- a. In C, E or I zones more than 50 feet from an R zone. A tower and all accessory equipment or structures located in the C, E, or I zones more than 50 feet from an R zone must meet the following landscape standard:

**Findings:** The proposal is to mount the facility on an existing building within 50 feet of an R zone.

*This criterion is therefore not applicable.*

- b. In OS or R zones or within 50 feet of an R zone. A tower and all accessory equipment or structures located in an OS or R zone or within 50 feet of an R zoned site must meet the following landscape standards:

- (1) Tower landscaping. A landscaped area that is at least 15 feet deep and meets the L3 standard must be provided around the base of the tower.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed.

*This criterion is therefore not applicable.*

- (2) Accessory equipment and structures. A landscaped area that is at least 10 feet deep and meets the L3 standard must be provided around the base of all accessory equipment or structures located at grade.

**Findings:** No accessory equipment or structures are proposed at grade.

*This criterion is therefore not applicable.*

10. Tower design.

- a. For a tower accommodating a Radio Frequency Transmission Facility of 100,000 watts or more, the tower must be designed to support at least two additional transmitter/antenna systems of equal or greater power to that proposed by the applicant and one microwave facility, and at least three two-way antennas for every 40 feet of tower over 200 feet of height above ground.
- b. For any other tower, the design must accommodate at least three two-way antennas for every 40 feet of tower, or at least one two-way antenna for every 20 feet of tower and one microwave facility.
- c. The requirements of Subparagraphs a. and b. above may be modified by the City to provide the maximum number of compatible users within the radio frequency emission levels.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed.



*This criterion is therefore not applicable.*

11. Mounting device. The device or structure used to mount facilities operating at 1,000 watts ERP or less to an existing building or other non-broadcast structure may not project more than 10 feet above the roof of the building or other non-broadcast structure.

**Findings:** The proposed antennas will be mounted below the highest roofline.

*This criterion is therefore met.*

12. Abandoned facilities. A tower erected to support one or more Federal Communication Commission licensed Radio Frequency Transmission Facilities must be removed from a site if no facility on the tower has been in use for more than six months.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed.

*This criterion is therefore not applicable.*

**D. Additional requirements in OS, R, C, and EX zones and EG and I zones within 50 feet of an R zone.**

1. Purpose. These additional regulations are intended to ensure that facilities operating at 1,000 watts ERP or less have few visual impacts. The requirements encourage facilities that look clean and uncluttered.
2. Standards. In addition to the regulations in Subsection C., above, facilities operating at 1,000 watts ERP or less located in OS, R, C, or EX zones or EG or I zones within 50 feet of an R zone must meet all of the following standards:
  - a. Antennas mounted on towers. Triangular “top hat” style antenna mounts are prohibited. Antennas must be mounted to a tower either on davit arms that are no longer than 5 feet, flush with the tower, within a unicell style top cylinder, or other similar mounting technique that minimizes visual impact.

**Findings:** The proposal is to mount the antennas on an existing building. No new tower is proposed.

*This criterion is therefore not applicable.*

- b. Antennas mounted on existing buildings or other non-broadcast structures. This standard only applies to facilities located in OS or R zones or within 50 feet of an R zone. The visual impact of antennas that are mounted to existing buildings or other non-broadcast structures must be minimized. For instance, on a pitched roof, an antenna may be hidden behind a false dormer, mounted flush to the facade of the building and painted to match; mounted on a structure designed with minimal bulk and painted to fade into the background; or mounted by other technique that equally minimizes the visual impact of the antenna. The specific technique will be determined by the conditional use review.

**Findings:** As previously discussed under criterion 33.815.225 A 1, the visual impact of the antennas has been minimized by locating the antennas within a

faux chimney mounted to the roof of an existing building. Thus the visual impact has been significantly reduced.

*This criterion is therefore met.*

- c. Lattice. Lattice towers are not allowed.

**Findings:** The proposal is to mount the facility on an existing building. No new tower is proposed.

*This criterion is therefore not applicable.*

**E. Additional requirements in R zones.** The minimum site area required for a tower in an R zone is 40,000 square feet. This regulation must be met in addition to the regulations in Subsections C. and D., above.

**Findings:** The proposal is to mount the facility on an existing building not in an R zone. No new tower is proposed.

*This criterion is therefore not applicable.*

## **(2) Chapter 33.825 Design Review**

### **Section 33.825.010 Purpose of Design Review**

Design review ensures that development conserves and enhances the recognized special design values of a site or area. Design review is used to ensure the conservation, enhancement, and continued vitality of the identified scenic, architectural, and cultural values of each design district or area. Design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. Design review is also used in certain cases to review public and private projects to ensure that they are of a high design quality.

### **Section 33.825.055 Design Review Approval Criteria**

A design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design guidelines for the area.

**Findings:** The site is designated with design overlay zoning (d), therefore the proposal requires Design Review approval. Because of the site's location, the applicable design guidelines are the Community Design Guidelines.

### **Community Design Guidelines**

The Community Design Guidelines consist of a set of guidelines for design and historic design cases in community planning areas outside of the Central City. These guidelines address the unique and special characteristics of the community plan area and the historic and conservation districts. The Community Design Guidelines focus on three general categories: **(P) Portland Personality**, which establishes Portland's urban design framework; **(E) Pedestrian Emphasis**, which states that Portland is a city for people as well as cars and other movement systems; and **(D) Project Design**, which assures that each development is sensitive to both Portland's urban design framework and the users of the city.

Staff has considered all guidelines and has addressed only those guidelines considered applicable to this project.

**P1. Plan Area Character.** Enhance the sense of place and identity by incorporating site and building design features that respond to the area's desired characteristics and traditions.

**D6. Architectural Integrity.** Respect the original character of buildings when making modifications that affect the exterior. Make additions compatible in scale, color, details, material proportion, and character with the existing building.

**Findings for P1 and D6:** The existing building, by virtue of its presence on the site since the early twentieth century, is *ipso facto* a component of the area's traditional character. It is a utilitarian structure with minimal ornamentation, and it includes exposed structural elements (beam brackets) that would normally be enclosed within the building envelope. As such, the building is stylistically capable of supporting other practical treatments, in this case the attachment of small scale, flush-mounted antennas and dishes on the original penthouses. One existing chimney is to be demolished as part of this proposal and one faux chimney will be added as a screening device for antennas mounted on a tripod structure on the roof. Because an earlier land use case approved three substantial faux "penthouse" structures as screening devices for other radio frequency transmission equipment on this roof, this proposal pushes the property to its limits in terms of the ability to support more additions/attachments.

*These guidelines are therefore met.*

**D7. Blending into the Neighborhood.** Reduce the impact of new development on established neighborhoods by incorporating elements of nearby, quality buildings such as building details, massing, proportions, and materials.

**D8. Interest, Quality, and Composition.** All parts of a building should be interesting to view, of long lasting quality, and designed to form a cohesive composition.

**Findings for D7 and D8:** The proposal blends its elements into the setting, a rooftop approximately 80' above grade, by adopting three strategies: one pair of antennas will be masked as a faux chimney structure similar in character to an existing chimney; other devices are small enough to read as insignificant attachments to the sides of existing penthouses; and all additions will be painted to match the color of the building. The building is utilitarian in character and includes exposed beam brackets apparently intended to facilitate an addition. The exposed, straightforward, and orderly attachment of other working elements, like the proposed antennas, fits into this character.

*With the condition of approval that all new hardware and shrouds be painted to match the penthouse color, these guidelines are therefore met.*

**(3) 33.825.040 Modifications That Will Better Meet Design Review Requirements:**

The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:

**A. Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and

**B. Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

The following modification is requested:

**33.130.210 Height**

**Purpose:** The height limits are intended to control the overall scale of buildings. The height limits in the CN1, CN2, and CO1 discourage buildings which visually dominate adjacent residential areas. The height limits in the CO2, CM, CS, and CG zones allow for a greater building height at a scale that generally reflects Portland's commercial areas. Light, air, and the potential for privacy are intended to be preserved in adjacent residential zones. The CX zone allows the tallest buildings, consistent with its desired character.

**Findings:** Design Guidelines: The building is, by virtue of its pre-dating most of the other commercial structures in the area, a definer of neighborhood character. The fact that its height exceeds the subsequently imposed limit of 45' in CG zoned areas, does not *per se* make the building incompatible with the neighborhood. Also, the proposal does not add height to the building but rather adds a slight amount of bulk (3'-0"x3'-0"x11'-0" or 99 cubic feet) above the height limit in the form of a faux chimney. The proposal better meets P1 – Plan Area Character and D6 – Architectural Integrity because retaining the building at its designed height maintains the longstanding character of the neighborhood.

Purpose of the Standard: The purpose statement addresses future buildings directly but is less clear with regard to existing structures. At approximately 95' to the top of the original penthouse, the building in question is over twice the height allowed in the CG zone. The modification request is not triggered by additional height, but by a small amount of additional mass, 99 cubic feet, above the height limit. The proposal essentially preserves an existing condition that is character-defining of the immediate neighborhood.

*The approval criteria are therefore 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, as modified during the review process, provides for a compatible and minimally visible installation of radio frequency transmission facilities atop an existing building. A modification to the height standard is approvable because the proposal adds only a small amount of bulk, 99 cubic feet, but no height above the 45' limit in the zone. The proposal therefore merits approval.

## **ADMINISTRATIVE DECISION**

Approval of four panel antennas and two microwave dishes flush mounted to the walls of existing penthouse structures; and two antennas on a single, shrouded tripod mounted on the roof surface; all new structures to be painted to match the penthouse;


Approval of a modification to 33.130.210 Height, for approximately 99 cubic feet of additional bulk above the 45' height standard of the zone (no additional height); and

Approval per Exhibits C-1 through C-10, signed and dated February 6, 2009, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use

review as indicated in Exhibits C-1 through C-10. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-191192 CU DZM. No field changes allowed."

B. All new hardware and shrouds are to be painted to match the penthouse color.

Decision rendered by:  on February 11, 2009.  
By authority of the Director of the Bureau of Development Services

**Decision mailed: February 13, 2009**

**Staff Planner: Dave Skilton**

**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 December 19, 2008, and was determined to be complete on January 5, 2009.

*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 December 19, 2008.

*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.

**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 Design Commission, which will hold a public hearing. Appeals must be filed **by 4:30 PM on February 27, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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](http://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 Design Commission 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 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 Design Commission 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 2, 2009 – (the day following the last day to appeal)**.
- 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.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**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. General Notes
  - 2. Vicinity/Site Plan (attached)
  - 3. Roof Plan
  - 4. Enlarged Roof Plans
  - 5. West and East Elevations (attached)
  - 6. South Elevation (attached)
  - 7. Enlarged Elevations
  - 8. Cabinet Details
  - 9. Antenna Details
  - 10. Equipment specifications
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses: (None)
- F. Correspondence:
  - 1. Jean Rogers, January 19, 2009, objecting to proposal on grounds of health and property value impacts;
  - 2. Jeremy Ginzberg, January 27 and February 3, 2009, objecting to proposal on grounds of health and aesthetic impacts;
  - 3. Eric Haas, January 27, 2009, objecting to proposal on grounds of health and aesthetic impacts;
  - 4. Emma Wood, January 27, 2009, objecting to proposal on grounds of health and aesthetic impacts;
  - 5. Erin Donovan, January 27, 2009, objecting to proposal on grounds of aesthetic impacts;
  - 6. Christina Files, January 29, 2009, objecting to proposal on grounds of health and property value impacts;
  - 7. Michael Witmore, Kerns Neighborhood Association, January 29, 2009, objecting on grounds that the proposal will: adversely effect neighborhood character, meet no demonstrated need, could encourage future radio transmission facilities in the area, and not give any benefit to the neighborhood.

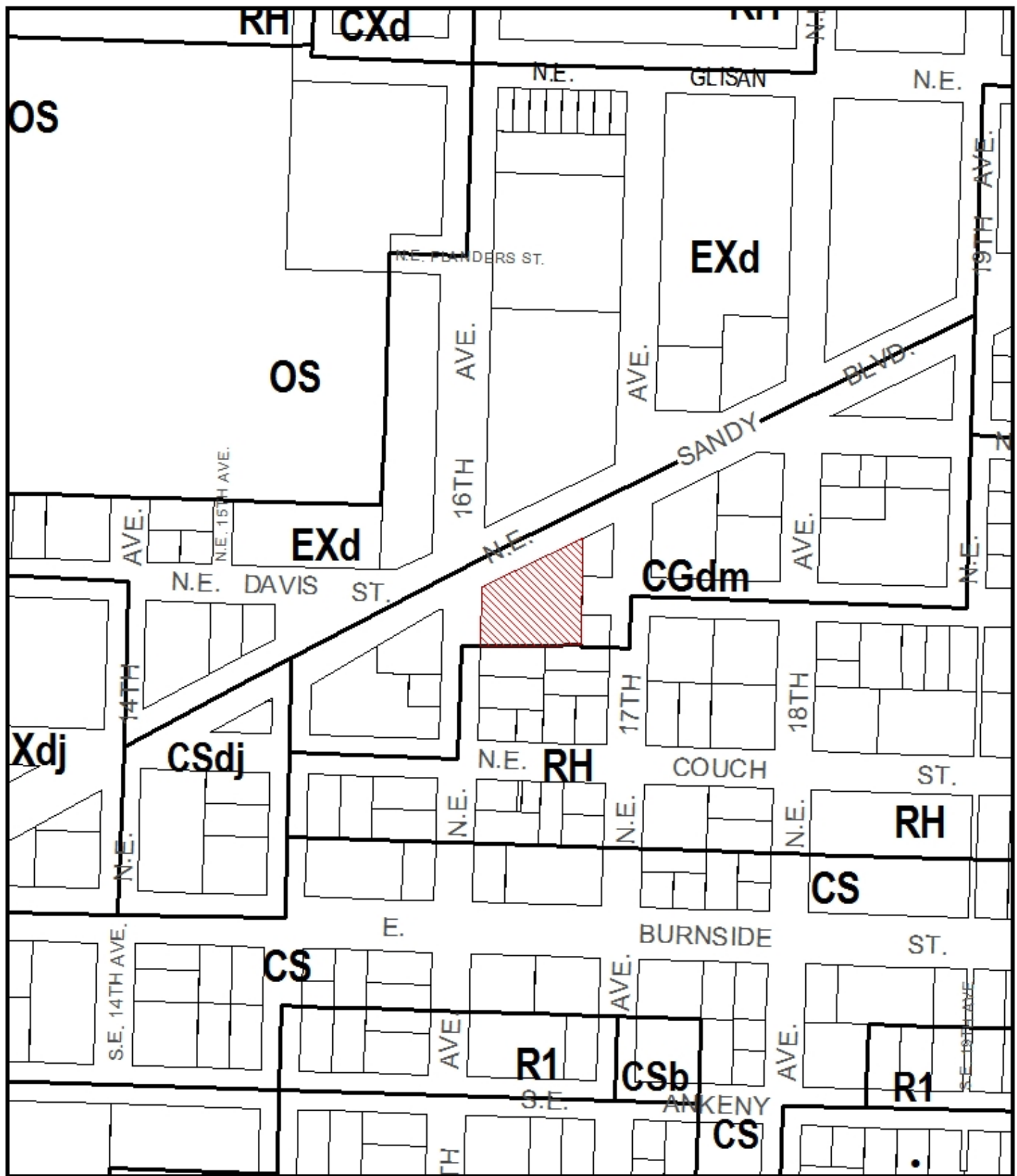
8. Dr. Anna Loomis, January 30, 2009, objecting to proposal on grounds of health and aesthetic impacts.

G. Other:

1. Original LU Application
2. Site History Research

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**





# ZONING



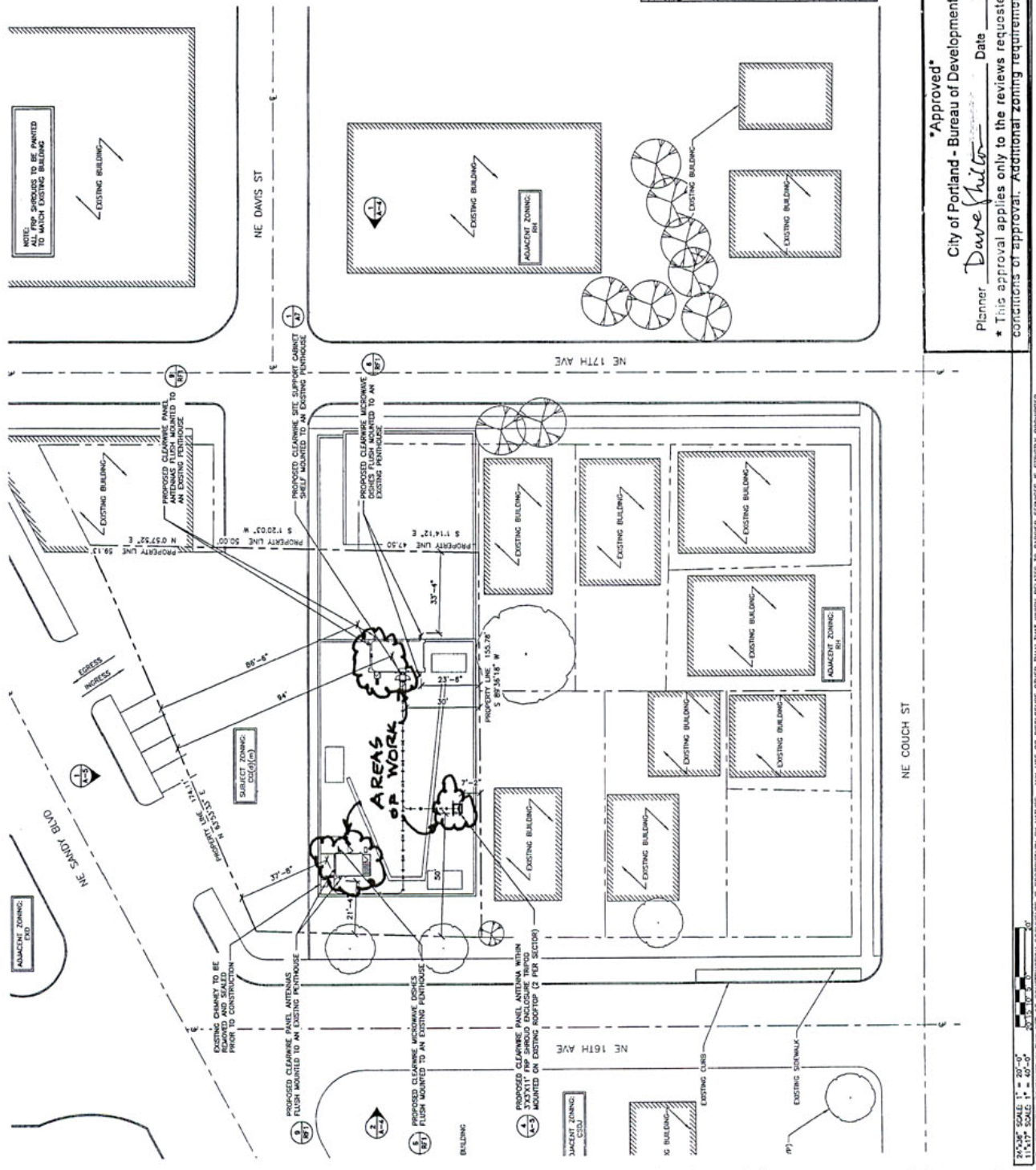
Site



NORTH

File No. LU 08-191192 CU DZM  
 1/4 Section 3032  
 Scale 1 inch = 200 feet  
 State\_Id 1N1E35DB 2300  
 Exhibit B (Dec 23, 2008)

- LEGEND**
- SUBJECT BOUNDARY LINE
  - RIGHT-OF-WAY CENTERLINE
  - RIGHT-OF-WAY LINE
  - ADJACENT BOUNDARY LINE
  - SECTIONAL BREAKDOWN LINE
  - OVERHEAD POWER LINE
  - BURIED POWER LINE
  - BURIED GAS LINE
  - OVERHEAD TELEPHONE LINE
  - BURIED TELEPHONE LINE
  - BURIED WATER LINE
  - BURIED SANITARY SEWER
  - BURIED STORM DRAIN
  - DITCH LINE/TLOW LINE
  - ROCK RETAINING WALL
  - VEGETATION LINE
  - CHAIN LINK FENCE
  - WOOD FENCE
  - PAVED DRIVE/WALK FENCE
  - FIRE HYDRANT
  - GATE VALVE
  - WATER METER
  - FIRE STAND PIPE
  - CATCH BASIN TYPE I
  - CATCH BASIN TYPE II
  - SON
  - GAS VALVE
  - GAS METER
  - BOLLARD
  - MAIL BOX
  - TELEPHONE WALK
  - TELEPHONE WALK
- TRANSFORMER  
LIGHT STANDARD  
POWER WALL  
UTILITY POLE  
POLE CAP WIRE  
GAS VALVE  
GAS METER  
TELEPHONE WALK



\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Dave Kuitert Date 2.6.9  
\* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.



REGISTERED ARCHITECT • NO. 12500 • EXPIRATION DATE 12/31/2008  
 RICHARD B. HALL  
 SEATTLE, WA 98108

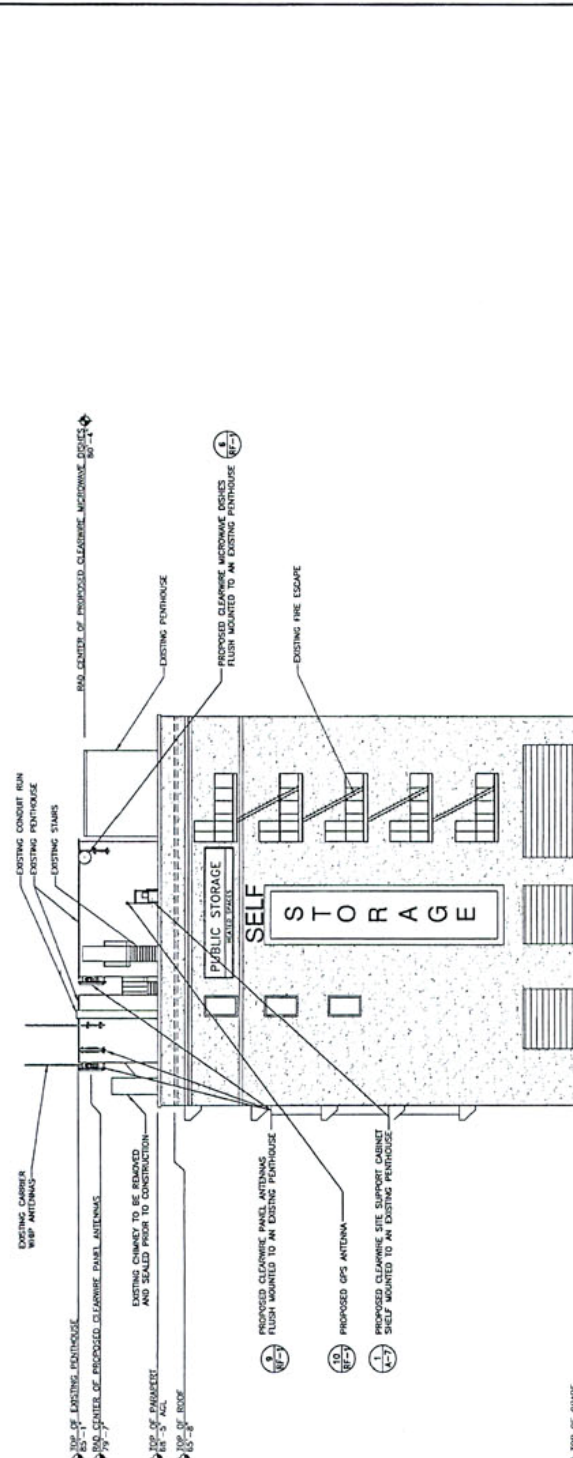
**SANDY PUBLIC STORAGE**  
OR-POR445-A  
1620 NE SANDY BLVD  
PORTLAND, OR 97232

REVISIONS				
NO.	DATE	BY	DESCRIPTION	APPROVED
1	11-10-04	REV 1	PRELIM ZONING	
2	11-10-04	REV 2	PRELIM ZONING	
3	11-10-04	REV 3	PRELIM ZONING	
4	11-10-04	REV 4	PRELIM ZONING	
5	11-10-04	REV 5	PRELIM ZONING	
6	11-10-04	REV 6	PRELIM ZONING	
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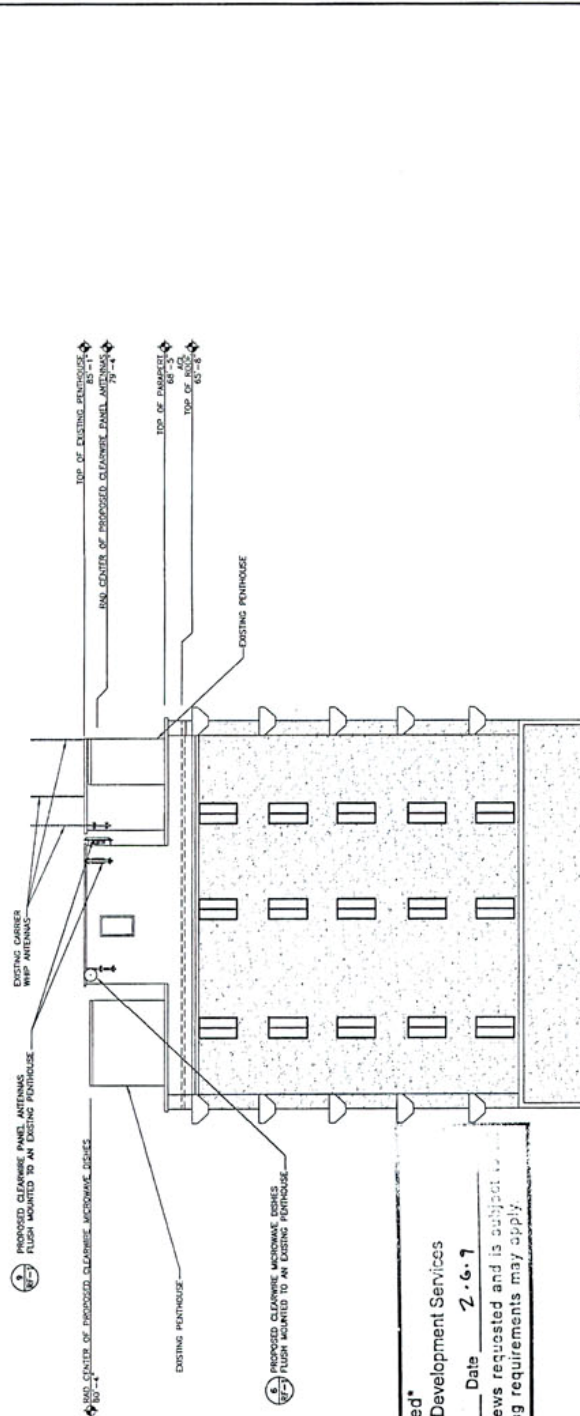
NOT FOR CONSTRUCTION UNLESS  
LABELLED AS CONSTRUCTION SET

SHEET TITLE
WEST & EAST ELEVATION(S)

SHEET NUMBER  
A-4



WEST ELEVATION 2



EAST ELEVATION

\*Approved\*  
City of Portland - Bureau of Development Services  
Planner Dave Sutton Date 2-6-7  
\* This approval applies only to the reviews requested and is subject to the conditions of approval. Additional zoning requirements may apply.

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.



WJ 08-191192 CV DZM EXHIBIT C-6