



City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: December 26, 2013

To: Interested Person

From: Sheila Frugoli, Land Use Services

503-823-7817 / Sheila.Frugoli@portlandoregon.gov

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 13-226922 AD

GENERAL INFORMATION

Applicant: Noah Grodzin, Verizon Wireless Representative

Cascadia PM

5501 NE 109th Ct, Suite A-2

Vancouver, WA 98662

Property Owner: HCO Portland Properties LLC

PO Box 659

Springfield, OR 97477-0121

Site Address: 7410 N LEADBETTER RD

Legal Description: LOT 3 TL 1300, LEADBETTER INDUSTRIAL PK

 Tax Account No.:
 R484430200

 State ID No.:
 2N1W25A 01300

Quarter Section: 1521

Neighborhood: St. Johns, contact Jason Sundling at jasonsundling@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: IHh, Heavy Industrial zone with the h, Aircraft Landing overlay zone

Case Type: AD, Adjustment Review

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee.

Proposal: Verizon Wireless intends to construct a 154 foot tall monopole (cell tower) that will support antennas. The tower and associated equipment will be located in the southwest corner

of the subject site, with a separate lease area. The applicant has requested an Adjustment to waive landscaping, (PCC 33.274.040.C.9) that is required to screen the base of the tower and the accessory equipment or structures located at grade. The landscaping must comply with the L3, High Screen standard (PCC248.020.C) which requires a continuous row of 6-foot tall evergreen shrubs. Trees and groundcover are also required.

The applicant intends to construct a 6-foot tall chain link fence along the lease boundary for the monopole facility.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The criteria are 33.805.040.A-F, Adjustment Review.

ANALYSIS

Site and Vicinity: The subject site is an approximate 3,600 square-foot, triangle-shaped "lease lot" that has been created through a ground lease. The ground lease sits on a larger 4.8 acre lot that is located in the Rivergate Industrial area, near the confluence of the Willamette and Columbia Rivers. The site is located near the south end of the Leadbetter Peninsula, which extends into Bybee Lake and near a segment of the Columbia Slough. This area is comprised of vegetation, wetlands and water bodies, all owned by the Port of Portland. The site is separated from the water body by an approximate 125 foot wide Port-owned lot and a dense landscape edge. The western abutting lot, with frontage on NE Bybee Lakes Court is vacant. The remaining lots that front Bybee Lake Court are developed. The southern most lot contains the Wapato Correctional Facility. The facility, an approved Conditional Use for a 525-bed medium security prison, was constructed by Multnomah County. But, due to budget constraints, it has never been occupied.

Other industrial lots with frontage on N Bybee Lake Court and N. Leadbetter Road are developed with large industrial warehouse or manufacturing buildings. The buildings are concrete tilt-up structures and are not much over 20 feet in height. There are no radio frequency (cell) towers nearby. The Portland Zoning Code allows, without a Conditional Use review, towers on industrially-zoned sites as long as they spaced at least 2,000 feet apart.

Zoning: The site is zoned IHh, Heavy Industrial with an "h", Aircraft Landing overlay zone. The Heavy Industrial zone is one of three zones that implements the Industrial Sanctuary Comprehensive Plan Map designation. The zone provides areas where industrial uses may locate, including those uses that are not desirable in other zones due to their objectionable impacts or appearance. Detention facilities are permitted in the IH zone only through an approved Conditional Use review. The "h" overlay limits the height of structures and vegetation in order to provide safer operating conditions for aircraft in the vicinity of the Portland International Airport. The height limit of the overlay zone is, at its lowest point on the site is 840 feet.

Land Use History: City records indicate there is one prior land use reviews for this site. The lot and abutting sites were created through a subdivision review in 1994—LUR 94-00979 SU.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **November 26, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation (Exhibit E.6)
- Water Bureau (Exhibit E.2)
- Fire Bureau (Exhibit E.3)
- Site Development Section of BDS (Exhibit E.4)

- Life Safety, Plan Review Section of BDS (Exhibit E.5)
- Bureau of Parks-Forestry Division (Exhibit E.6)

The Bureau of Environmental Services responded with the following comments:

A. RESPONSE SUMMARY

BES has no objection to the requested Adjustment. Note that the proposed development will be subject to BES standards and requirements during the permit review process. The following comments have been included as a courtesy to the applicant.

B. SANITARY SERVICE

- 1. Existing Sanitary Infrastructure:
 - a. There is a 12-inch RCP public sanitary gravity sewer located in N Leadbetter Road that can serve the sanitary disposal needs of this project (BES project # 5558).

C. STORMWATER MANAGEMENT

- Existing Stormwater Infrastructure:
 - a. There is a 36-inch RCP public storm-only sewer located in N Leadbetter Road (BES project # 5558).
- 2. General Stormwater Management Requirements: All development and redevelopment proposals are subject to the requirements of the City of Portland Stormwater Management Manual (SWMM). The SWMM is periodically updated; projects must comply with the version that is adopted when permit applications are submitted. The 2008 SWMM may be obtained at the City of Portland Development Services Center (1900 SW 4th Ave) and from the BES website (www.portlandonline.com/bes/2008SWMM).
- 3. Development projects are evaluated using the criteria described in <u>Section 1.3</u> of the SWMM. The Stormwater Hierarchy guides the applicant in determining where stormwater runoff should be conveyed (i.e. infiltrated on-site or discharged off-site). The highest technically feasible category must be used. Regardless of the discharge point, vegetated surface facilities are required to the maximum extent feasible to meet SWMM pollution reduction and flow control requirements.
- 4. On-Site Stormwater Management Comments: BES reviews stormwater management facilities on private property for the feasibility of infiltration, pollution reduction, flow control, and off-site discharges. The Site Development Section of BDS determines if stormwater infiltration on private property is feasible when slopes on or near the site present landside or erosion related concerns, or where proximity to buildings might cause structural problems.
 - a. BES understands that less than 500 square feet of new or redeveloped impervious area will be created with this project. Therefore, pollution reduction and flow control requirements of the SWMM do not apply. However, a disposal location for stormwater runoff must be identified at the time of building permit review.

D. SITE CONSIDERATIONS

 Landscaping: This development borders the Smith Bybee Comprehensive Natural Resource Plan area. Therefore the use of native plants in the landscape area is particularly important. Light spill from any light fixtures should also be controlled to protect this natural resource. (Exhibit E.1)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 26, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown 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 purpose of the landscape standard, described under Section 33.274.040, is to:

Ensure that Radio Frequency Transmission Facilities will be compatible with adjacent uses;

Section 33.248.020.C describes the intent of the L3, high screen standard as follows:

The L3 standard is a landscape treatment which uses screening to provide the physical and visual separation between uses or development. It is used in those instances where visual separation is required.

A 5-foot deep landscape buffer, planted to meet the L3 standard is required around the base of RF towers and any accessory equipment. The applicant wishes to waive the requirement. To secure the facility, the applicant is proposing to install a 6-foot tall, chain link fence with strands of barbed wire on the top of the fence.

The abutting sites are zoned for industrial use. Most of the sites are developed with relatively new, well maintained large warehouse-like buildings. Approximately 130 feet to the south is a segment of Bybee Lake. The Smith and Bybee Lakes natural area is 2,100 acres in size and is comprised of land, wetlands and water bodies. Most of the area is under the ownership of the Port of Portland, Metro and City of Portland. The applicant has identified the existing dense landscaping along the edge of the natural area and the landscape area on the north side of the 4.8 acre lot that fronts N. Ledbetter Road. Staff finds that given the Verizon lease area is located over 400 feet from the landscaped area near the N. Leadbetter right-of-way and over 100 feet from the designated natural area, the existing landscaping would not screen the facility. The Verizon lease area is located in the southwestern corner of the site that is not screened by other buildings. Further, a chain link fence will not obstruct views from the adjacent properties and N. Bybee Court.

Landscape areas provide functional benefits such as reducing stormwater runoff, reducing airborne and water pollution and provide shade and cooling. In particular, many species of trees can screen larger structures given their height and span of canopy. Given the existing landscaping along the edge of the street, and the nearby large natural area, the use of plants to screen the Verizon facility are not essential. Rather, a tall sight-obscuring fence would provide sufficient physical and visual separation. To fulfill the purpose of the regulation, a condition will require the installation of a 6-foot tall fence that is fully sight-obscuring to surround all the mechanical equipment, structures and the base of the tower. If barbed wire is necessary, the condition will require that it be located inside and just below the top of the fence to reduce visual clutter.

With compliance with the condition, the request equally meets the purpose of the screening standard.

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: The site is industrially-zoned. Both N. Ledbetter and nearby N. Bybee Lake Court are designated as local service streets within a designated Freight District. The requested Adjustment does not conflict with the street classification. The Heavy Industrial zone provide areas where industrial uses may locate, including those uses that are not desirable in other zones due to their objectionable impacts or appearance. With screening, radio frequency (cell) towers and their associated equipment are allowed in the Heavy Industrial zone. With compliance with a condition that requires sight obscuring fencing, 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: The applicant is requesting to vary from one development standard. Therefore, this criterion does not apply.

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

Findings: City-designated scenic or historic resources are shown on the City's zoning map by the "s" overlay symbol. Historic resources are designated by a large dot. There are no such designated resources present on the site. Therefore, this criterion is not applicable.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: As explained under criterion A, a tall fence will adequately mitigate for the lack of vegetative screening. Through compliance with a condition that the fencing be installed, this criterion is met.

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: This site is not within an environmental zone, which is shown on the City's zoning map by either a "c" or "p" overlay symbol. Therefore, this criterion does not apply.

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

A solid fence, at least 6-feet tall, will provide adequate visual screening of the base of the tower and equipment. Based on the findings of this report, the approval criteria are met. Therefore, the requested Adjustment should be approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to waive the required L3, high screen landscaping in a 5-foot deep setback along the south property line (Zoning Code Section 33.270.040), as illustrated on the submitted site plan, Exhibits C.1, signed and dated December 23, 2013, subject to the following conditions:

- A. As part of the building permit application submittal, the development-related condition B must be met. The sheet on which this information appears must be labeled "Site improvements required per land use decision, case file LU 13-226922 AD."
- B. A fully sight-obscuring fence, that meets the F2 standard (PCC 33.248.020.G), at least 6-feet tall, must be installed to surround the base of the radio frequency tower and all accessory equipment or structures. If barbed wire is installed on the solid fence, it must be located inside and just below the top of the fence.

Staff Planner: Sheila Frugoli

Decision rendered by: ______ on December 23, 2013

By authority of the Director of the Bureau of Development Services

Decision mailed: December 26, 2013

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 November 12, 2013, and was determined to be complete on November 22, 2013.

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 November 12, 2013.

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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 9, 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 January 10, 2014 (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:

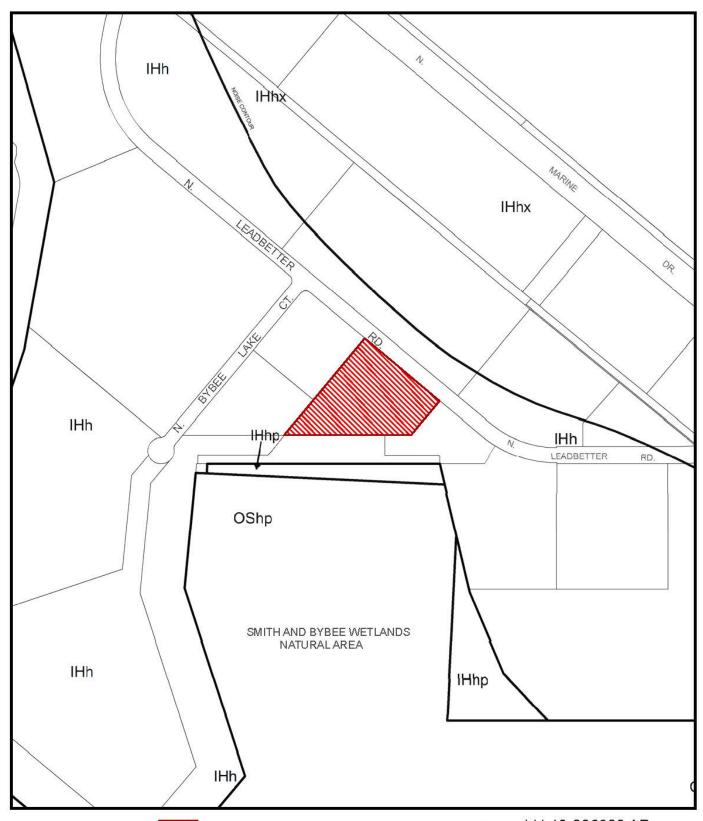
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Enlarged Site Plan -Lease Area (attached)
 - 2. Overall Site Plan
 - 3. Elevation
 - 4. Vicinity Map and Survey
 - 5. Photos of Site
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
 - 3. Fire Bureau
 - 4. Site Development Review Section of BDS
 - 5. Life Safety Plan Review Section of BDS
 - 6. TRACS Print-Out identifying "no concerns" from Bureau of Transportation and Bureau of Parks, Forestry Division
- F. Correspondence: NONE
- 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

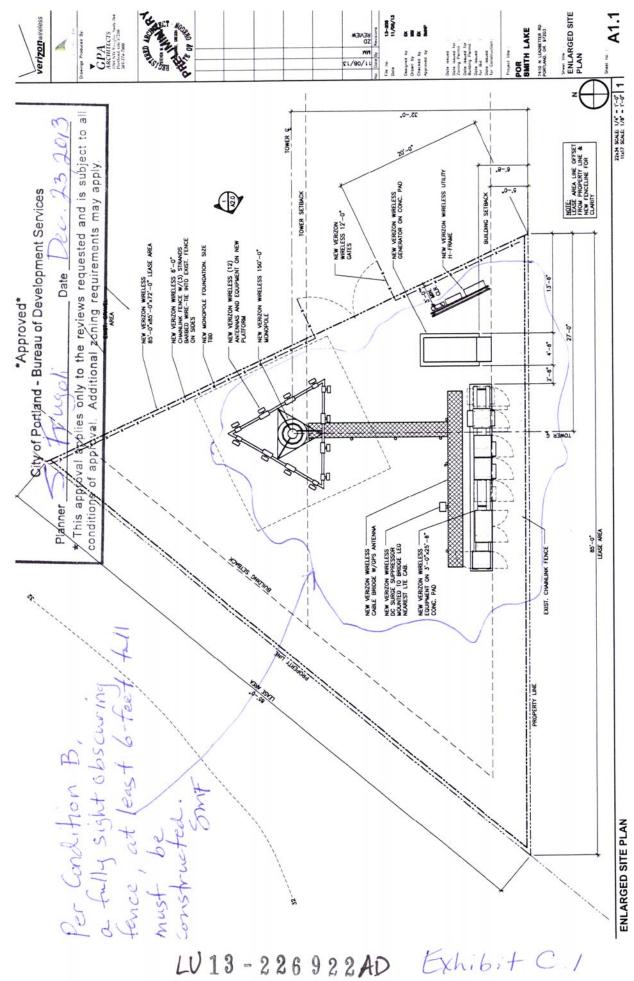


LU 13-226922 AD File No. _ 1521 1/4 Section_

1 inch = 400 feet Scale. 2N1W25A 1300 State_Id .

(Nov 15, 2013) Exhibit.





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