



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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

Date: November 23, 2016
To: Interested Persons
From: Megan Sita Walker, City Planner, Bureau of Development Services

NOTICE OF APPEAL HEARING
ON A PROPOSAL IN YOUR NEIGHBORHOOD

CASE FILE: LU 16-129919 HR – NEW WIRELESS FACILITY
CONCEALED IN FAUX WATER TOWER
REVIEW BY: Landmarks Commission
WHEN: Monday, January 9, 2017, at 1:30pm
WHERE: 1900 SW Fourth Avenue
Conference Room 2500A
Portland, Oregon 97201

Within the past several weeks, we sent you the Bureau of Development Services Administrative Findings and Decision on this proposal. That decision of **denial** has now been appealed by: E. Michael Connors, attorney representing applicant.

A copy of the appeal is attached as well as an explanation of the hearings process. This is a notice to inform you of a public hearing on this proposal and invite you to testify at this hearing. At the hearing the Landmarks Commission will consider the proposal for the development described below.

The following information will tell you important information about this proposal. It is a summary of the administrative decision which you previously received.

Applicant(s): Emily Estrada
Centerline Solutions
6623 NE 78th Ct, Ste. B-1
Portland, OR 97218

Noah Grodzin
Verizon Wireless
5430 NE 122nd Ave
Portland, OR 97230

Owner: Lex Industries LLC
Po Box 780
Hood River, OR 97031

Site Address: 208-218 SW 1ST AVE

Tax Account No.: R667703990
State ID No.: 1N1E34DC 02700
Quarter Section: 3030

Neighborhood: Old Town-China Town, contact Sarah Stevenson 503-226-4368 x2 or Zach Fruchtengarten 503-227-1515.

Business District: Old Town Chinatown Business Association, contact at chair@oldtownchinatown.org.

District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Plan District: Central City - Old Town/Chinatown

Other Designations: Contributing Resource in the Skidmore/Old Town Historic District, a Historic Landmark registered with the National Register of Historic Places.

Zoning: CXd – Central Commercial with Design Overlay and Historic Resource Protection Overlay

Case Type: HR – Historic Resource Review

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

Proposal:

The applicant seeks Historic Resource Review approval to install a new stealth wireless facility on the roof of the historic Old Portland Machine Company building, a 3-story structure, located at 208 SW 1st Avenue built in 1895. The Old Portland Machine Company building, also known as the 208 Building, is a contributing building in the Skidmore/ Old Town Historic District, listed in the National Register of Historic Places on December 6, 1975. The proposed faux water tower consists of a fiber reinforced plastic (FRP) “tank” approximately 10’ in diameter and 9’-6” tall supported by a 7’-9” tall steel structure, for a maximum total height of 17’-3” from the surface of the roof deck to the top of the tower. The faux water tower and associated steel structure are proposed to be set back approximately 19’-6” from the south roof edge abutting an adjacent 2-story landmark building (the Seufert Building, built in 1889), and are proposed to be set back approximately 14’-6” from the west roof edge fronting onto SW 1st Avenue, a MAX light rail line, Major Transit Priority Street, and Community Main Street.

Within the new faux water, the following equipment is proposed:

- Six (6) new antennas
- Six (6) Remote Radio Units (RRU’s) mounted behind each antenna
- Three (3) new surge protectors mounted behind antennas

The remaining equipment associated with the new wireless facility is proposed to be located in the basement of the building and the hybrid cable routes are proposed to be routed across the roof, down through an existing masonry chimney.

Historic resource review is required because the proposal is for exterior alteration of a building in the Skidmore/ Old Town Historic District.

Note: Since the Notice of Proposal was mailed out on September 21, 2016, the proposed RF shroud made to resemble a water tower has been reduced from approximately 14’ in diameter to 10’ in diameter, and the number of antennas and RRUs proposed has been reduced from 10 to 6.

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:

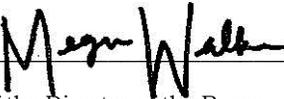
- *Central City Fundamental Design Guidelines*
- *Skidmore Old Town Historic District Design Guidelines (1988)*

The following administrative decision was issued on Date Mailed: **November 4, 2016**

Administrative Decision:

Denial.

Staff Planner: Megan Sita Walker

Decision rendered by:  **on November 2, 2016**

By authority of the Director of the Bureau of Development Services

Decision mailed: November 4, 2016

Review of the file: The complete Administrative Findings and Decision and all evidence on this case are now available for review at the Bureau of Development Services (BDS), 1900 SW Fourth Avenue, Suite 5000, Portland, OR 97201. Please call BDS at 503-823-7617 for an appointment to review the file. If the Administrative Findings and Decision are modified in any way, that report will be available 10 days prior to the hearing. Copies of information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some information over the phone.

We are seeking your comments on this proposal. To comment, you may write or testify at the hearing. Please refer to the file number when seeking information or submitting testimony. In your comments, you must address the approval criteria as stated in the administrative report and decision which you previously received.

Written comments must be received by the beginning of the hearing and should include the case file number. Thank you for any information you can provide regarding this case.

Note: If you have already written, it is not necessary to write again; your correspondence will be given to the Landmarks Commission.

Any new written comments must be given to or mailed to the Landmarks Commission, **Megan Sita Walker, Planner**, 1900 SW Fourth Avenue, Suite 4500, Portland, OR 97201. You may FAX your comments to the Committee or Commission at 503-823-5630.

A description of the Landmarks Commission hearings process is attached. The decision of the Landmarks Commission is final; any further appeal is 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 775 Summer St NE, Suite 330, Salem OR 97301-1283 [Telephone: 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 Landmarks Commission an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

For more information, call Megan Sita Walker, Planner at 503-823-7294 or email MeganSita.Walker@portlandoregon.gov.

Attachments:

1. Zoning Map
2. Site Plan (Not Approved)
3. Appeal
4. Type II Appeal Hearings Process

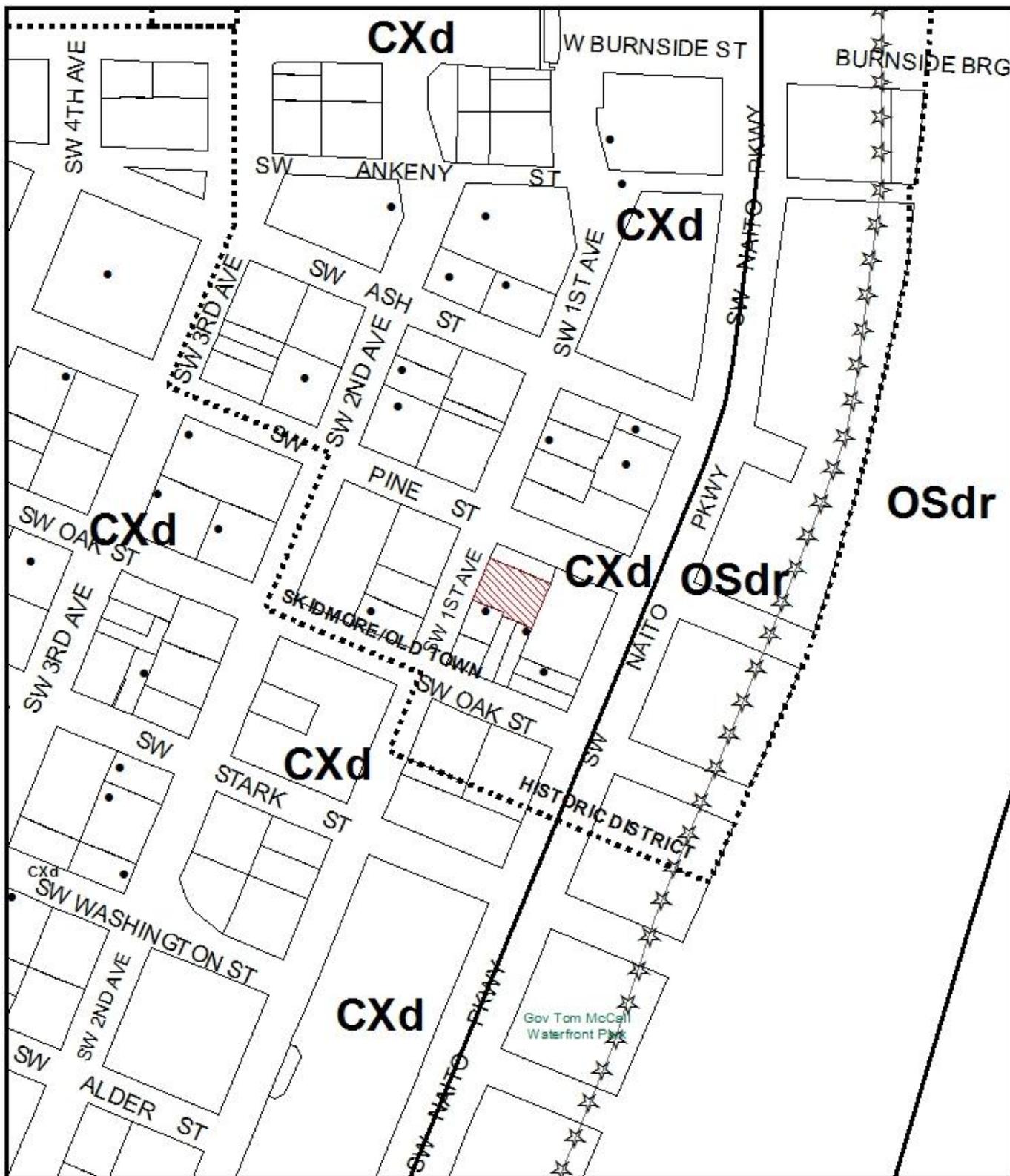
cc: Landmarks Commission
Representative/owner/applicant and appellant, if different.
Neighboring property owners within 150 feet.
All persons who wrote letters in response to this application per Decision Exhibit List.
Neighborhood Association(s)

HEARING CANCELLATION

This public hearing will be cancelled if Portland Public Schools close due the inclement weather or other similar emergency. Check local television and radio reports for school closures. The hearing will be rescheduled for the earliest possible date. A renotification notice will not be sent. Contact the Bureau of Development Services at 503-823-7967, for immediate information regarding cancellations or rescheduling.

To attend the hearing, public transportation is available. Tri-Met buses stop near the BDS building on SW Fifth or Sixth Avenues at Hall or Harrison Streets. Call Tri-Met at 503-238-7433 (or www.trimet.org/schedule/allroute.htm) for routes and times. Hourly-rate public parking is available a half block south of the BDS building on Fourth Avenue.

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)



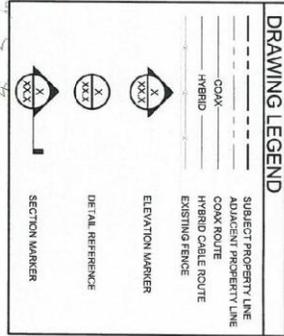
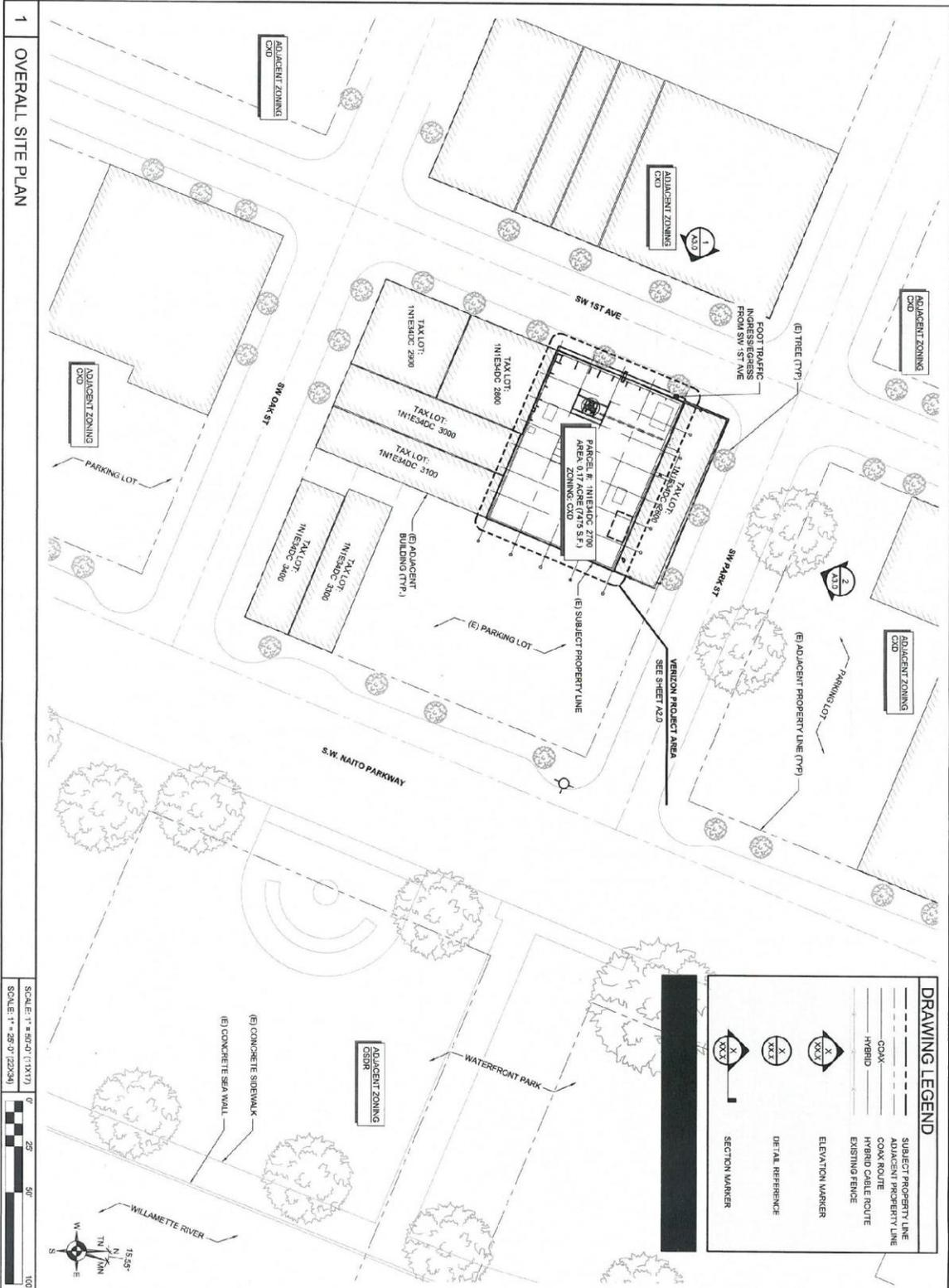
ZONING

This site lies within the:
 CENTRAL CITY PLAN DISTRICT
 OLD TOWN/CHINATOWN SUBDISTRICT
 SKIDMORE / OLD TOWN HISTORIC DISTRICT



- Site
- Recreational Trails
- Historic Landmark

File No.	LU 16-129919 CU HR
1/4 Section	3030
Scale	1 inch = 200 feet
State_Id	1N1E34DC 2700
Exhibit	B (Mar 04, 2016)



verizon

CENTERLINE
SOLUTIONS

MINIARY

verizon

CENTERLINE
SOLUTIONS

SITEMAME:
POR BOSTON

SITE ADDRESS:
200 SW 1ST AVE
PORTLAND, OR 97204-5332

SHEET TITLE:
OVERALL
SITE PLAN

SHEET NO.
A1.0

NO.	DATE	DESCR.	BY	CHKD.
1		PRELIMINARY		
2		CONCEPT		
3		CONCEPT		
4		CONCEPT		
5		CONCEPT		
6		CONCEPT		
7		CONCEPT		
8		CONCEPT		
9		CONCEPT		
10		CONCEPT		

1 OVERALL SITE PLAN

SCALE: 1" = 50'-0" (1:1500)
SCALE: 1" = 25'-0" (1:750)

EXHC-2 LV 16-129919 HR



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue - Portland, Oregon 97201 | 503-823-7300 | www.portlandoregon.gov/bds



Type II and IIX Decision Appeal Form

LU Number: 16-129919 HR

FOR INTAKE, STAFF USE ONLY

Date/Time Received 11/18/16 @ 2:32pm Action Attached _____
 Received By AP Fee Amount \$ 250.00
 Appeal Deadline Date 11/18/2016 (4:30pm) [Y] [N] Fee Waived _____
 Entered in Appeal Log Bill # 4037416
 Notice to Dev. Review _____ Neighborhood Old Town-Chinatown

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 208 SW 1st Avenue DEADLINE OF APPEAL November 18, 2016
 Name E. Michael Connors, HATHAWAY KOBACK CONNORS, LLP
 Address 520 SW Yamhill St., Ste. 235 City Portland State/Zip Code OR 97204
 Day Phone (503) 205-8401 Email mikeconnors@hkcllp.com Fax (503) 205-8406
 Interest in proposal (applicant, neighbor, etc.) Attorney representing Applicant

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. 846 . _____ Zoning Code Section 33. 130 . 030
 Zoning Code Section 33. 274 . _____ Zoning Code Section 33. _____ . _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

Please see attached letter from E. Michael Connors, dated November 18, 2016.

Appellant's Signature E. Michael Connors

FILE THE APPEAL - Submit the following:

- This completed appeal form
- A copy of the Type II or IIX Decision being appealed
- An appeal fee as follows:
 - \$250, payable to City of Portland
 - No appeal fee is charged when appeal is filed by ONI recognized organizations for properties within organization's boundaries
 - Fee waiver request letter for low income individual is signed and attached
 - Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

The City must receive the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee (or fee waiver request as applicable) at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

A public hearing on the appeal will be held. 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.

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

Type II and IIx Appeal Procedure

For land use review applications that follow a Type II and IIx procedure, the Bureau of Development Services makes the decision on the application. This decision is called the Administrative Decision and may be appealed. The applicant and/or an interested person who does not agree with the Administrative Decision may appeal it by using the Type II and IIx Decision Appeal Form and submitting an appeal fee. No appeal fee is charged for Type II and IIx appeals when filed by an ONI recognized organization; the appeal must be for property located within the organization's boundaries, and the vote to appeal must be in accordance with the organization's bylaws. An appeal of a decision triggers an initial hearing before a City review body.

There is a 14-day appeal period that starts the day that the decision is mailed. The last day to appeal is stated in the decision. If appealed, a specific review body hears the case and makes the final City decision. These review bodies include:

- The Hearings Officer
- The Design Commission
- The Portland Historic Landmarks Commission
- The Adjustment Committee

Type II and IIx Appeal Hearing

When a decision is appealed, the Bureau of Development Services schedules a public hearing and sends out a notice within five days of receiving the appeal. The hearing is held at least 21 days from the mailing of the notice.

At the hearing, everyone attending is allowed to speak to the review body. The testimony must address whether or not the proposal meets the approval criteria as described in the Administrative Decision or how the City erred procedurally. Written testimony is also accepted prior to or at the hearing. This may include additional information submitted by the applicant and/or appellant.

If a committee reviews the appeal, a decision is made at the hearing. If the Hearings Officer is the review body, they may make a decision at the hearing, or make a decision later. Both the Hearings Officer and the committee must make a written decision and send notice of the decision within 17 days after the hearing. The decision is mailed to the appellant, applicant, and to anyone who submits oral or written testimony at the hearing.

The review body may adopt, modify, or overturn the Administrative Decision based on the information presented at the hearing and in the case record.

Appeal Fees

An appeal of a land use decision must include an appeal fee. There is a \$250 fee charged for appealing a Type II and IIx decision. This fee is refunded if the decision-maker grants the appeal; i.e. agrees with the appellant.

In order for an appeal to be valid, an appeal fee must accompany the appeal form or a fee waiver request must be approved before the appeal deadline as stated in the specific land use decision (Section 33.730.020 of the Portland Zoning Code). See below for fee waiver eligibility information.

Low Income Fee Waiver

The appeal fee may be waived for low income applicants who appeal a land use decision on the site of their primary residence in which they have an ownership interest. In addition, the appeal fee may be waived for low income individuals who have resided for at least 60 days within the required notification area for the land use review. 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.

Information is subject to change



520 SW Yamhill St.
Suite 235
Portland, OR 97204

E. Michael Connors
503-205-8400 main
503-205-8401 direct

mikeconnors@hkcllp.com

November 18, 2016

VIA HAND DELIVERY

Historic Landmarks Commission
c/o Bureau of Development Services
City of Portland
1900 SW 4th Avenue, Fifth Floor
Portland, OR 97201

Re: Case File No. LU 16-129919 HR
Appeal of BDS Type II Decision
Verizon Wireless – New Rooftop Wireless Facility

Dear Commissioners:

This firm represents the applicant Verizon Wireless (“Verizon”) with respect to the above-referenced appeal of the City Staff’s Type II Decision, dated November 4, 2016 (the “Staff Decision”), denying the Historic Resource Review application for a new rooftop wireless facility proposed on the Old Portland Machine Company building located at 208 SW 1st Avenue in Portland. This letter and the attached documents supplement the Type II Decision Appeal Form submitted contemporaneously with this letter and provide reasons why the proposal meets the applicable approval criteria.

The Historic Landmarks Commission should grant the appeal and approve the application for three primary reasons. First, the Staff Decision failed to consider all of the design options Verizon proposed for the wireless facility, including a stealth mechanical penthouse design which the staff identified as a preferred design in the Staff Decision. Second, the City staff erred in denying the application because they misinterpreted and misapplied the Central City Fundamental Design Guidelines and Skidmore Old Town Historic District Design Guidelines (the “Guidelines”). Third, the City’s denial of the application will prohibit or have the effect of prohibiting Verizon from providing personal wireless services in this area of the City in violation of the Federal Telecommunications Act.

Background

A. The application process and proposed design alternatives.

Verizon is upgrading and expanding its system network throughout the City of Portland in order to fill significant coverage and capacity gaps and provide reliable coverage for its customers. Verizon identified a significant coverage and capacity gap in service in this area of downtown Portland.

Verizon's site selection process included an initial assessment of properties in and around the search area determined by Verizon's Radio Frequency (RF) engineers. For this site, many of the properties within the search area are too short, too tall, and/or have significant structures in the immediate area that would block the RF signal. Verizon contacted those property owners whom owned buildings that could accommodate the facility and most of the property owners indicated that they were not interested in leasing space and/or had no space available. The subject property was eventually selected because it was the only property that had a willing property owner, an acceptable height/location for RF coverage, and available space for Verizon's proposed installation.

Given that the subject building is a contributing building in the Skidmore/Old Town Historic District, Verizon initially proposed to stealth the facility by constructing a faux water tower and mount the antennas inside the water tower so that they are fully concealed. The proposed stealth water tower was intended to blend in with the historic water towers already in existence in the area and the stealth RF water tower located on the rooftop at 133 SW Pine St., which was recently approved by the City pursuant to Case File No. LU 15-156816 HR. SHPO reviewed the water tower design and obtained a No Adverse Effect on Historic Properties determination.

In response to the City staff's letter of incomplete application, dated April 4, 2016, Verizon met and spoke with the City staff on multiple occasions to discuss their concerns about the proposal. On August 11, 2016, Verizon met with the City staff to discuss their interpretation of the Guidelines and the specific ways in which Verizon could improve the design to better address the applicable Guidelines. At that meeting, the staff advised us that they do not believe Verizon can design this facility in a manner that complies with these Guidelines because the building is a contributing building in the Skidmore/Old Town Historic District and there are no existing rooftop RF facilities on the building. The staff explained that their position is based on the City staff's informal interpretation that the Guidelines do not allow new RF facilities on historical buildings with no existing RF facilities. Based on this informal interpretation, the City staff was unwilling to provide Verizon any input or suggestions on how to modify or design the RF facility to better address the Guidelines.

Given the City staff's unwillingness to provide any input, Verizon evaluated the various design options and proposed the following design options for the City to consider: (1) the original stealth water tower; (2) a stealth mechanical penthouse designed to match the existing penthouse located on the building rooftop; and (3) the antennas without a stealth facility or similar screening. Verizon believes these design options are the best available options and provide a good variety of approaches. Verizon consulted with the State Historic Preservation Office ("SHPO") regarding these design options, and SHPO indicated that the penthouse is the

preferred option. Verizon also indicated that it was open to other design concepts if the staff believes there is a better option available. *See Exhibits A.5. through A.12. & A.14.*

The City staff did not provide Verizon any input on these design alternatives prior to its decision, but the staff did suggest that Verizon consider moving the wireless facility toward the center of the rooftop. Verizon evaluated this request and determined that the facility cannot be moved because there are only two other locations on the rooftop that could structurally support the facility and these alternate locations will not work because the neighboring property's penthouse will block the signal to the north. Providing coverage to the north is one of the primary purposes for this facility. Verizon submitted a letter from its RF engineer and supporting documentation explaining why it cannot move the rooftop location. *See Application Exhibit A.13.*

The City staff deemed the application complete and sent the required notices of the application to the affected City bureaus, the neighborhood association and property owners entitled to notice. The City bureaus have no issues or concerns. Neither the neighborhood association nor the notified property owners submitted any comments.

B. The Staff Decision is confusing and ambiguous with respect to several issues.

The Staff Decision denied the application on the grounds that it does not comply with several Guidelines. The Staff Decision concluded that the application does not comply with the Guidelines for two primary reasons. First, the staff concluded that the faux water tower is not consistent with the history and character of the building because there is no evidence of a water tower having been located on this building. Second, the staff concluded that the proposed height and placement of the facility will make it too visible.

Although the City staff advised Verizon that they intended to deny the application, the Staff's Decision is surprising and confusing for several reasons. The Staff Decision does not mention the staff's interpretation that the Guidelines do not allow new RF facilities on historical buildings with no existing RF facilities. *See Exhibit A.12., p. 2.* This omission is surprising because this interpretation was the primary, if not exclusive, reason why the staff was unwilling to provide Verizon input on how to design the facility in a way that they thought could satisfy the Guidelines. It is unclear if the staff has abandoned this interpretation or if it the real reason driving its conclusion but the staff elected not to rely on it given its inconsistency with the Portland City Code ("PCC") and the Guidelines. *See Exhibit A.12.*

The Staff Decision also does not reference or address the alternative design options Verizon proposed, namely the penthouse and unscreened antenna options. Exhibits A.5., A.8., A.9. and A.12. The Staff Decision ignored these design alternatives and does not explain why the staff did not evaluate these options. To confuse matters even further, the Staff Decision suggested that Verizon consider more traditional rooftop designs such as "mechanical penthouses". Staff Decision, pp.6 & 8. (Emphasis added). Verizon did propose a penthouse design and it is unclear why the staff did not evaluate or comment on it.

Finally, the Staff Decision does not reference or respond to Verizon's explanation why the RF facility cannot be moved to a more central location on the rooftop. The Staff Decision suggested that the facility be moved to a location on the rooftop with "a significant setback from both the

west and south property lines (along SW 1st and adjacent to the Landmark Seufret Building, respectively),” but it did not acknowledge that Verizon considered and responded to this suggestion. Staff Decision, p.6. As previously noted, Verizon submitted a letter from its RF engineer and supporting documentation explaining why it cannot move the rooftop location. Exhibit A.13. It is unclear why staff ignored this information. To avoid any further confusion, Verizon submitted the attached letter from its RF engineer Tom Fergusson, dated November 17, 2016, explaining in detail why the facility cannot be moved as suggested by the staff.

Basis for Appeal

A. The Staff Decision erred by failing to consider Verizon’s penthouse design.

The City staff’s conclusion that the proposed facility does not comply with the Guidelines is based exclusively on the water tower design. The staff concluded that the water tank is not appropriate because there is no evidence of a water tower having been located on this building and the water tower will be too visible. However, the staff acknowledged that other designs could be compatible. The Staff Decision noted that the facility could comply with the Guidelines if it was designed to look more like “traditional rooftop additions commonly seen on a building of this size, such as stair overruns or *mechanical penthouses*.” Staff Decision, p.6. (Emphasis added).

This part of the Staff Decision is confusing because Verizon proposed a mechanical penthouse design for staff’s consideration. Exhibits A.5., A.8. and A.12. The proposed penthouse is designed to match the existing penthouse located on the building rooftop. The staff did not reference this design option or explain why it did not consider it. The staff was required to explain why it did not consider this design option or why it does not believe it complies with the Guidelines. At a minimum, the staff should have provided some input on this design option in order to provide this Commission some guidance on appeal. *See* Exhibit A.12., p.7.

The staff’s failure to consider the penthouse design is particularly problematic because the staff acknowledged that a penthouse design could comply with the Guidelines. Staff Decision, pp.6 & 8. If the staff concluded that a penthouse design could comply with the Guidelines, it was required to consider the penthouse design proposed by Verizon. The staff cannot simply ignore a design that it acknowledges could comply with the Guidelines.

Since the staff failed to evaluate Verizon’s penthouse design, it is incumbent upon this Commission to do so as part of this appeal. The staff acknowledged that a penthouse design could satisfy the Guidelines so Verizon intends to focus on this particular design option for purposes of the appeal. Staff Decision, pp.6 & 8. The penthouse is designed to match the existing penthouse located on the building rooftop. This concept of using a penthouse to stealth the antennas and integrate it into the rooftop is an approach the City staff and this Commission previously approved for another RF facility proposed on a contributing building in a historic district. *See* Case File No. LU 14-123583 HR CU, dated February 27, 2015. As part of the appeal, Verizon will submit more detailed additional information regarding the penthouse design and demonstrate that it complies with the Guidelines.

B. The City staff erred in interpreting and applying the Guidelines.

The application must be reviewed based on those Guidelines that are applicable to the proposed facility. ORS 227.173(1). The City is required to interpret the Guidelines in a manner that is “reasonable and correct” based on their express language and the express language of the other applicable approval criteria. *McCoy v. Linn County*, 90 Or App 271, 275-76, 752 P2d 323 (1988); *Luedtke v. Clackamas County*, 41 Or LUBA 493, n.9 (2002). The City may not adopt an interpretation that requires the insertion of words that have been omitted or the omission of words that have been inserted into the express language. ORS 174.010; *Goose Hollow Foothills League v. City of Portland*, 117 Or App 211, 218, 843 P2d 992 (1992) (the interpretation cannot amend legislation de facto or subvert its meaning under the guise of interpretation). The City staff’s interpretation of the Guidelines is inconsistent with the express language of the Guidelines and other applicable approval criteria in several respects.

1. The City staff’s interpretation of the Guidelines is inconsistent with the applicable PCC zoning code provisions

Before addressing the Guidelines, it is important to consider the Guidelines within the context of the other applicable approval criteria which the staff did not acknowledge or address in the Staff Decision. A fundamental flaw with the staff’s approach is that the staff appears to be interpreting the Guidelines as prohibiting or discouraging RF facilities on historic buildings. The Guidelines are not intended to regulate the types of allowed uses. They are *design* guidelines. They are intended to regulate the design and character of proposed development, not determine what types of uses are allowed in the Central City. Central City Fundamental Design Guidelines, p.16. It is the zoning code (PCC Chapter 33) that regulates the types of uses allowed in the various zoning districts, not the Guidelines, and the zoning code makes it clear that a RF facility is allowed in this area.

The subject property is zoned Central Commercial (CX). The CX zoning applies to “Portland’s most urban and intense areas” and is intended to accommodate a broad range of commercial development where “[d]evelopment is intended to be very intense.” PCC 33.130.030(H). RF facilities are expressly allowed in the CX zone. PCC 33.130.030, Table 130-1.

Although RF facilities are typically subject to conditional use review, the proposed facility in this case is an allowed use without conditional use review because Verizon is proposing to collocate the antennas on a building. PCC 33.274.025 provides that a conditional use permit is required for all RF facilities: “Unless exempted by 33.274.030 or allowed by 33.274.035.” PCC 33.274.035(A) allows certain RF facilities “without a conditional use permit” including: “New and modified personal wireless service facilities in C, E, or I zones mounted on an existing building or other non-broadcast structure provided that the entire facility is more than 50 feet from an R zone.” The proposed RF facility is exempt under PCC 33.274.035(A) because the property is in a C zone, the facility will be mounted on an existing building and it is more than 50 feet from an R zone. The proposed RF facility is exempt from conditional use review

specifically because the City Council prefers collocating antennas on a building and wants to encourage these types of RF proposals.¹

Not only is the proposed RF facility an allowed use, but it furthers the express purpose of PCC Chapter 33.274 in several respects. The purposes of the RF facility standards include: (1) “Reduce the potential need for additional towers that are built in or near residential and open space zones by *encouraging that Radio Frequency Transmission Facilities be located on buildings, existing towers, or utility poles in public rights of way*”; and (2) “Preserve the opportunity for continued and growing service from the radio frequency transmission industries”; and (3) “Support the goals of the City’s Broadband Strategic Plan.” PCC 33.274.010. (Emphasis added). The proposed facility in this case will be collocated on a building, provides an opportunity for continued service from the radio frequency transmission industries and supports the City’s Broadband Strategic Plan’s goal of accessible and reliable wireless service.²

Since the building is in a historic district, Verizon understands that the proposed facility is also subject to the Historic Resource Review approval criteria set forth in PCC 33.846.060. But similar to the Guidelines, PCC 33.846.060 regulates the *design* of proposed development, not the types of allowed uses. It certainly does not restrict rooftop RF facilities in any manner since these types of facilities are not even mentioned in PCC Chapter 33.846.

The Staff Decision completely ignored these other approval criteria. These PCC zoning provisions make it clear that RF facilities are not prohibited or discouraged on historic buildings or in historic districts. To the contrary, they are expressly allowed uses that further many of the City’s zoning policies that specifically apply to RF facilities. If the City Council intended to prohibit or restrict these types of facilities on historic buildings or in historic districts, it would have imposed specific code provisions to that effect.

While the RF facility must still satisfy the applicable Guidelines, the staff erred in interpreting and applying these Guidelines in a manner that assumes RF facilities are prohibited or discouraged on historic buildings or in historic districts. Such an approach is inconsistent with the express language of in PCC 33.130, 33.274 and 33.846.

¹ The City staff’s interpretation undermines this City Council policy because it would effectively prohibit collocating RF facilities on historical buildings with no existing RF facilities.

² As part of the resolution authorizing Portland’s Broadband Strategic Plan, the City Council acknowledged that “high-speed, accessible and affordable broadband is essential infrastructure for job creation, education, health care, the enhancement of safe and connected communities, civic engagement, government transparency and responsiveness, reduced carbon emissions, and emergency preparedness,” and “the advancement of technologies and infrastructure associated with Broadband will play a key role in Portland’s economic future and quality of life.” City Council Resolution No. 36816, dated September 22, 2010, authorizing the OCT to develop a draft Portland Broadband Strategic Plan; Portland Broadband Strategic Plan 2011-2020, pp.2 & 3.

2. The Staff Decision is inconsistent with those Guidelines that specifically address rooftop equipment, antennas and more modern additions.

When interpreting statutes or regulations that contain both general and specific provisions that apply to the issue in question, the more specific provisions should be given more weight. ORS 174.020(1). The Staff Decision relied almost exclusively on a number of more general Guideline provisions that do not specifically address rooftop equipment, antennas and more modern additions to historic areas, and ignored those particular Guideline provisions that do specifically address these types of proposals.

These more specific Guidelines reflect two concepts that are contrary to the staff's view of the Guidelines. Not only do these Guidelines not prohibit or discourage rooftop RF facilities on historic buildings as the staff appears to believe, they expressly recognize that RF antenna facilities are common on rooftops in historic areas. Nor do these provisions require an applicant to avoid all visual impacts, as staff suggests, but rather they merely require that the visual impacts be mitigated. These more specific Guidelines support approval of the RF facility in this case.

Central City Fundamental Design Guideline Guideline C11 specifically addresses rooftops and antennas. It expressly recognizes that it is common practice to locate antennas and similar equipment on rooftops: "It is common practice, in the development of contemporary multistory buildings, to locate necessary building functions such as; heating ventilating and air conditioning systems (HVAC), elevator penthouses, and *various antennae at the tops of buildings.*" Central City Fundamental Design Guidelines, p.130. (Emphasis added). Guideline C11 requires that the visual impacts from these types of rooftop equipment proposals be mitigated, not prohibited: "Visual impacts and/or views of this equipment can be mitigated by a holistic design concept that includes parapets, screens, and other rooftop devices." Central City Fundamental Design Guidelines, p.130. Guideline C11 encourages applicants to "[s]ize and place rooftop mechanical equipment * * * to enhance views of the Central City's skyline" and "[integrate] rooftop mechanical equipment with the building's overall design." Central City Fundamental Design Guidelines, pp.131-132. Guideline C11 recognizes the use of rooftops for antennas and similar equipment and requires that the visual impacts be mitigated, not eliminated. The Staff Decision did not address these parts of Guideline C11.

Central City Fundamental Design Guideline Guideline C3 expressly recognizes that some modifications or additions to historical buildings cannot completely match the character and style of the original building. Guideline C3 requires an applicant to "respect the original character of an existing building when modifying its exterior," but it also recognizes that there may be some modifications or additions that do not necessarily match the original character or style of the building. Central City Fundamental Design Guidelines, pp.100-101. Guideline C3 does not prohibit those types of modifications or additions. Rather, in those instances, Guideline C3 provides that the design goal may be accomplished by: "[i]ntegrating new additions that contrast stylistically with the original building" and "[d]istinguishing between old and new portions of the development while maintaining a similar scale, proportion, and quality of construction." Central City Fundamental Design Guidelines, p.102. Guideline C3 supports the concept that new additions are not necessarily required to match existing features provided that they are

adequately integrated, and in some instances they should be differentiated from the original building design. The Staff Decision did not address these parts of Guideline C3.

Although Central City Fundamental Design Guidelines C4 and C5 are not directly applicable to the application as explained in Section B.4 below, they contain similar language recognizing more design flexibility than the Staff Decision suggested. Guideline C4 provides that: “the design of a new building need not mimic or imitate the context of existing buildings to be complementary” and it recognizes the use of “significantly different building styles and/or materials” so long as the new design complements the existing style in the area. Central City Fundamental Design Guidelines, p.104. Guideline C5 requires the applicant to: “[i]ntegrate the different building and design elements” and integrate “existing buildings in new building compositions,” not prohibit more modern designs altogether. Central City Fundamental Design Guidelines, p.109.

The Skidmore Old Town Historic District Design Guidelines similarly undermine the City staff’s restrictive interpretation.³ There is nothing in these Guidelines prohibiting or limiting RF facilities or similar rooftop equipment on contributing buildings. Moreover, these Guidelines support the concept that contemporary additions and alterations are allowed so long as they are designed in a way that is compatible with the building and surrounding area: “Contemporary design for new buildings in old neighborhoods and additions to existing buildings or landscaping *should not be discouraged* if such design is compatible with the size, scale, color, material and character of the neighborhood, building or its environment.” Skidmore Old Town Historic District Design Guidelines, p.3. (Emphasis added).

Although the new Skidmore Old Town Historic District Design Guidelines are not applicable to the application, these new Guidelines further undermine the staff’s interpretation. These new Guidelines expressly recognize that some historic resource review proposals will involve the “addition of technological and sustainability features in the district, such as solar panels, wind turbines, green roofs and walls and *telecommunications equipment*,” and they do not contain any prohibitions or restrictions on these types of facilities. Skidmore Old Town Historic District Design Guidelines (2016), p.6. (Emphasis added). Moreover, these new Guidelines recognize that the primary emphasis in this district is preserving and restoring cast-iron commercial buildings in the district.⁴ That is why the City Council’s resolution adopting the new Guidelines, Resolution No. 37207, imposed specific protections for City owned cast-ironed buildings but exempted “Projects that involve renovation of contributing historic buildings within the Skidmore/Old Town Historic District that did not originally incorporate cast iron elements in their design.” Skidmore Old Town Historic District Design Guidelines (2016), Appendix 1, p.2. The building in this case is a more utilitarian commercial building that appears to lack a particular style, not a cast iron building that is the primary emphasis in this district.

³ The Application was filed before the new Skidmore Old Town Historic District Design Guidelines went into effect on May 4, 2016 and therefore the Application is subject to the old guidelines.

⁴ The new Guidelines provide: “But the most noteworthy and defining elements of the district’s historic character derive from its Victorian-era masonry and cast-iron façade buildings, primarily in the Italianate style. The district’s cast-iron structures, many with elaborate decorative elements echoing Italian Renaissance designs, are the backbone of a distinctive historic cityscape marking Portland’s first commercial core.” Skidmore Old Town Historic District Design Guidelines (2016), p.11.

The proposed RF facility in this case is consistent with these more specific Guidelines that the staff failed to address in the Staff Decision. A rooftop RF facility is recognized as a common practice in historic areas and is the least intrusive type of RF facility for this area of downtown. Verizon agreed to attempt to integrate and mitigate the impacts of the facility to the greatest extent possible. Verizon proposed multiple design options for the City to consider. All of the design options were intended to be compatible with the building and surrounding area, but there now seems to be agreement that a penthouse design is the superior design. Verizon proposed such a design and the City is required to evaluate that proposal. Verizon reduced the size of the facility to the smallest one possible that can still satisfy the coverage and capacity objectives for this site and located it as far from the edge of the rooftop as possible. Exhibit A.14. Although the staff suggested that Verizon consider moving the facility further to the center of the rooftop, Verizon evaluated that suggestion and explained why it is not possible due to structural limitations and RF signal interference from the adjacent building. Exhibit A.14.; Letter from Tom Fergusson, Network Department – System Design, dated November 17, 2016. These efforts and proposals demonstrate that Verizon truly did attempt to integrate the facility and mitigate its impacts to the greatest extent possible. Based on the express language in these more specific Guidelines, the proposed facility clearly complies with the Guidelines.

3. The Staff Decision failed to account for the existing RF facilities and similar rooftop equipment in the Skidmore/Old Town Historic District and surrounding area.

The Staff Decision implies that the proposed rooftop RF facility would be unusual and therefore incompatible with the existing development in the Skidmore/Old Town Historic District and surrounding area. This perception of the area appears to have heavily influenced the staff's interpretation of the Guidelines and the determination that the proposed RF facility does not comply with the Guidelines. It may also account for the staff's refusal to consider the penthouse design option. The staff's perception of the area is not consistent with the actual development in this area and improperly influenced the staff's interpretation and application of the Guidelines in this case.

As part of the appeal, Verizon will provide a detailed evaluation of the other RF facilities and rooftop equipment in the Skidmore/Old Town Historic District and surrounding area, as well as some other historic districts. This information will demonstrate that there are a number of existing rooftop RF facilities in these areas, including some stealth water towers and penthouses similar to what Verizon is proposing in this case. This information will also demonstrate that several buildings in these areas have significant rooftop equipment located on them. Finally, this information will demonstrate that there are a number of buildings that have rooftop water towers and mechanical penthouses similar to the stealth facility designs Verizon is proposing. These other examples demonstrate that the proposed facility would be compatible with existing rooftop development in the area and therefore would integrate with the historic district and surrounding area.

4. The Staff Decision denied the application based on Guidelines that are not applicable to the proposed facility.

Although the City staff previously advised Verizon that the proposed facility does not comply

with Central City Fundamental Design Guidelines C3, C4, C5 and C11, the Staff Decision significantly expanded the Guidelines cited as a basis for denial of the application. The Staff Decision does not explain why staff did not previously identify these additional Guidelines as issues. The Staff Decision erred by denying the application based on several Guidelines that are not relevant or directly applicable to the application. ORS 227.173(1).

The Staff Decision erroneously concluded that the proposed facility is subject to Skidmore Old Town Historic District Design Guidelines C, D and E. Staff Decision, p.6. None of these Guidelines apply to the application. Guideline C is limited to proposals to add “additional stories” to historic buildings, which clearly is not being proposed in this case. Skidmore Old Town Historic District Design Guidelines, p.3. Guidelines D and E apply to horizontal and vertical additions, but the Staff Decision acknowledged that “the proposal does not include a vertical or horizontal addition that adds floor area.” Staff Decision, p.6. Moreover, Guideline E is limited to the vertical lines of columns, piers, spandrels and cornices, not rooftop equipment, and it merely requires that these features be “maintained”. Skidmore Old Town Historic District Design Guidelines, p.4. These Guidelines do not apply to rooftop equipment or RF facilities.

The Staff Decision erroneously concluded that the proposed facility is subject to Skidmore Old Town Historic District Design Guidelines G and H. Staff Decision, p.7. Neither of these Guidelines is applicable. Guideline G addresses the exterior building material surfaces (i.e. brick masonry or stone) and requires that these surfaces be “treated, repaired, and maintained.” Skidmore Old Town Historic District Design Guidelines, p.4. The maintenance of the exterior building surface has nothing to do with a rooftop equipment addition. Moreover, Guideline G imposes requirements for “Walls, Storefronts, Doors and Windows,” and does not even address the rooftop. Skidmore Old Town Historic District Design Guidelines, pp.5-6. Guideline H applies to “Rear and Side Walls,” not rooftops and its “chief concern lies with the *removal* of redundant additions to each building” not additions. Skidmore Old Town Historic District Design Guidelines, p.6.

The Staff Decision erroneously concluded that the proposed facility is subject to Central City Fundamental Design Guideline A5. Guideline A5 applies to new development, not modifications to existing development. The first sentence of Guideline A5 provides that “Areas of the Central City are enhanced, embellished, and/or identified through the integration of distinct landmarks or special features *with new development*.” Central City Fundamental Design Guidelines, p.36. (Emphasis added). The guidelines listed under Guideline A5 include: (1) “Enhance an area by reflecting the local character within the right-of-way,” which is accomplished by “Enhancing the character of an area by integrating the right-of-way with *new development*”; (2) “Embellish an area by integrating elements in *new development* that build on the area’s character; and (3) “Identify an area’s special features or qualities by integrating them into *new development*.” Central City Fundamental Design Guidelines, p.36. (Emphasis added). This Guideline focuses on new development, not rooftop equipment added to existing development.

The Staff Decision erroneously concluded that the proposed facility is subject to Central City Fundamental Design Guideline A8. Guideline A8 addresses the street level development, not rooftop development. The guidelines listed under Guideline A8 include: (1) “Integrate building setbacks with adjacent sidewalks to increase the space for potential public use”; (2) “Develop

visual and physical connections into buildings' active interior spaces from adjacent sidewalks"; and (3) "Use architectural elements such as atriums, grand entries and large ground-level windows to reveal important interior spaces and activities." Central City Fundamental Design Guidelines, p.51. A guideline that focuses on street level development is clearly not applicable to a rooftop addition.

The Staff Decision erroneously concluded that the proposed facility is subject to Central City Fundamental Design Guideline B2. Although Guideline B2 references building mechanical equipment, it expressly excludes rooftop equipment from these standards and is not intended to address visual impacts. Guideline B2 provides that the mechanical equipment guideline is accomplished by "Integrating mechanical equipment into the overall building design *when they are not at the roof or penthouse levels of the building.*" Central City Fundamental Design Guidelines, p.69. (Emphasis added). This language makes it clear that this Guideline does not apply to mechanical equipment on the rooftop. Guideline B2 also makes it clear that it is not intended to address visual impacts, but rather is intended to mitigate other types of impacts that are more common from ground level equipment: "Building mechanical equipment that produces offensive odors, noise, and/or air movement, should be located so as not to negatively impact the pedestrian environment." Central City Fundamental Design Guidelines, p.66. A rooftop RF facility clearly will not produce offensive odors, noise, and/or air movement.

The Staff Decision erroneously concluded that the proposed facility is subject to Central City Fundamental Design Guidelines C2, C4 and C5. These Guidelines apply to new development, remodels and renovations of existing buildings, not equipment and similar minor additions to existing buildings. None of these Guidelines even reference rooftop equipment or antennas.

The Staff Decision relied heavily on a number of Guidelines that are not relevant or applicable to the proposed rooftop RF facility. Even if these Guidelines have some indirect applicability to the application, they certainly should not have been the focal point for the Staff Decision. The staff should have focused on those Guidelines that more specifically address the specific proposal in this case. It was error for the staff to rely predominately on more general Guidelines that are intended to address more significant and different types of development proposals.

C. The denial of the application would violate the Federal Telecommunications Act.

The Telecommunications Act provides wireless carriers with important procedural due process protections, including the requirement that "the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality that * * * shall not prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(c)(7)(B)(i)(II). Given the circumstances of this case, we believe the City would violate the Telecommunications Act if it denies the Application.

Verizon provided substantial evidence demonstrating that the proposed site is the only viable property that will achieve the objective and siting requirements for this wireless communication facility. The City is required to defer to Verizon's coverage and capacity objectives. *Sprint PCS v. Washington County*, 42 Or LUBA 512 (2002), *aff'd in part and modified in part*, 186 Or App 470, 63 P3d 1261 (2003).

Verizon proposed several different design options in order to satisfy the approval criteria, mitigated the impacts of the proposed facility to the maximum extent feasible and considered all of the staff's suggestions. One of those designs, the penthouse design, is a design option that the staff concluded could satisfy the Guidelines. If the City were to deny the application at this point, it would effectively be determining that a RF facility cannot satisfy the Guidelines regardless of its design. Such a conclusion would effectively preclude a RF facility at this location.

Such a denial of the application would violate the Telecommunications Act. There are no other sites that can accommodate this facility and provide the necessary coverage and capacity for this area. Verizon cannot site a RF facility at this location if the City concludes that it is prohibited regardless of its design. Therefore, a denial of the application will prohibit or have the effect of prohibiting Verizon from providing personal wireless services in this area of the City in violation of Telecommunications Act.

Conclusion

Throughout this process, Verizon has gone to great lengths to design a facility that is consistent with the building and surrounding area, minimizes the impact of this facility to the greatest extent practicable and is responsive to the Guidelines. Verizon initially proposed a water tank design because the City approved a similar proposal on a nearby property. When the City staff advised Verizon that it did not believe this design was appropriate for this particular building, Verizon engaged with the staff to figure out what type of design would be more compatible. When the staff was unwilling to provide that input, Verizon proposed additional design options for the City to consider. Verizon also agreed to reduce the number of antennas and size of the facility to the minimum size feasible. It now appears that the staff and Verizon agree that the penthouse design is compatible with the building and surrounding area.

As a result of this deliberative process, the penthouse design is truly the best design possible and is consistent with the Guidelines and other applicable approval criteria. As previously indicated, we will provide more detailed information about this design during the appeal process. We respectfully request that the Commission approve the application subject to the penthouse design.

We look forward to discussing these issues in greater detail at the appeal hearing.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP



E. Michael Connors

EMC/pl
Attachments

cc: Verizon Wireless
Centerline Solutions



5430 NE 122nd Avenue
Portland, OR 97230

November 17, 2016

City of Portland
Bureau of Development Services
1900 SW 4th Avenue, Suite 5000
Portland, OR 97201

Re: Verizon Wireless – Application LU 16-129919 CU HR
208 Building – Rooftop RF Facility
Appeal of City Staff Decision

To whom it may concern:

This letter is in response to the suggestion in the City staff decision, dated November 4, 2016, that Verizon move the RF facility to a different location on the rooftop in order to minimize visual impacts. In particular, staff suggested that Verizon move the RF facility so that “the proposed antennas and shroud were located with a significant setback from both the west and south property lines (along SW 1st and adjacent to the Landmark Seufert Building, respectively) so that alterations were not visible from the adjacent public rights-of-way * * *.” Although I previously explained in my September 21, 2016 letter that the RF facility cannot be moved to this area of the rooftop, which the City staff did not address in its decision, I’m submitting this letter to more specifically explain why the City staff’s suggestion is not feasible and what we have done to attempt to mitigate the visual impacts of this facility.

To begin with, the RF facility can only be located on a portion of the rooftop that could structurally support the RF facility. In response to the City staff’s previous suggestion that Verizon consider a more central location on the rooftop, Verizon’s Architect evaluated those areas on the rooftop that could structurally support the RF facility. As shown in the attached Exhibit 1, the Architect concluded that there are only two alternative locations on the rooftop that could structurally support the RF facility.

I evaluated these alternative rooftop locations from an RF perspective and determined that neither of these locations will work. The main problem with these locations is that the neighboring property’s penthouse will block the signal to the north. The site needs to provide coverage to the North without significant clutter in the path in order to achieve the coverage and capacity objective for this site. Providing coverage to the North is one of the primary purposes for this facility. The neighboring penthouse could become a significant barrier if the antenna is placed where the penthouse is in its front view that would block a substantial portion of the signal to the north as shown on Exhibit 2. One of the driving factors for the proposed location further to the west was to reduce signal blockage from this neighboring penthouse.

Since there are only two alternative locations that could structurally support the RF facility and neither of these locations will enable Verizon to achieve one of the primary objectives for this site, the City staff's suggestion that Verizon move the facility to a different location on the rooftop is not feasible and would not enable Verizon to satisfy its coverage and capacity objectives for this site.

Although Verizon is not able to locate the RF facility further to the north or east as staff suggested, it is important to understand that Verizon has taken significant steps to minimize the visual impact of the facility. The best location for the antennas from an RF perspective is the western edge of the rooftop. Based on our original site walk and review of the Portland code requirements, however, we pushed the RF facility as far back from the edge as possible without creating interference with the neighboring penthouse coverage area to the North. So we did attempt to locate the facility in an area that would minimize the visual impacts.

Additionally, Verizon agreed to significantly reduce the size of the facility to further mitigate visual impacts. The original proposal included four antennas per sector. In response to City staff's comments during its review of the application, Verizon agreed to reduce the facility to two antennas per sector even though it is not an ideal design. This change to two antennas per sector is the minimum size possible for this facility in order to satisfy the coverage and capacity objectives for this site. This change significantly reduced the size of the facility and therefore the visual impact of the site.

Verizon has been sensitive to potential visual impacts and located and designed the RF facility in a way that minimizes the visual impacts of the facility to the maximum extent feasible. Verizon cannot, however, move the RF facility further to the north or east and still satisfy its objectives for this site.

Regards,



Tom Fergusson
Verizon Wireless
Pacific Northwest Region
Network Department – System Design

Exhibit 1 –Structural location proposed by Architect:

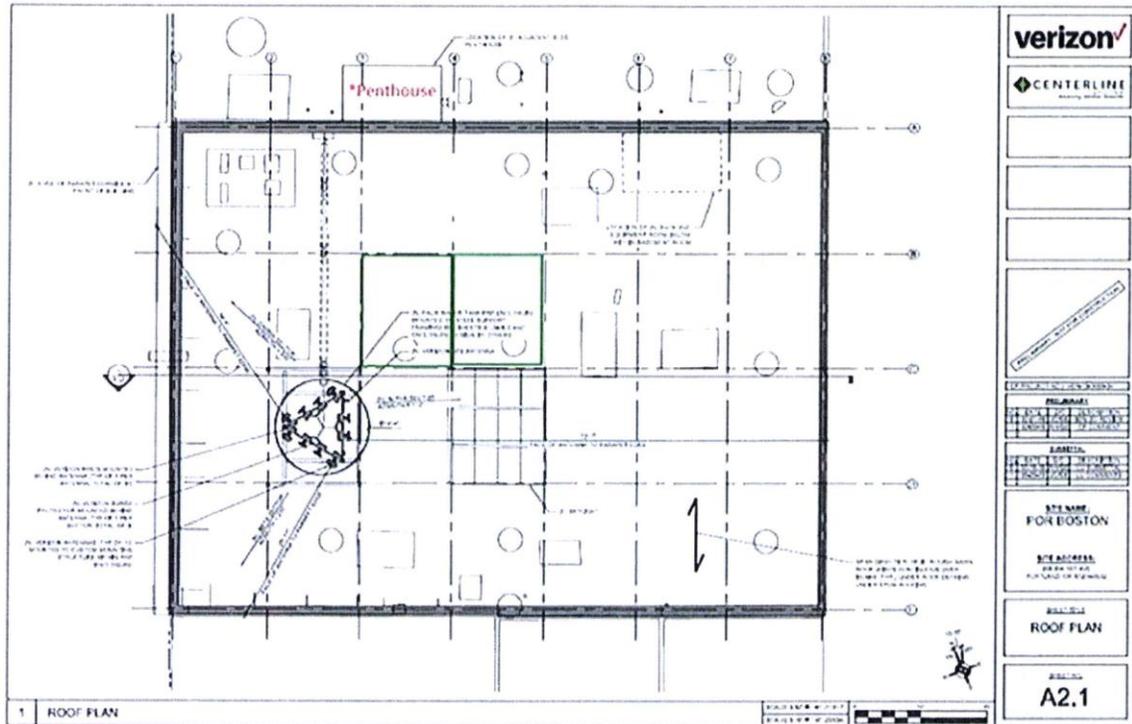
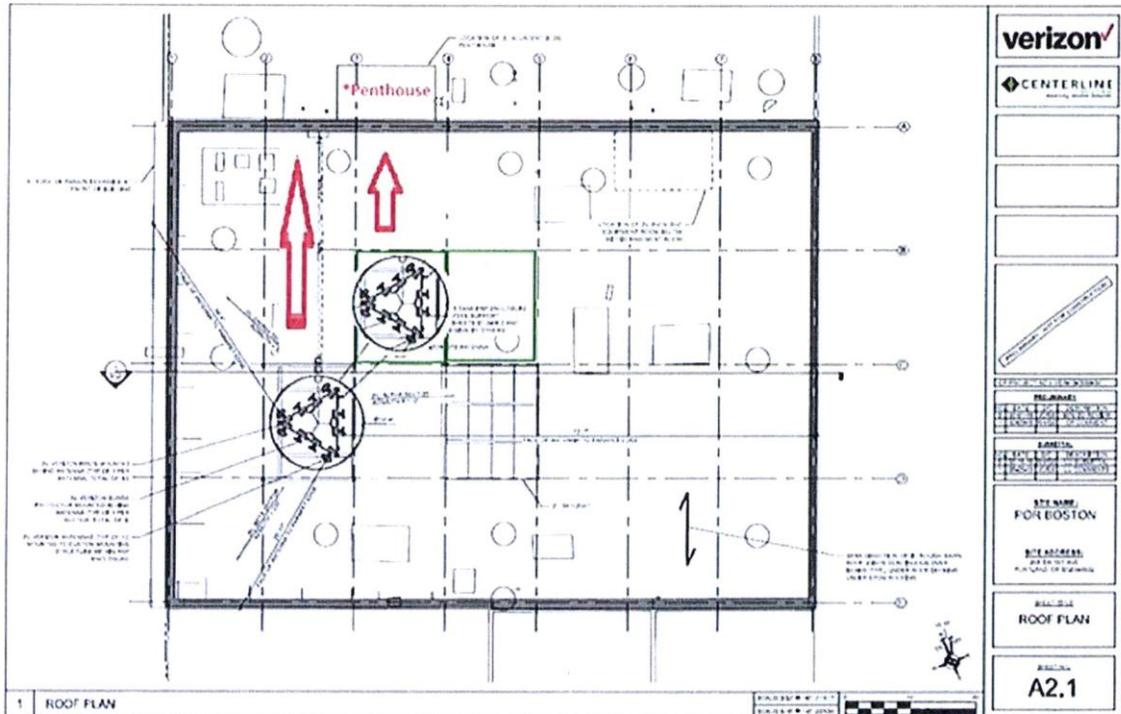


Exhibit 2 -RF Blocked by Penthouse:





Hathaway Koback
Connors LLP

520 SW Yamhill St.
Suite 235
Portland, OR 97204

E. Michael Connors
503-205-8400 main
503-205-8401 direct

mikeconnors@hkcllp.com

November 18, 2016

VIA HAND DELIVERY

Historic Landmarks Commission
c/o Bureau of Development Services
City of Portland
1900 SW 4th Avenue, Fifth Floor Reception
Portland, OR 97201

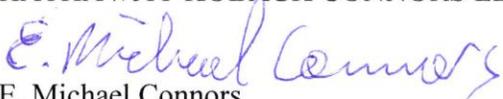
Re: Case File No. LU 16-129919 HR
Appeal of BDS Type II Decision
Verizon Wireless – New Rooftop Wireless Facility

Dear Commissioners:

This firm represents the applicant Verizon Wireless (“Verizon”) with respect to the above-referenced matter. We are submitting the enclosed appeal of the City’s Type II decision, dated November 4, 2016, denying the Historic Resource Review application for a new rooftop wireless facility proposed on the building located at 208 SW 1st Avenue in Portland. Enclosed for filing please find the completed Type II and IIX Decision Appeal Form, supporting letters and documents, the appeal fee in the amount of \$250 and a copy of the City’s Type II decision being appealed. Thank you for your assistance.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP


E. Michael Connors

EMC/pl
Enclosures

cc: Verizon Wireless
Centerline Solutions

LANDMARKS COMMISSION HEARINGS PROCESS ON APPEALS

1. SUBMISSION OF TESTIMONY

- a. Testimony regarding the appeal may be submitted in writing to the Landmarks Commission, c/o the Planner named in this report, Bureau of Development Services, 1900 SW Fourth Avenue, Room 5000, Portland, OR 97201. Written comments must be received by the time of the hearing and should include the case number.
- b. Testimony may be submitted orally at the time and place shown on the hearing notice.

2. HEARINGS PROCESS

- a. The order of appearance is generally as follows:
 - Planner Presentation 10 minutes
 - Appellant 10 minutes
 - Supporters of Appellant 2-5 minutes each (determined by commission chair)
 - Principal Opponent 15 minutes
 - Other Opponents 2-5 minutes each (determined by commission chair)
 - Appellant Rebuttal 5 minutes
 - Close Public Testimony
 - Commissioner Comments or Deliberation

Prior to the close of Public Testimony, if any party requests an opportunity to submit additional evidence, the record will be held open.

- b. The appellant may be the applicant or someone else, and opposes the administrative decision. In order to prevail, the appellant must succeed in one of the following:
 1. If you are the appellant and not the applicant, you must persuade the Commission to find that the applicant has not carried the burden of proof with regard to one or more of the approval criteria. You may also wish to explain to the Commission how or why the applicant's facts are incorrect.
 2. If you are the appellant and also the applicant, you must persuade the Commission how you have met all of the applicable criteria and how the facts, which you relied upon, are correct. If you have appealed the decision because of a condition of approval, you must demonstrate how the applicable criteria can be met without the condition or that there is no legal relationship between the approval criteria and the condition.
 3. If you are the appellant (and either the applicant or an opponent of the decision), you may want to show the approval criteria are being incorrectly interpreted, the wrong approval criteria are being applied, or additional approval criteria should be applied. Any errors in the proceeding should also be identified, as well as an error in any decision by staff.
- c. Failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

3. ADDITIONAL INFORMATION

- a. The Appeal Report to the Landmarks Commission, including the Administrative Findings and Decision, will be available at least 10 days prior to the hearing. Call the Bureau of Development Services at (503) 823-7300 if you want a copy mailed to you. Be sure to indicate the case file number.
- b. If any additional information is provided in support of the application, after the notice of the hearing is given, any party is entitled to request a continuance of the hearing to allow time for review of that material.
- c. If a participant requests it, before conclusion of the initial evidentiary hearing by the Landmarks Commission, the record will remain open for at least seven days after the hearing to allow for the submittal of additional written evidence. If new evidence is submitted in that seven-day period, there will be an additional seven days provided to the applicant for written rebuttal to the evidence, if the applicant requires that time. The Commission will then meet again to make their decision.
- d. The decision of the Commission will be mailed to the applicant and other participants no later than 17 days after the close of the record.