



MULTNOMAH COUNTY  
LAND USE PLANNING DIVISION  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
(503) 988-3043 FAX: (503) 988 -3389

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## DECISION OF THE PLANNING DIRECTOR

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### Design Review

Case File No. DR 0-2

August 4, 2000

**Proposal:** Design Review approval to install two 4' 3" and two 8' 5" high antennas on an existing communications tower with equipment to be stored in an existing structure. The existing tower was approved under Multnomah County Community Service Use case number CS 13-81.

**Location:** Property address:  
262 NW Miller Road  
Tax Account #R961361320, and -1321  
1N1W36D -00200

<b>Applicant/ Owners</b>	<b>Property Owner, Land</b> Martin and Lillian Schmidt 600 NE Grand Ave. Portland, OR 97232	<b>Owner, Improvements:</b> First Media Television, LP 910 NE ML King Blvd. Portland, OR 97232-2748	<b>Applicant:</b> Verizon Wireless c/o Wireless Facilities, Inc. 4520 SW Water Ave. #H Portland, OR 97201
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**Site Size:** Total of Affected Parcels = 20.5 acres

**Zoning:** R-10 Single Family Residential

**Approval Criteria:** Multnomah County Code (MCC) 11.15.7035B)(6)(d), and the Design Review criteria in MCC .7835 through .7850.

**Decision:** **Approve the request to install the proposed antennas and necessary equipment as proposed, based on the findings and conclusions, and subject to the Conditions of Approval of this decision.**

### I. CONDITIONS OF APPROVAL

1. Except as otherwise specified in the above conditions, this approval is based on the applicants submitted testimony, site plan, and findings contained in this decision. The applicant shall be responsible for implementing the development plan as presented and approved.

2. Prior to final approval of the building plans, the applicant shall submit written verifications from the FAA, the Oregon Aeronautics Division, and the FCC that the facility meets applicable requirements. This condition is intended to implement MCC .7035(14)(a), (b), and (c). Any of the verifications required in this condition may be waived if the applicant demonstrates that the provisions of MCC .7035(14)(d) are satisfied.
3. Prior to final approval of the building plans, the applicant shall provide documentation from the agency with jurisdiction, that the applicable federal emissions standards will be met for the site. This condition is intended to address the provisions of MCC .7035(14)(F).
4. This approval will become void 18 months from the date this decision becomes final unless the project is constructed or an extension is approved pursuant to MCC 11.15.7870 . The decision will become final on August 16, 2000 unless an appeal is filed.

**Note: The Planning Director's policy is for the case planner to provide zoning approval of the Building Plans on an appointment basis. Please contact Chuck Beasley at 988-3043 to set an appointment for Building Permit sign-off.**

## **STAFF REPORT FORMAT**

This staff report addresses one requested action, approval of a Design Review permit. The Applicant's response to an approval criterion indicated by the notation "Applicant." Planning staff comments and analysis follow the applicant's responses to the criterion. Additional planning staff comments are added where supplemental information is needed or where staff may not concur with the applicant's statements. If no staff remarks are indicated, staff concurs with the applicant. Findings are included by staff as necessary to address ordinance requirements.

## **FINDINGS:**

## **II. BACKGROUND AND DESCRIPTION OF PROPOSAL**

### **Applicant:**

Verizon Wireless is requesting a Design Review approval from the Multnomah County to locate a total of four cellular communications panel antennas on an existing 1070 ft transmission tower. The new cellular site is proposed to improve wireless communications in the Metropolitan Service Area. Verizon has identified this project site as a high priority for its "Bulletproof" transceiver construction program. Currently, there is a gap in the service area that results in poor service and/or dropped calls, and the

proposed installation is necessary to eliminate the gap and thereby insure quality service in the future as the number of customers in the area increases.

Verizon proposes to install two 4'3" antennas at the 52'6" height and two more 8'5" antennas at 640 feet on the existing 1070 ft. tower. The four antennas will be operated by two equipment cabinets that will be stored in a 6 X 13 square ft area in the existing equipment building at the base of the tower. The antennas will be mounted within the legs of the tower and will not be visually obtrusive.

A technician would visit the site approximately once every thirty (30) to forty-five (45) days. There will be no discernible transportation impact to the surrounding area based on the infrequent trips generated by Verizon Wireless' maintenance requirements.

The signals emitted by the proposed Verizon Wireless antennae/transmitter fall between 880-894 megahertz bandwidth. This range of frequencies does not interfere with those used by local emergency service providers. In addition, Verizon Wireless' signals do not interfere with television, FM radio, or other similar electronic transmissions.

Verizon construction schedule spans an approximate 30 to 60 day timeframe. The construction schedule allows for mobilization, material delivery, poor weather conditions and other scheduling constraints. The cellular equipment is pre-manufactured off-site.

## **SITE AND VICINITY CHARACTERISTICS**

**Staff:** The subject property is located east of NW Miller Road on a ridge above a commercial nursery. Access to the tower is over an easement (Random Road) through the property from NW Miller Rd. This ridge is developed with other similar towers including those owned by Oregon Television, Inc., King Broadcasting Co., and Fisher Broadcasting, Inc.

## **III. APPLICABLE CRITERIA**

1. MCC 11.15.7035(6)(d) contains the requirements for adding antennas to existing towers, subject to standards in the Community Service ordinance and Design Review.
2. MCC 11.15.7850 contains the Design Review approval criteria applicable to the request.

## **IV. ANALYSIS**

### **A. Community Service Ordinance**

**11.15.7035(B)(6)(d) Radio and Television Transmission Towers. Once a new tower**

is approved, additional antennas and accessory uses to permitted antennas may be added to it in accordance with the approved sharing plan if the Planning Director finds that the standards of MCC .7035(B)(7) through (9),(12), (14) and (15) are met.

- (i) A request for additional antennas or accessory uses shall be processed under MCC .7835 through .7845, provided the standards of MCC .7850 may only be applied in direct proportion to the extent of the proposed change.
- (ii) If the proposed change results in an increase in the extent to which the existing use violates the setback and landscape standards of MCC .7035(B)(4)(b) through (d), (B)(5)(b) through (d), and (B)(11)(a), the application for approval shall be considered as an action proceeding by the approval authority, who may approve the change based on the applicable standard of MCC .7035(B)(4)(a), (B)(5)(a), and (B)(11)(a).

**Applicant:** The new antennas do not affect any setbacks or landscaping at the site. All equipment will be stored in the existing storage facility.

**Staff:** The tower was approved under CS 13-81 in July of 1982, and is subject to these provisions under the terms of the approval. The tower was planned to provide for three television antennas, up to four FM antennas, and eighty-two two-way radio antennas. The applicant indicates that the proposed cellular telephone antennas do not result in a change to the structure or landscaping.

- (7) **Visual impact – The applicant shall demonstrate that the tower can be expected to have the least visual impact on the environment, taking into consideration technical, engineering, economic and other pertinent factors. Towers clustered at the same site shall be of similar height and design, whenever possible. Towers shall be painted and lighted as follows: (a) through (d).**

**Applicant:** The new antennas will go unnoticed to the general public. They are too small in size to be seen from a significant distance. No additional lighting will be needed or required by the FAA. The new panel antennas will be painted to match the current color of the tower.

**Staff:** The existing tower is painted and lighted as required. The new panel antennas are narrow (6” to 12” wide) strips of a size that will minimize visibility.

- (8) **Maintenance impacts – Equipment at a transmission facility shall be automated to the greatest extent possible to reduce traffic and congestion. The applicant shall describe anticipated maintenance needs, including frequency of service, personnel needs, equipment needs, and traffic, noise or safety impacts of such maintenance. Where the site abuts or has access to a collector and local street, access for maintenance vehicles shall be exclusively by means of the collector street.**

**Applicant:** This will be an unmanned facility. The equipment will be stored indoors in the existing storage area. All components of the antennas and equipment are self-

sustaining. The only traffic generated will be by a service technician who will visit the site once every 30 to 45 days.

**Staff:** The only identified change to maintenance will be the occasional service technician site visit.

- (9) Parking – A minimum of two parking spaces shall be provided on each site; an additional parking space for each two employees shall be provided at facilities which require on-site personnel.**

**Applicant:** The site already has more than two existing parking spaces. There will not be a need for additional space.

**Staff:** Agrees.

- (12) Accessory uses – Accessory uses shall include only such buildings and facilities necessary for transmission function and satellite ground stations associated with them, but shall not include broadcast studios, offices, vehicle storage areas, nor other similar uses not necessary for the transmission function.**

**Accessory uses may include studio facilities for emergency broadcast purposes or for other special, limited purposes found by the approval authority not to create significant additional impacts nor to require construction of additional buildings or facilities exceeding 25 percent of the floor area of other permitted buildings.**

**Applicant:** There will not be any accessory use of the existing facility.

**Staff:** No new accessory buildings or other facilities that are not necessary for the transmission function are proposed. Applicant is proposing to add antennas and equipment.

- (14) Agency Coordination – The applicant shall provide the following information in writing from the appropriate responsible official:**

- (a) A statement from the Federal Aviation Administration that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or a statement that no compliance with Part 77 is required.**

**Applicant:** See attached.

**Staff:** The applicant has submitted two documents from the FAA: Notice of Proposed Construction or Alteration, dated 9/28/82; and Notice of Proposed Construction or Alteration, dated 8/9/94. The 1982 document is for the new tower, and the 1994 document is for a prior alteration of the tower.

- (b) A statement from the Oregon State Aeronautics Division that the application has been found to comply with the applicable regulations of the Division, or a statement that no such compliance is required.**

**Applicant:** See attached.

**Staff:** The applicant has submitted a letter from the State of Oregon Aeronautics Division dated 7/13/82, that approved construction of the original tower.

- (c) A statement from the Federal Communications Commission that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.**

**Applicant:** See attached.

**Staff:** The applicant has provided a copy of an FCC antenna registration dated 1/5/98, and a Cellular Radiotelephone Authorization for operation of the wireless frequency dated 5/11/99.

- (d) The statements in (a) through (c) may be waived when the applicant demonstrates that a good faith, timely effort was made to obtain such responses but that no such response was forthcoming, provided the applicant conveys any response received; and further provided any subsequent response that is received is conveyed to the approval authority as soon as possible.**

**Staff:** The applicant has not indicated that a timely response from the appropriate agency is not forthcoming. Therefore, the applicant should statements from each of the three agencies for the proposed project, especially considering the passage of time and the possibility of a changes in regulations.

**(15) Emission of non-ionizing electromagnetic radiation. The NIER requirements of (F) are met.**

**Applicant:** The Federal Telecommunications Act of 1996, pre-empted Federal, State and Local regulation, and authority concerning non-ionizing radiation, and placed all regulatory authority with the Federal Communications Commission. The FCC has established allowable radiation levels and requirements for compliance. The site is presently in compliance and the proposed antennas will be in compliance. The site has been signed with approved FCC signs delineating the boundaries for controlled and non-controlled areas. The FCC requires that each licensee be compliant and so state compliance. If any party wished to contest the statement of compliance, the burden of proof and any associated costs must be borne by the contesting party. Federal Case Law has already established that compliance cannot be used in zoning and permitting cases, once compliance has been stated.

**Staff:** This approval standard refers to the standards and procedures for measuring non-ionizing electromagnetic radiation (NIER) in MCC .7035(F). These standards were incorporated into the code in 1982. Since that time, the federal government designated the FCC as the body with regulatory authority to set standards and measure compliance in this area. Staff agrees that the applicable standards are those which implement the 1996 FCC Act. These federal emissions standards effectively substitute for substantive provisions of the Multnomah County Code that regulate the permissible level of allowable emissions. Staff does not agree, based on the evidence provided by the applicant, that the applicant's burden to demonstrate compliance with the federal standard is also waived or superceded by the Act. Emissions from these facilities has been a significant public concern, therefore the County has an interest in documenting the compliance with applicable standards. The applicant will need to submit evidence that the applicable FCC standards are met, prior to construction of the proposed improvements.

**Conclusion:** Staff concludes that the approval criteria of the CS ordinance can be met when conditions of approval are satisfied. The conditions imposed are documentation that the Agency Coordination provisions of MCC .7035(14) are met, and that documentation of compliance with the NIER standards of the Telecommunications Act of 1996 is provided.

## **B. Design Review Approval Criteria**

**MCC 11.15.7850(A):** Approval of a final design review plan shall be based on the following criteria:

- (1) Relation of Design Review Plan Elements to Environment.**
  - (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.**
  - (b) The elements of the design review plan should promote energy conservation and provide protection from adverse climactic conditions, noise, and air pollution.**
  - (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter-related, and shall provide spatial variety and order.**

**Applicant:** We are proposing to locate four new panel antennas on an existing tower that was approved through Multnomah County file number CS 13-81. We will not alter any of the existing design standards.

**Staff:** The scale of the proposed panel antennas is relatively small, and their shape is linear in keeping with the existing tower structure. Staff agrees that they will be visually and functionally compliant with these criteria.

- (2) Safety and Privacy – The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.**
- (3) Special Needs of Handicapped – Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and Braille signs.**
- (4) Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering**

development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.

- (5) **Pedestrian and Vehicular circulation and Parking** – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.
- (6) **Drainage** – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.
- (7) **Buffering and Screening** – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.
- (8) **Utilities** – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.
- (9) **Signs and Graphics** – The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.

**Applicant:** The four new panel antennas will not impact any of these design considerations.

**Staff:** The standards above that relate to needs of the handicapped (3), preservation of the natural landscape (4), drainage (6), buffering and screening (7), and signs and graphics (9), have no applicability to the placement of the proposed antennas on the existing tower. The remaining standards could have some applicability, however evaluation of the proposal against the standards must take into account the direction given in MCC .7035(6)(d). The design standards are to be applied only in proportion to the extent of the proposed change. The proposed change is to add two antennas at the 52' level and two at the 640' level, and the panel antennas are 4'3" and 8'5" high respectively. The panel antennas will each be between 6" and 12" wide. In addition, servicing of equipment will generate infrequent site visits by technicians every 30 to 45 days. Based on these facts, staff finds the proposal to have a very low impact or change to the existing facility.

(2) **Safety:** The potential safety issues that could be a factor in this application are all related to structural engineering and NIER exposure. The structural issues will be



addressed through the required building permit process. The NIER issue is addressed through compliance with federal requirements.

(5) Circulation and Parking: The access point and circulation patterns are established. The one additional trip per 1-1.5 months does not add enough impact to require improvements to meet this standard.

(8) Utilities: The proposed antennas are above-ground utilities. The location of the antennas on the existing tower has no identified adverse impacts on the site and neighboring properties when the applicable standards addressed here are met.

**MCC 11.15.7870 - Expiration of Approval:** (A) Design review approval shall expire in 18 months from the date of final design review approval, however upon application a six month extension may be granted by the Planning Director upon written findings that the applicable provisions of this ordinance are satisfied. The Director's Decision may be appealed as provided by MCC 11.15.8290. Failure to apply for an extension shall result in expiration of the approval.

- (a) Application shall be made on the appropriate forms and filed with the Director at least 30 days prior to the expiration date.
- (b) The Director shall issue a written decision on the application within 20 days of filing. That decision shall be based on the finding that:
  - (i) Final Design Review approval has been granted under MCC .7845 on the total project; and
  - (ii) At least ten percent of the dollar cost of the total project value has been expended for construction or development authorized under a sanitation, building or other development permit. Project value shall be as determined by MCC .9025 (A) or .9027 (A).
- (c) Notice of the Planning Director decision shall be mailed to all parties as defined in MCC .8225.
- (d) The decision of the Planning Director shall become final at the close of business on the tenth day following mailed notice unless a party files a written notice of appeal. Such notice of appeal and the decision shall be subject to the provisions of MCC .8290 and .8295.

**Conclusion:** Staff concludes that the Design Review standards can be met for this low-impact request. The applicant will comply with all of the standards when the building permit requirements and NIER requirements are met.

## **VI. EXHIBITS**

A1. Applicants submittal on 6/15/00.

Narrative, site plans, documents from state and federal agencies, 6/2/00 letter re RF emissions.

### ***In the matter of DR 0-2***

This decision filed with the Director of the Department of Environmental Services on August 4, 2000.

Multnomah County Department of Environmental Services  
Land Use Planning Division

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By Chuck Beasley, *Planner*

For: Kathy Busse, *Planning Director*

## **NOTICE**

State law requires a public notice (by mail) to nearby property owners and to any recognized Neighborhood Association, of a Planning Director decision which applies discretionary or subjective standards or criteria to land use or development permit applications. The notice must describe the method to appeal the decision and, if appealed, the County must hold a public hearing to consider the merits of the application. A person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830. (ORS 197.763, ORS 215.416(11)).

The Administrative Decision(s) detailed above will not become final until the 12-day period for filing an appeal has expired. The 12-day appeal period starts the day after this notice is mailed, and if the 12th day falls on Saturday, Sunday, or a legal holiday, the appeal period extends through the next full business-day. Any person who is adversely affected or aggrieved by the decision, or who is entitled to written notice as described above, may appeal this decision. To file an appeal, complete an Appeal of Administrative Decision form, and submit to the County Planning Division Office, together with a \$100.00 fee and supplemental written materials (as needed) stating the specific grounds, approval criteria, or standards on which the appeal is based. If an appeal is filed, a public hearing will be scheduled before a County Hearings Officer pursuant to Multnomah County Code section 11.15.8290 and in compliance with ORS 197.763. To review the application file(s), obtain appeal forms, or other instruction, call the Multnomah County Planning Division at (503) 988-3043, or visit our offices at 1600 SE 190<sup>th</sup> Ave., Gresham, OR s [hours: 8:30 a.m. – 4:30 p.m.; M—F].

**The appeal period ends August 16, 2000, at 4:30 p.m.**