

Land Use Application T2-2019-12701

Verizon WCF Tower Appeal

Submitted by

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My appeal of the Multnomah County planning director's approval of application T2-2019-12701 is based on two primary reasons:

1. Pre-application conference:

I request the application be denied due to failure to conduct a pre-application conference as is required in Multnomah County Code for a Type III process. No evidence has been supplied which shows the Planning Director waived the requirement.

If that request is not approved, I then request that the applicant be required to conduct a pre-application meeting with open participation for public comment.

I believe the County erred in not requiring a pre-application conference for the Type III application due to excessive time in between the original submission and the subsequent and current application.

Based on documentation of the record:

- The original Type II application pre-application conference was held on Apr 25, 2019.
- Applicant states (see Exhibit A40) that they resubmitted a new Type II application on May 30, 2019 therefore meeting the 6 month limit. However on 11/20/19, Applicant chose to submit a **NEW** proposal using Type III process. Applicant has alleged that Type III processes do not require a pre-application conference.
- MCC 39.1120 specifically states that prior to submitting a Type II, Type III, or Type IV application, the applicant will schedule a pre-application conference with the County.
- Applicant argues that the Type III application was essentially the same as their earlier Type II application, other than the election to use concealment technology. Applicant states that Multnomah County did not require a new application conference due to being "just over 6 months".
- The submission of the Type III application on 11/20/2019 superceded the May 30, 2019 application and as such becomes the actual permit request. The Type III permit was filed 209 days after the Type II pre-application conference and therefore according to MCC 39.1120 (D) the applicant was required to schedule a new Pre-application conference.
- MCC 39.1120 (D) does state "The Planning Director may waive the pre-application requirements if, in the Director's opinion, the development does not warrant these steps". However there is no evidence in the record presented that the Planning director did in fact waive the requirement for

the pre-application conference, nor was any rationale provided as to why the conference was not required.

- Other timelines according to MCC appear to have been met, regarding Application, Review, time, incomplete notice, resubmission w/i the 180 day clock, Completeness letter, 150 day clock, 14 day notice to neighbors, request for extension of the 150* day clock (twice; 30d +45d = 75d) and finally the notice of decision.
- If this area is designated Urban Growth Boundary, the 150 day clock is reduced to 120 days, but given the 75 day extension would have placed final decision less than or equal to Mar 10, 2020 + 120days + 75 days extension = Sep 21. So they would have met that constraint anyway.

2. Wildlife Habitat:

I believe the County has erred in the interpretation and / or committed a procedural error in the decision to not list the area as critical, and further believe they are in violation of the intent and requirements of the Endangered Species Act.

Request: The project be suspended and that the applicant be required to perform an Environmental Assessment or SEPA checklist to fully evaluate the impact to the surrounding area and the critical habitat for these threatened or endangered species.

Based on existing documentation or research tools available at time of application:

- The project site and surrounding area is shown as habitat for 9 threatened species; 3 birds, 1 fish and 5 flowering plants when performing a search with the iPAC tool (US Fish and Wildlife). See also reference 1, results of Consultation.
- To our knowledge the applicant performed NO analysis for endangered or threatened species as part of the application process. When we questioned the review agency (Multnomah County) during the review period we were advised that there was no requirement to conduct an analysis as the area is not listed as critical habitat on the County SEC maps.
- Multnomah County as the local review jurisdiction, is responsible to adhere to the State of Oregon Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. MC is required to conduct periodic review of their Comprehensive plan.
- As part of that process, the County conducted a review of wildlife in the area (A subarea of Multnomah County identified as East of the Sandy River Area). The review and analysis conducted in 2014 was summarized on the County document of November 21, 2014 written by MC Planner, Rithy Khut, the same planner that was assigned to this WCF review. In that report, Mr. Khut states that associated studies identified the “East of the Sandy River area” as being comprised of 80% critical wildlife Habitat. That statement correlates well with the information obtained from USDFW.
- Multnomah County’s Comprehensive Plan Chapter 5 states:

INTRODCUTION/BACKGROUND INFORMATION

Maintaining environmental quality and protecting natural resources is essential for livability in Multnomah County, including a strong and sustainable economy. The County’s natural resources -- from its many

streams and rivers, to the wetlands on Sauvie Island, to the wildlife habitat in the West Hills and East County, to the grand beauty of the Columbia River Gorge -- are visual and ecological assets. Each is a major factor in defining the character of the rural areas of the County and each contributes to the quality of life for residents and visitors. Protecting and conserving these resources are vital components to a successful land use program. Protecting and managing these resources helps improve the quality of air we breathe, the ground we walk on, and the water in aquifers, wetlands, streams, and lakes.

Goals 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and 6 (Air, Water, and Land Resources Quality) of Oregon's statewide planning goals require cities and counties to plan for the management and protection of natural resources, including maintaining air, land, and water quality and protecting riparian corridors, wetlands, and wildlife habitat. Goal 15 (Willamette River Greenway) also protects the Willamette River and includes requirements for land uses and other activities adjacent to it. These goals and their associated administrative rules call for cities and counties to inventory significant natural resources and create and implement programs.

- Mr. Khut's memo on The County Planning Team's analysis is in contradiction to that intent. His memo goes on to state "It was determined that within the more heavily populated areas in the west of the "East of Sandy area" the addition of an SEC overlay would provide insignificant gains in wildlife protection and have negative economic and social impacts. Additionally within the eastern portion of the Plan Area the CFU zoning in place was already providing safeguards so that an additional SEC overlay was redundant". We believe the application of that criteria was incorrect. The project site and the surrounding areas are not heavily populated and in fact have zonings of EFU 10 acre minimum, MUA (20 acre minimum) and General Ag (10 acre minimum). The reliance that the zoning already has sufficient safeguards to protect critical habitat is flawed. The fact that a project is allowed to be submitted and now approved without an environmental analysis is contradictory to the statements of the Multnomah County's Comprehensive Plan Chapter 5.
- References:
 1. US Fish and Wildlife Letter dated September 22, 2020, Consultation code 01EOFW00-2020-SLI-0595.