

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an appeal of an administrative decision) **FINAL ORDER**
approving a 155-foot tall stealth wireless communications)
tower and associated equipment at 21616 SE Bohna) **File No. Z0498-24-C**
Park Road in unincorporated Clackamas County, Oregon) **(Verizon Bohna Park)**

A. SUMMARY

1. On December 4, 2024, Verizon Wireless (the “applicant”) filed an application (Exhibits 2, 2a, 4, and 5) for approval of a utility facility necessary for public service consisting of a 155-foot tall "stealth" telecommunication tower (Cell Tower) within a 50'x50' fenced area that will also contain equipment cabinets and a backup propane generator. The proposed tower will be designed to look like a fir tree. The facility is proposed on a 16.08-acre parcel located at 21616 SE Bohna Park Road; also known as T1 R3 Section E33D Tax lot 01400, T1 R3 Section E33C Tax lot 02500, T2 R3 Section E04 Tax lot 00400, T1 R3 Section E33D 01500, & T1 R3 Section E04 00300 (the “site”). The site is zoned EFU (Exclusive Farm Use). All other surrounding properties are zoned RRFF-5 (Rural Residential Farm Forest, five-acre minimum lot size).

2. On May 22, 2025, the planning director (the “director”) issued a written decision approving the application subject to conditions. (Exhibit 1).

3. On June 3, 2025, Rachelle and Nolan Wagner (the “appellants”) filed a written appeal of the director’s decision, objecting to the proposed towers impacts on health and safety, the environment, aesthetic concerns, property values, and a lack of transparency and community involvement. (Exhibit 29).

4. Clackamas County Hearings Officer Joe Turner (the "hearings officer") conducted an online public hearing regarding the appeal. County staff recommended that the hearings officer deny the appeal and affirm the director’s decision. Representatives of the applicant testified in support of the director’s decision. Appellant Rachelle Wagner and another area resident testified in support of the appeal. Principal contested issues in the case include the following:

- a. Whether the use is a utility facility necessary for public service
- b. Whether the County utilized the proper procedure to review the application;
- c. Whether the facility is subject to the approval criteria in ZDO 835;
- d. Whether the County can consider potential health effects of the facility;

e. Whether the facility is subject to and complies with the “separation requirements” of ZDO Table 835-2;

f. Whether the applicant is required to provide [a] certified engineering analysis demonstrating why existing support structures are unsuitable”;

g. Whether the applicant is required to document compliance with FCC RF exposure limits;

h. Whether alleged impacts on property values are relevant to the applicable approval criteria;

i. Whether the County can consider the aesthetic impacts of the facility;

j. Whether the facility poses an unusual risk of fire and whether such concerns are relevant to the applicable approval criteria; and

k. Whether proposed tree removal is relevant to the applicable approval criteria.

5. The hearings officer concludes the applicant sustained the burden of proof that the proposed use does or can comply with the applicable approval criteria of the ZDO subject to conditions of approval needed to ensure such compliance occurs in fact. The appellants did not rebut the substantial evidence in the record in support of the application. Therefore the hearings officer denies the appeals and upholds the planning director’s decision, based on the findings and conclusions adopted or incorporated herein and subject to the conditions of approval at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about the appeal on June 26, 2025. All exhibits and records of testimony are filed at the Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Aldo Rodriguez summarized the Staff Report and his PowerPoint presentation.

a. The applicant proposed to construct a 155-foot tall “monofir” wireless communications tower; the tower is designed to look like a fir tree and blend in with surrounding trees in the background. The applicant will locate the tower and associated ground mounted equipment within a 50- x 50-foot lease area. The applicant will utilize an existing driveway on the site to access the lease area from SE Bohna Park Road.

b. The proposed facility is allowed in the EFU zone as a utility facility necessary for public service pursuant to Section 401.05(G)(2) of the Clackamas County Zoning and Development Ordinance (the “ZDO”), subject to OAR 660-033-0130(16)(b) and ORS 215.274.

i. ORS 215.274(1) provides “A utility facility established under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.”

ii. ORS 215.274(2) provides:

To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

- (a) Technical and engineering feasibility;
- (b) The proposed facility is locationally dependent.
A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
- (c) Lack of available urban and nonresource lands;
- (d) Availability of existing rights of way;
- (e) Public health and safety; and
- (f) Other requirements of state or federal agencies.

iii. The applicant considered reasonable alternatives and determined that the proposed facility must be sited in the EFU zone in order to provide the service. The applicant’s technical analysis, included in the application, demonstrates the facility must be located in or near the identified search ring in order to provide the service. The facility is intended to fill an existing gap in wireless service. The applicant identified two search rings where a tower could be located to fill the identified service gap. The applicant mailed letters to the owners of properties that were located in or near the search rings and large enough to accommodate the proposed facility. 70% of the properties to which the applicant sent letters were zoned RRFF-5. The owner of the site was the only property owner who responded to the applicant’s letters. The site is zoned EFU. Therefore, there are no reasonable alternative locations and the facility must be sited in the EFU zone in order to provide the service, filling the identified coverage gap.

iv. The facility is locationally dependent; it must be located on a higher elevation in order to “see” over the ridges and tall trees in the area. The site, one of

higher elevation properties in the area, is located at an elevation of 700 feet and higher. Surrounding properties are located at elevations of 400 to 700 feet. Topography and vegetation would block the signal from a tower at a lower elevation.

v. The applicant determined that there are no opportunities for collocating the antennae on an existing tower.

vi. The facility is also necessary for public health and safety, to ensure reliable 911 service in the area.

c. The concerns raised by the appellants - health and safety, the environment, wildlife, increased fire risk, aesthetic concerns, and property values - are not relevant to the applicable approval criteria.

3. Attorney Mike Connors and planner Shanin Prusia testified for the applicant, Verizon Wireless.

a. Mr. Connors summarized his written testimony (Exhibit 37) and PowerPoint presentation (Exhibit 40).

i. He noted that the site consists of four separate EFU zoned parcels which constitute 16.08-acres in area. The site was historically planted as a Christmas tree farm.

ii. The applicant proposes to construct a 155-foot tall stealth monopole telecommunications tower disguised as a faux fir tree. The tower and lease area are designed to accommodate a total of nine antennae and ground equipment. The tower is necessary to fill an existing gap in telecommunications coverage to the north and northeast of the site, as well as to provide additional capacity for the area as wireless traffic is “increasing exponentially” and the existing towers are approaching capacity

iii. The proposed tower is subject to the approval criteria in ORS 215.275. The Courts have held that the County may not impose additional approval criteria beyond those set out in the statute.

iv. Due to the hilly topography in the area, the applicant’s engineers identified two search rings where a tower could be located to serve the identified coverage gap. The tower must be located at a higher elevation due to the topography and tall trees in the area that would otherwise block signals from the tower.

v. It is not feasible to provide the required coverage by locating antennae on existing towers. Verizon already has antennae on the nearest existing towers. The applicant cannot use the existing CCOM tower to the north of the site, as it is limited to public emergency service providers; private antennae are prohibited on that tower. The elevation of the Sprint/Nextel tower, identified in the public comments, is too low to

provide line of sight coverage to the area the proposed tower is intended to serve due to the presence of an intervening ridgeline southwest of the site.

vi. It is not feasible to provide the required coverage by constructing a tower on non-EFU land. The applicant identified properties located in or near the search rings that were at sufficient elevation to provide service and large enough to accommodate the tower and desired setbacks. The applicant mailed letters to the owners of the identified properties, the majority of which were located on non-EFU lands, and the owner of the site was the only property owner that responded. Therefore, the site is the only feasible option to locate a tower to fill the identified coverage gap.

vii. At the request of the property owner, the applicant proposed to design the tower as a “stealth monofir” tower disguised as a fir tree in order to minimize its visual impact.

viii. The issues raised in the appeal - concerns with health, safety and environmental impacts, visual impacts, property values, and fire risks - are not relevant to the applicable approval criteria. In addition, the Federal Telecommunications Act (the “FTA”) expressly prohibits the County from conditioning or denying the application based on health, safety and environmental concerns. The Federal Communications Commission’s (“FCC”) has exclusive jurisdiction to regulate RF emissions and wireless providers are subject to strict compliance with those standards.

(A) This application is not subject to ZDO 835, cited by the appellants. However, the application does comply with all of the criteria in that Code section. ZDO Table 835-2 requires 2,650 feet of separation between telecommunications towers, not between a tower and other surrounding structures. The tower will be located 600 feet from the nearest property line. ZDO 835.06(D)(1) does not require an engineer’s RF analysis. This section only requires a “a statement from a qualified person” that the tower cannot be collocated for one or more reasons listed in that section. The application includes such a statement. The County will conduct a structural review of the tower through the building permit review process.

(B) There is no County standard requiring consideration of impacts to property values and the appellants failed to provide any evidence of such impacts.

(C) There is no evidence that the proposed tower poses a higher risk of fire than any other structure. The applicant proposed to use a propane fueled generator on this site rather than diesel in order to limit the risk of fire. The Fire Marshall reviewed this application and did not raise any concerns with fire risk.

ix. The appellants cite a “lack of transparency and community involvement.” However, the County processed application as required by the procedures of the Code, with public notice and an opportunity to comment and appeal.

x. He waived the applicant's right to submit a final written argument and agreed to extend the 120 day clock to July 18, 2025.

b. Ms. Prusia noted that the Code does not require preservation of trees or mitigation for removal of trees. The trees that will be removed for this facility are merely overgrown Christmas trees from a prior Christmas tree farm. They are not mature large canopy trees.

4. Appellant Rachelle Wagner summarized the appeal.

a. She argued that the failed to allow adequate public oversight as the County utilized the wrong process for reviewing this application; it should have been processed as a Level II wireless facility which is subject to Type III review with a public hearing prior to decision.

b. The applicant failed to address ZDO 401.05(A)(1), which requires that the applicant demonstrate that the facility will force a significant change in or increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses.

c. ZDO Table 835-2 requires that towers be located 2,640 feet from other structures. This tower is proposed within 645 feet of the nearest homes. There is no location on the where the tower can be located in compliance with this requirement.

d. The applicant failed to provide a technical analysis demonstrating why the facility cannot be collocated on an existing structure, as required by ZDO 835.06(D)(1).

e. Construction of this tower will require the removal of 53 trees on the site, in violation of ZDO 835.06(D)(5).

5. Area resident Brittany Sastrawidjaya summarized her written testimony (Exhibit 35).

a. The applicant failed to provide modeling demonstrating compliance with the FCC's Maximum Permissible Exposure (MPE) limits and ZDO 1006.06(C). The FCC Guidelines have not been updated since 1996 despite a 2019 court decision requiring such updates.

b. The facility poses a risk to the health of area residents due to its proximity to surrounding homes.

c. The facility is not necessary for public health and safety, as it is possible to make 911 calls via satellite when telecommunications service is not available.

d. The applicant failed to provide a fire mitigation and response plan for the facility, which is located in the wildland/urban interface area. The proposed propane tank, emergency generator, and high-voltage utility trenching through forested terrain create a significant fire risk. The Oregon Department of Forestry (ODF) identified infrastructure ignition as one of the top five causes of wildfires.

6. At the end of the hearing, the hearings officer closed the record and took the matter under advisement.

C. DISCUSSION

1. ZDO 1305.02.D(2) authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The hearings officer must decide whether the applicant carried the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence. The hearings officer finds that this application complies with the applicable approval criteria based on the findings, and subject to the conditions of approval, below.

2. **ZDO Section 401, Exclusive Farm Use (EFU) District**

Section 401.04 Uses Permitted: Utility facilities necessary for public service, including associated transmission lines as defined in ORS 469.300 and wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. This category includes wireless telecommunication facilities not otherwise listed in Table 401-1, Permitted Uses in the EFU District.

Finding: This proposal is for a new monopole that will aid in providing necessary public service, as discussed below, and the tower will be less than 200 feet (155 feet) in height. Therefore, pursuant to ZDO Table 401-1, this application is subject to Type II review, subject to the criteria in ZDO Section 401.05(G)(2).

This criterion is met.

401.05(G)(2) Utility and Solid Waste Disposal Facility Uses: A utility facility necessary for public service may be established as provided in OAR 660-033-0130(16)(a) and ORS 215.275 and 215.276, or, if the utility facility is an associated transmission line, as provided in OAR 660-033-0130(16)(b) and ORS 215.274 and 215.276.

Finding: The project is not an associated transmission line, therefore the project must comply with OAR 660-033-0130(16)(a) and ORS 215.275 and 215.276. Compliance with these sections is discussed further, below.

This standard is met.

*ZDO 401.07 Dimensional Standards: Minimum front and rear setback: 30 feet;
Minimum side setbacks: 10 feet.*

Finding: As demonstrated by the applicant's submitted site plan, the proposed wireless telecommunication facility complies with the minimum setback standards.

This criterion is met.

3. ZDO Section 1010, Signs 1010.08 Signs for Institutional Uses. *Pursuant to Section 202, Definitions, a utility facility is an institutional use.*

Finding: The south and east elevation sheets in the application materials identified a proposed sign to be located on the access gate, but did not provide the specific size or details of the sign. Any signage will require compliance with this section. The maximum sign area allowed is 32 square feet per side. Neither a freestanding nor a building sign shall exceed this standard. Maximum top-of-sign height is five feet for a freestanding sign. A condition of approval is warranted to ensure compliance with this section.

As conditioned, this criterion is met.

4. ZDO Section 1015, Parking is designed to ensure that developments in Clackamas County provide sufficient and properly designed parking for motor vehicles as well as appropriate off-street loading areas.

Finding: The development operates as an unstaffed ("unmanned") facility. The access road and maneuvering area (hammerhead turnaround) will provide adequate off-street parking for the occasional maintenance needs of the unstaffed facility.

This criterion is met.

5. OAR 660-033-0130(16)(a), Utility facility necessary for public service:

(16)(a) A utility facility established under ORS 215.213(1)(c) or 215.283(1)(c) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must:

(A) *Show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:*

(i) *Technical and engineering feasibility;*

(ii) *the proposed facility is locationally-dependent. A utility facility is locationally-dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*

(iii) *Lack of available urban and nonresource lands;*

(iv) *Availability of existing rights of way;*

(v) *Public health and safety; and*

(vi) *Other requirements of state and federal agencies.*

Finding: The applicant considered reasonable alternatives to locating the facility in the EFU zone. The proposed facility is necessary to fill an identified wireless service coverage gap to the north and northwest of the site. The facility must be located in or near the identified search rings in order to address the identified coverage gap. The applicant mailed letters to the owners of all properties within a reasonable distance of the search rings that were at sufficient elevation to provide the needed coverage and that were large enough to accommodate the proposed facility. 70-percent of the identified properties were zoned RRFF-5. However, the owner of the site, which is zoned EFU, was the only owner who responded to the applicant's inquiries. Therefore, the facility must be sited in an EFU zone due to the following factors:

(i) *Technical and engineering feasibility:* The facility must be located at a higher elevation in or near the identified search rings in order to fill the identified coverage gap. Higher elevations are necessary to ensure adequate wireless coverage in areas challenged by topography and thick vegetation coverage, allowing the antennae to "see" over the top of hills and trees. The site, located in the EFU zone, is one of the highest elevation properties in the area, above 700 feet. Rural residential lands that are suitable to accommodate the facility on the outskirts of the EFU district are at lower elevations that range from 450 feet – 700 feet. The site is the only location where a tower can be located to fill the identified coverage gap with a property owner willing to allow the applicant to site the facility on their land. Therefore, the hearings officer finds that the facility must be located on EFU land due to technical and engineering feasibility.

(ii) *The proposed facility is locationally-dependent.* The topography in the area (unique geographical needs) limits the applicant's ability to locate the facility

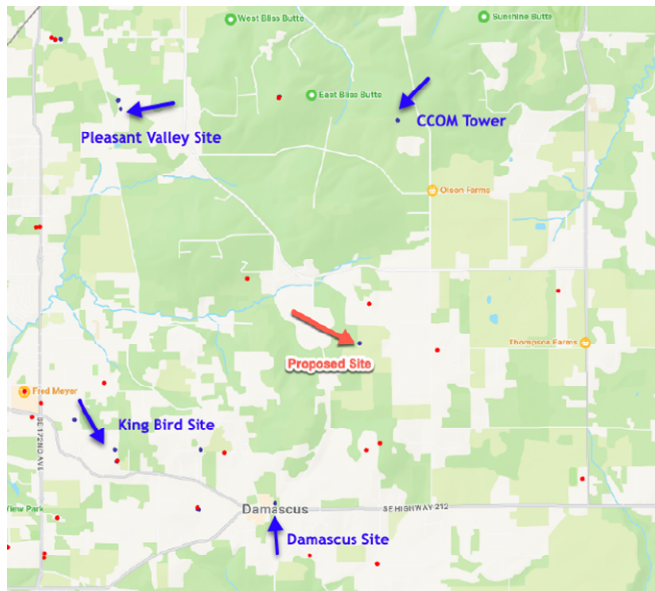
elsewhere. The proposed tower must be at high enough elevation to “see” over the top of surrounding ridges and tall trees. A tower located outside of the search area identified by the applicant would be at a lower elevation and unable to provide the needed service. Therefore, the hearings officer finds that the facility is locationally dependent.

(iii)*Lack of available urban and nonresource lands.* As noted above, the applicant contacted the owners of all properties within the identified search area, 70-percent of which were nonresource lands, but the owner of the site, zoned EFU, was the only owner to respond. Therefore, the hearings officer finds that there are no urban or nonresource lands available to located the facility.

There is a dispute as to whether the facility is also necessary for public health and safety, specifically to allow 911 emergency calls. Neighbors argued, without support, that it is possible to place 911 calls via satellite when wireless coverage is unavailable. However, it is not necessary to resolve this dispute in this proceeding as OAR 660-033-0130(16)(a)(A) only requires the applicant demonstrate that the facility must be sited in an exclusive farm use zone due to one or more of the listed factors. Based on the findings above, the applicant demonstrated that the must be sited in an exclusive farm use zone based on factors (i), (ii), and (iii). Therefore, regardless of whether the facility must be sited in an EFU zone in order to provide 911 service, the application complies with OAR 660-033-0130(16)(a)(A).

Staff received numerous comments from nearby property owners. A comment was received regarding whether alternative sites or co-location were considered prior to choosing the subject property. The applicant representing Verizon stated the following:

The submitted (Exhibit C) Radio Frequency justification letter shows existing Verizon sites. There are three sites, Pleasant Valley, King Bird, Damascus that surround the proposed property. Since those towers are already in use by Verizon – they are not colocation possibilities. Submitted Exhibit D (located in the app.) is an existing facilities map. The BLUE dots on the map represent existing towers (RED dots are only antennas – not towers). The only non-Verizon occupied tower is located at 9350 SE Wooded Hills Ct, Damascus. This tower is owned by CCOM – Clackamas County 911 Safety Services. Verizon approached CCOM, through the managing partner at WCCCA. Because the tower was not constructed for carrier purposes and due to future growth required, colocation was not a possibility. Additionally, this tower location is too far north to remedy the lack in coverage in between the existing sites, as noted in Exhibit C. To further clarify the lack of colocation possibilities, I have labeled the BLUE dots on the submitted existing facilities map (Exhibit D in the app.) and inserted a graphic of this below. There are no existing towers in the area that Verizon does not already occupy.



Based on the evidence provided by the applicant, reasonable alternatives, such as co-location and other sites that included urban and nonresource were considered and due to the findings above the subject property (EFU) property was chosen.

This criterion is met.

(B) Costs associated with any of the factors listed in paragraph (a) of this subsection may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

The applicant did not identify costs as a factor in addressing the factors listed in OAR 660-033-0130(16)(a)(A).

This criterion is inapplicable.

(C) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this paragraph shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

The applicant states the lease agreement between Verizon and the property owners requires that the property is to be restored to its original conditions upon removal of the site. OAR 660-033-0130(16)(a)(C)

This criterion is met.

(D) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

The hearings officer finds that the proposed WCF will not force a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands. The parcels that make up the site are the only EFU zoned parcels in the area. All but one of the parcels are planted in Christmas trees. The remaining parcel to the west is forested and is not in farm use. The tower site is an unoccupied facility. It does not create any emissions or odors that would impact farming. Therefore, no mitigation is required as the facility will not have impacts on surrounding lands devoted to farm use and will not force a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.





This criterion is met.

(E) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under oar 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.

(F) In addition to the provisions of paragraphs (a) to (d) of this subsection, the establishment or extension of a sewer system as defined by oar 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of oar 660-011-0060.

(G) The provisions of paragraphs (a) to (d) of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the federal energy regulatory commission.

On-site and off-site facilities for temporary workforce housing for workers constructing a utility facility, sewer facilities, and natural gas utilities are not proposed in this application, therefore sections (E), (F), and (G) are not applicable and are included for informational purposes only.

These criteria are inapplicable.

- 6. ORS 215.274 and 215.276:** ORS 215.274 relates to standards for transmission lines necessary for public service; ORS 215.276 relates to standards for transmission lines located on high-value farmland.

Finding: The proposal does not include a request to add transmission lines.

This criterion is not applicable.

7. Water Supply 1006.03

The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village: 1. Land divisions or other development requiring water service shall not be approved, except as provided in Subsection 1006.03(D)(4), unless they can be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority. 2. Development requiring water service within the boundaries of a water service system, created pursuant to ORS chapters 264, 450, or 451, shall receive service from this system. 3. New public water systems shall not be created unless formed pursuant to ORS chapters 264, 450, or 451. 4. A lot of record not located within the approved boundaries of a public water system may be served by an alternative water source.

FINDING: The subject parcels are located within a water limited area identified in the Clackamas County Groundwater Limited Map. The applicant has stated the site will not have any water service. Therefore, no additional review regarding water use is required.

This criterion is met.

8. Appeal Issues:

- a. **Improper procedure:** As discussed above, the proposed tower is “A utility facility necessary for public service” as defined by OAR 660-033-0130(16)(a). ZDO Table 401-1 provides that such facilities are subject to Type II review and the criteria in ZDO 401.05(G)(2).
- b. **Health Effects:** The hearings officer recognizes concerns that electromagnetic energy emitted by the proposed antennas could have an impact on public health. However the Federal Communications Act of 1996 expressly prohibits the County from considering such impacts when evaluating an application of this kind. Moreover the energy emitted by antennas transmitting at the frequencies used for cellular and personal service communications networks is several orders of magnitude less than the amount of energy known to have any effect, much less a hazardous one, on people, wildlife, or the environment.

- c. **“Separation requirements” of ZDO Table 835-2 (cited as Table 835-1 in Exhibit 35):** As “A utility facility necessary for public service” this facility is not subject to the approval criteria in ZDO 835. In addition, this table requires a minimum 2,640 feet between wireless communication towers, not between such towers and other structures. The relevant column of Table 835-2 is labeled “Minimum Tower Separation.” There are no existing towers within 2,640 feet of the proposed facility. Therefore an adjustment would not be required, even if this facility were subject to ZDO 835.
- d. **Inadequate Collocation Justification:** This facility is not subject to ZDO 835. In addition, ZDO 835.06(D)(1)(a) does not require “[a] certified engineering analysis demonstrating why existing support structures are unsuitable.” (Exhibit 35). This section only requires “[a] statement from a qualified person that the necessary telecommunication service cannot be provided by collocation...” The applicant provided such a statement in the application, noting that the applicant already has antennae on all but two of the existing towers near the site, identified in the application as “Pleasant Valley, King Bird and Damascus.” The applicant cannot collocate antennae on the CCOM tower and antennae located on the Sprint/Nextel Tower would not address the identified coverage gap due to a ridgeline between the tower and the area where service is needed.
- e. **Lack of RF compliance documentation:** The applicable approval criteria do not require the applicant to provide modeling demonstrating compliance with FCC RF exposure limits. ZDO 1006.06(C), cited in Exhibit 35, regulates surface water management and erosion control. The applicant is required to comply with FCC regulations and the FCC has adequate authority and expertise to ensure compliance.
- f. **Property values:** Property values are not relevant to the applicable approval criteria for this utility facility necessary for public service and the County is prohibited from imposing additional standards beyond those set out in state law, ORS 215.283(1)(c)(A) and 215.275. In addition, there is no County standard requiring consideration of impacts to property values. Although this use is not a conditional use subject to the criteria in ZDO 1203.01, the Land Use Board of Appeals (“LUBA”) held that “[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . .” *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998). In addition, there is no evidence to support assertions that the proposed tower will have an impact on property values.
- g. **Aesthetics (“eyesore”):** Aesthetic concerns are not relevant to the applicable approval criteria for this utility facility necessary for public service and the County is prohibited from applying any criteria beyond those set out in state law. However, the applicant proposed to minimize the visual impacts of the facility by utilizing a “stealth tower” design, disguising the tower as a fir tree that will blend with existing tall trees to the west of the facility.

- h. **Fire Risk:** Fire risk is not relevant to the applicable approval criteria for this utility facility necessary for public service. In addition, although opponents submitted examples of fires involving wireless communication facilities, there is no evidence that wireless facilities pose a greater risk of fire than any other structure or use permitted in the EFU zone. Although not required, the applicant proposed to use a propane fueled generator on this site rather than diesel in order to limit the risk of fire. The Fire Marshall reviewed this application and did not raise any concerns with fire risk.
- i. **Tree Removal:** The applicable approval criteria do not require retention of trees. In addition, the trees that will be removed to accommodate construction of the proposed facility are not mature trees; they are overgrown Christmas trees.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that File No. Z0498-24-C (Verizon Bohna Park) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with those standards.

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves File No. Z0498-24-C (Verizon Bohna Park) subject to the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 12/4/2024 and additional documents submitted on 2/27/2025 and 5/12/2025. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with these documents and the limitation of any approval resulting from the decision described herein.
2. **Prior to the issuance of a building permit**, the applicant shall obtain any necessary permits with the Development Engineering Division for private on-site and access improvements. The amount of work required and proposed will determine the level of permitting; it may be a Development Permit or an Entrance Permit. All private access and circulation improvement shall meet R100 for cross and structural section, along with C350 for emergency vehicle access and D500 for paved approach to a County roadway.

3. Adequate storm drainage facilities shall be provided. A storm water management plan per Roadway Standards Chapter 4 shall be provided when 10,000 square feet or more of impervious area is developed. Adequate conveyance of stormwater runoff shall be provided for the site and access road.
4. **Prior to the issuance of a building permit**, the applicant shall provide the Planning and Zoning Division a copy of the aeronautical determination letters from the Federal Aviation Agency (FAA) and the Oregon Department of Aviation (ODAV). In accordance with FAR Part 77.9 and OAR 738-070-0060, the proposed development is required to undergo aeronautical evaluations by the FAA and ODAV. The aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an obstruction to aviation safety. The applicant must receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.
5. Proposed signage shall comply with the standards of ZDO Section 1010, and ZDO Subsection 1010.08 “institutional signs in natural resource zoning districts”.

DATED this 2nd day of July 2025.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer’s decision constitutes the County’s final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA “shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.” This decision will be “final” for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).