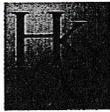


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May 23, 2016

VIA EMAIL & U.S. MAIL

Keir Miller, Senior Planner
Keir.miller@co.lane.or.us
Lane County Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Verizon Wireless - Wireless Telecommunication Facility
Lane County Application No. PA16-05083
EUG GOLDEN Property – 28767 Bodenhamer Road, Eugene, OR 97402

Dear Keir:

As you know, this firm represents Verizon Wireless (VAW) LLC (“Verizon”) with respect to the above-referenced application for an approximate 116-foot monopole telecommunication tower with a 120-foot antenna tip height, panel antennas, microwave dishes and associated equipment (the “Application”). The County deemed the Application incomplete and informed Verizon that it must submit additional information to address three (3) approval criteria in order for the Application to be deemed complete. Verizon submitted all of the requested information with the exception of the third item – written approval from the homeowner at 28568 Bodenhamer Rd. under Lane Code 16.264(4)(e)(ii)(A) because the proposed tower will be within 1,200 feet of the residence located on that property. As we previously discussed and I explained in this letter, Verizon hereby advises the County that it does not intend to provide written approval from the homeowner at 28568 Bodenhamer Rd., the Application should be deemed complete pursuant to ORS 215.427(2)(b) and the County should move forward with processing the Application.

Verizon is in the process of addressing significant coverage and capacity deficiencies in the Lane County area. There are certain areas within the County that currently lack sufficient coverage for Verizon customers and some of the existing facilities in the County are currently at maximum system capacity. As a result, Verizon is proposing a number of new facilities to address these coverage and capacity deficiencies, including the site proposed as part of the Application.

As Verizon has been working on selecting new sites and preparing the land use applications for processing, it has repeatedly run into problems complying with Lane Code 16.264(4)(e)(ii)(A).¹

¹ Other sections in the Lane Code reference this same requirement, namely Lane Code 16.264(4)(c)(i)(A), 16.264(5)(b)(i)(A) and 10.400-30(5).

Lane Code 16.264(4)(e)(ii)(A) provides that a telecommunication tower must be 1,200 feet from any dwelling or school unless "the homeowner(s) who is being encroached upon submits written approval of the encroachment." In selecting new sites in the search areas where a new facility is necessary, it has been extremely difficult finding sites that will satisfy Verizon's coverage/capacity objectives, has a willing property owner and appropriate zoning, and that is also more than 1,200 feet from a residence or school. For those sites in which Verizon could not identify a viable site more than 1,200 feet from a residence or school, it has made substantial efforts to obtain the written consent from the necessary property owners but has been unable to do so in several instances because the property owners either refuse to respond to Verizon's requests, demand some form of compensation for their consent or refuse to provide the consent under any circumstances. The problem has become significant enough that Verizon no longer believes it is possible to build out its network in Lane County in strict compliance with Section 16.264(4)(e).

The site proposed as part of the Application is one of those sites that Verizon has been unable to obtain the consent of the neighboring property owner with a residence within 1,200 feet of the proposed tower. These same neighbors had previously expressed a willingness to lease space to Verizon to locate the proposed tower on their property, but when Verizon elected to lease the subject site they refused to consent under Lane Code 16.264(4)(e)(ii)(A). Since it is clear that these neighbors will not consent under Lane Code 16.264(4)(e)(ii)(A) despite Verizon's best efforts, Verizon cannot locate the tower on the subject site more than 1,200 feet from their residence and there are no viable alternative sites that can satisfy the coverage and capacity objective, Verizon must move forward with this Application without this requirement.

As part of this Application proceeding, Verizon intends to challenge the County's application of Lane Code 16.264(4)(e)(ii)(A) on the grounds that it violates the Federal Telecommunications Act of 1996 (the "Act") in two respects. First, Lane Code 16.264(4)(e)(ii)(A) violates 47 U.S.C. § 332(c)(7)(B)(iv) because the 1,200-foot separation requirement is based predominately, if not exclusively, on concerns about RF emissions from telecommunication towers. The Act expressly prohibits local governments from regulating wireless service facilities based on concerns about the health, environmental or safety effects of RF emissions since those standards have been mandated at the federal level. 47 U.S.C. § 332(c)(7)(B)(iv). The legislative history for the current version of Lane Code 16.264(4)(e)(ii)(A) demonstrates that one of the primary purposes, if not the exclusive purpose, behind this code provision was to address health related concerns from RF emissions. The fact that the requirement is specific to "dwellings" and "schools" further indicates that it was motivated by RF emission related concerns.

Second, Lane Code 16.264(4)(e)(ii)(A) violates 47 U.S.C. § 253(a) and 47 U.S.C. § 332(c)(7)(B)(i)(II) because it has the effect of prohibiting the provision of wireless services. Local governments may not adopt regulations that "prohibit or have the effect of prohibiting" the provision of wireless services. 47 U.S.C. § 253(a); 47 U.S.C. § 332(c)(7)(B)(i)(II). A local government's denial of a permit for a wireless communications facility has the "effect of prohibiting the provision of wireless services" where the wireless facility is needed to fill a significant gap in service coverage and there are no other feasible alternatives to the proposal. *MetroPCS Inc. v. City and County of San Francisco*, 400 F.3d 715, 731 (9th Cir. 2005); *Second Generation Properties L.P. v. Town of Pelham*, 313 F.3d 620, 631-34 (1st Cir. 2002). Lane Code 16.264(4)(e)(ii)(A) has the effect of prohibiting wireless services in this particular area and

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throughout the County area. Verizon is not aware of any other local wireless codes that require anything close to a 1,200-foot separation from residences and schools. By requiring such a large separation from residences and schools and giving neighboring property owners an effective veto right over proposed facilities regardless of whether or not they comply with the remaining approval standards, Lane Code 16.264(4)(e)(ii)(A) is precluding Verizon from filling in several significant gaps in service coverage in this particular area and Lane County as a whole.

We intend to provide additional authority for our position during the Application process, but we wanted to provide you a summary of our position at this point so you understood why we are proceeding with the Application notwithstanding the lack of neighbor signatures required by Lane Code 16.264(4)(e)(ii)(A).

We appreciate your assistance with this matter. If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP



E. Michael Connors

EMC/pl

cc: Verizon Wireless (via email)
Robin Smith, Centerline Solutions (via email)
Lydia McKinney, Lane County Land Management Division Manager (via email)
Andy Clark, Lane County Legal Counsel (via email)
Deanna Wright, Lane County Planner (via email)