

WALLOWA COUNTY PLANNING COMMISSION

WALLOWA COUNTY COURTHOUSE

101 S. River Street, Room B-1

Enterprise, OR 97828

IN THE MATTER OF THE REQUEST)
FOR A CONDITIONAL USE PERMIT)
IN THE FORM OF A PUBLIC) FINDINGS OF FACT, CONCLUSIONS,
SERVICE UTILITY FACILITY) AND DECISION OF THE WALLOWA
(CELLULAR TOWER) IN THE) COUNTY PLANNING COMMISSION
RESORT COMMERCIAL)
RECREATION (RCR) ZONE)

RE: US Cellular, South Wallowa Lake, CUP# 10-11

The request was deemed to be complete on November 2nd, 2011. The application was advertised in the Wallowa County Chieftain on November 11th, and neighbors and other interested parties were noticed on November 10th, 2010. As there was no Commission meeting in November due to a lack of a quorum, the application was continued to the next public hearing on January 25th, with a Decision on February 22nd, 2011. The Commission does not usually meet in December. The Planning Commission having reviewed the record, the materials introduced in the above-referenced hearing, and having heard and considered oral and written testimony in the above-referenced hearing, and being fully advised, makes the following findings of fact and decision.

- 01. **APPLICANT:** U S Cellular - Oregon RSA#2, Inc. c/o Dan MacKinney
9323 N. Government Way #220
Hayden, ID 83835
- 02. **OWNER:** Wallowa Lake Tramway, Inc.
- 03. **REQUEST:** Utility or communications facilities necessary for public service (cellular tower)
- 04. **LOCATION:** The property description is Township 03S, Range 45E, Section 28, tax lot 300
- 05. **PARCEL CHARACTERISTICS:** Parcel is zoned RCR and contains the lower terminal of the Wallowa Lake Tramway. Access is from the State Highway.
- 06. **REVIEW CRITERIA:** Article 5, Public Hearing Review, Sections 5.025(01-03) and 5.040(01); Article 9, Conditional Use Permit, Section 9.015 and Section 9.020; Article 55, Resort Commercial recreation, Sections 55.020 (03), 55.025, 55.030 and 55.035 relevant criteria; and other applicable zoning ordinances or goals of Wallowa County and or laws of the State of Oregon.); and other applicable zoning ordinances or goals of Wallowa County and or laws of the State of Oregon.

FINDINGS

US Cellular, South Wallowa Lake, CUP# 10-11

January 27, 2011

Page 1 of 9

SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. Public Hearing Review requires notice of hearing be given to all owners of property lying within:
 - A. One hundred (100) feet of the exterior boundary of the subject property where the subject property is wholly or in part within an urban growth boundary;
 - B. Two hundred and fifty (250) feet of the exterior boundary of the subject property where the subject property is outside an urban growth boundary and not within a farm or forest zone;
 - C. Seven hundred fifty (750) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone.

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.

03. Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.

FINDING 6.1: The Planning Commission finds the public hearing was properly noticed to all property owners within 250 feet of the subject property, in a newspaper of general circulation and was posted on the Wallowa County Courthouse Public Notice Board prior to the hearing within the required time frame.

SECTION 5.035, REVIEW PROCESS AND DECISION:

01. The Public Hearing Review authority may impose such conditions of approval upon a permit as are deemed necessary to insure the use or development complies with the applicable standards and criteria.

FINDING 6.2: The Planning Commission has determined that the use or development, as proposed, complies with the applicable standards and criteria and is compatible with the zone. Therefore, no Conditions of Approval are required.

SECTION 9.015, REVIEW PROCEDURE: Application for a Conditional Use Permit shall be subject to the public hearing review process.

FINDINGS

FINDING 6.3: The Commission finds that this application was heard at a properly advertised public hearing as indicated above.

SECTION 9.020, REVIEW CRITERIA: After taking into account location, size, design, and the general nature of the proposed use; the hearing body must determine that the development will comply with all of the following criteria to approve a Conditional Use Permit.

01. The proposed use will be consistent with the purpose of [and is allowed conditionally in the zone in which the use proposed.
02. The use will not create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.
03. The proposed use will not overburden the public services of water, sewer, storm drainage, electrical service, fire protection, and school.
04. The site is suitable to accommodate the proposed use, such as: topography, soils, and parcel size.
05. The proposed use will not interfere with uses permitted on adjacent parcels.
06. The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.

FINDING 6.4: The Commission finds, via testimony and other evidence presented, that U. S. Cellular’s communications facility and tower will be consistent with the purpose of [and is allowed conditionally in] the RCR zone, will not create excessive traffic congestion or noise, will not overburden public services, is suitable for the site, will not interfere with uses permitted on adjacent parcels.

Testimony has shown, and the Planning Commission finds that the proposed cell tower will benefit the public in the form of improved cell phone service, and will bring service into areas which currently do not have service.

The Commission further finds that the use does not require review by the Wallowa County Salmon Habitat Technical Advisory Committee.

[.....]

SECTION 55.020, CONDITIONAL USES: The following specific uses, and other substantially similar uses, including structures enclosing or uses occupying in excess of 4000 square feet for each commercial use, may be established in the Resort Commercial Recreation zone subject to public hearing review for compliance with requirements of Article 9, Conditional Use Permit, and other provisions of this ordinance (all outdoor activities or activities generating noise audible outside of a building at the adjoining property line to begin no earlier than 8:30 AM and terminate by 10 PM except as allowed by a Temporary Use Permit for special events).

FINDINGS

[.....]

03. Utility or communication facilities necessary for public services, including power generation facilities, transmission, and receiving towers.

[.....]

FINDING 6.5: The Planning Commission finds that the proposed use is a Conditional Use in the RCR zone, that this application has been properly brought before the Planning Commission as part of the Conditional Use process.

SECTION 55.025, REVIEW CRITERIA:

All uses and development described in this Article shall be subject to the following additional criteria:

01. **SALMON HABITAT RESTORATION:** Applications must satisfy any applicable criteria of Article 36, Salmon Habitat Restoration.
02. **SCENIC WATERWAYS, WILDLIFE HABITAT, WETLANDS AND RIPARIAN CORRIDORS:** Applications must satisfy any applicable criteria of Article 28, Goal 5 and 6 Resource Overlay Zone.

[.....]

FINDING 6.6: The Commission finds that the above criteria are not applicable to this application as no stream or other fish bearing waters are impacted.

SECTION 55.030, DESIGN STANDARDS: For both Permitted and Conditional uses in the Resort Commercial Recreation Zone, a lot or parcel may be used and a structure or part of structure, constructed, reconstructed, or altered only after the following design requirements have been met. Proposed permitted use development meeting all design standards are subject to Ministerial Review; those not conforming with one or more of these standards shall be subject to Administrative Review or Article 10, Variance Procedure, while conditional use adherence to design standards will be considered in Public Hearing Review.

01. **STRUCTURE HEIGHT:** Building heights shall be limited to forty (40) feet above grade measured vertically from the highest point of the grade against the structure to a line perpendicular to the highest point of the structure. If the lot is larger than minimum, a building height of more than forty feet may be approved subject to the Public Hearing Review process and a finding that the building height is in proportion to the lot size and is in harmony with surrounding properties.

02. **EXTERIOR WALLS, FENCES AND TRIM:** Exterior siding materials accepted by the review authority are natural wood, board & batt, rough sawn, T1-11 paneling, and other siding materials having an appearance comparable to the wooden materials listed. Other siding materials subject to Administrative Review for compliance with the purpose of the zone and these design standards.

FINDINGS

Colors shall be chosen from a color selection chart which is available for review in the Planning Department, shall be non reflective, and conform to and blend with the surrounding area. Colors not shown on the chart will be subject to Administrative Review for compliance with the purpose of the zone. Submission of samples for review of materials and colors to be utilized may be required.

No fence may exceed six feet and six inches in height from ground level. Chain link fences will only be allowed with prior approval of the review authority.

03. **ROOFS:** To achieve harmonious appearance, roofs must have a minimum pitch of 4/12. However, a roof pitch of 3/12 may be allowed upon demonstration to the review authority that a 4/12 roof pitch is not feasible but that the structure otherwise meets design standards. The color of roofing material shall be chosen from a color chart which is available for review in the Planning Department, and it shall be non-reflective dark shades of blue, green, brown, and gray. Colors not shown on the chart will be subject to Administrative Review for compliance with the purpose of the zone and design standards.

FINDING 6.7: The development plan submitted by the applicant shows that the equipment building is a typical equipment building and will be exposed aggregate with a flat roof, but the roof will be designed to meet the required snow load. Additionally, a 7.0 foot chain link fence with barbed wire fence is required by the applicant to meet security and insurance requirements. The Commission finds the above described structure meets the requirements of this article.

04. **FIRE SAFETY:**

[.....]

FINDING 6.8: The proposed development is within the Wallowa lake Rural Fire District and the building and all equipment will meet current fire safety standards. The Commission finds the above arrangements meet the requirements of this article.

05. **SIGNS:** Signs shall conform to Article 34, Signs.

06. **PARKING:** Off street parking shall be supplied according to the requirements of Article 33, Parking. Employee parking for the number of employees typically working during the largest shift of the peak season must be provided in addition to the minimum parking required by the square footage , seating, or unit criteria.

07. **CHANGE IN NATURAL GRADE:** Only that excavation necessary for building construction and landscaping shall be allowed. All slopes shall be graded to a minimum of 2:1 and shall be covered with top soil and reseeded with appropriate cover vegetation.

FINDING 6.9: The development plan submitted by the applicant shows no additional signage and no change in natural grade. Also, no additional parking is required as there will be no direct use by the public.

FINDINGS

US Cellular, South Wallowa Lake, CUP# 10-11

January 27, 2011

Page 5 of 9

08. **ARTIFICIAL LIGHTING:** Pole lights, night lights, or other artificial lighting shall not cause illumination in excess of two foot candles beyond any site boundary line. Flickering and intrinsically bright sources of illumination, even if meeting the standard prescribed above, shall be controlled by down shielding and aiming the light source down and away from roads and nearby sites.

09. **WATER SUPPLY AND SEWAGE DISPOSAL:** Evidence shall be submitted that adequate means of waste water disposal and an adequate water supply for domestic use and fire suppression will be provided in conjunction with the proposed development.
[.....]

FINDING 6.10: The equipment building will only be lighted when the maintenance technician is present, otherwise there will be no exterior lighting on the building or on the tower. The Commission finds the above arrangements meet the requirements of this article.

12. **UTILITY SERVICE:** Utility service lines such as electric, cable TV, and phone shall be placed underground unless evidence satisfactory to the review authority is presented that underground placement is not feasible.

13. **FLOOD ZONE AREAS:** In addition to the provisions of this subsection, uses proposed that are within a flood zone area shall be subject to the requirements of Article 25, Flood Hazard Area.
[.....]

FINDING 6.11: The FEMA flood map of the area show that the development is not within a flood area. Additionally, to meet the requirements of this article, utilities will be placed underground, including the cables from the equipment building to the tower.

SECTION 55.035, PROPERTY DEVELOPMENT STANDARDS:

[.....]

03. ACCESS:

[.....]

Residential and commercial lots shall be served by improved public access as defined in Article 32, Roads, except that private access will be allowed where no more than two residential lots are to be served by the access and there is no potential for further divisions to be served by the private access.

No fences or buildings to be built on public or private roadway or utility easements, rights of way, or access.

FINDING 6.12: The maps submitted by the applicant indicate public access from the State Highway, the Joseph - Wallowa Lake Highway #351.

FINDINGS

04. **SETBACKS:** To insure setback requirements are met, setback and service district easement lines shall be flagged. Prior to construction commencing, the property owner shall request the Planning Department perform a setback inspection--setback measurements shall be to the nearest permanent structure or structural appendage, including patios, decks, eaves, overhangs.

FRONT YARD: Not less than 25 feet from the property line. Some circumstances will require that a commercial structure adhere to a setback that is greater than 25 feet in order to maintain the varied character of the area. In this event, the required rear setback shall be reduced to limit negative impact to the owner.

SIDE YARD: Not less than 7 feet from the property line.

REAR YARD: Not less than 10 feet from the property line.

Zero clearance for side or rear yard may be allowed with the recorded consent of an adjoining property owner affected provided that such siting presents no appreciable increase in fire danger and meets state building code and fire Marshall requirements for zero clearance. An application for zero clearance must be accompanied by a plan showing how open space or parking area will be enhanced by review authority approval of a zero clearance setback.
[.....]

STREAMS: All structures, buildings, or similar permanent fixtures shall be set back from the normal high-water line or mark along all streams, creeks, or lakes a minimum of 25 feet measured at right angles.

HIGHWAYS: All structures, buildings, or similar permanent fixtures shall be set back not less than twenty-five feet from a state highway right of way, and to further increase setback, other setbacks may be adjusted, with approval of the review authority.
[.....]

FINDING 6.13: Maps submitted by the applicant indicate that all the above setbacks are met.

07. **CONCLUSION:**

All applicable criteria have been met, and the Planning Commission approves this application.

The Conditional Use Permit # 10-11 to operate a public service utility facility (cellular tower) will be valid until the permitted use is discontinued for one full year.

08. CONDITIONS OF APPROVAL:

Proposal is approved as submitted - no conditions are required.

09. DECISION:

Based upon the information submitted, the comments of interested parties and the findings, the review authority finds this application satisfies all review criteria and is hereby approved as presented. The vote on the motion is _____ in favor and _____ opposed with _____ abstaining.

February 22nd, 2011
DATE OF ACTION

CHRIS GEYER, CHAIRMAN
WALLOWA COUNTY PLANNING COMMISSION

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeal. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 p.m. March 7th, 2011.