From: Robin Potter
Sent: Thursday, December 29, 2011 2:23 PM
To: Greg Chaney; 'Site Deployment'
Cc: Dale Pernula; Eric Feldt; Kim Kiefer
Subject: RE: Conditional Use 2011-27 , Spruce Meadow RV, VZW AK3 Mendenhall Glacier - Appraisal Report

Hello Greg,

I was finally able to review Mr. Horan's report and am pleased to report that I not only concur with everything he said, I appreciate the level of research he went to, to reach his conclusion.

Several years ago, this same issue came to my attention in regard to an international review among Assessors via IAAO.org. Communication towers are proliferating everywhere so this question comes up often. I was unable to locate any evidence to support an adverse impact on surrounding property values. We also received an appeal from a property owner out in Lena Heights during 2009, who claimed the NOAA tower impeded his view and affected his property value. The owner enjoys 180 degree views with the tower in one small portion of it. His next door neighbor's home had more impact on the view than the tower did. I issued a no change to value and he accepted so the matter was resolved.

Thank you for providing me a copy of Mr. Horan's report.

If I can be of any further assistance, please let me know.

Happy New Year,

Robin Potter Assessor City and Borough of Juneau 907.586.5220 main 907.586.0330 direct

"The absence of alternatives clears the mind marvelously." Henry Kissinger

From: Greg Chaney
Sent: Thursday, December 29, 2011 10:42 AM
To: 'Site Deployment'
Cc: Dale Pernula; Eric Feldt; Kim Kiefer; Robin Potter
Subject: RE: Conditional Use 2011-27 , Spruce Meadow RV, VZW AK3 Mendenhall Glacier - Appraisal Report

Hi Alissa,

ATTACHMENT E

Due to the extremely important nature of this case, Robin Potter, our City Assessor is providing a third party review of Mr. Horan's report. I have asked her to do this (and she has graciously agreed) because there is a strong likelihood that the case will be appealed and we want to ensure that the case review was very thorough. Mr. Horan's report will is also likely to be used as a reference in future Wireless Communication Cases in Juneau. So it is in the best interest of all parties involved that Mr. Horan's report be thoroughly vetted before scheduling the item for another public hearing.

I will schedule the item for the next appropriate Planning Commission meeting as soon as possible when she has completed her review.

Thank you for your patience.

Happy New Year,

- Greg

From: Site Deployment [mailto:sitedeployment@gmail.com]
Sent: Thursday, December 29, 2011 7:41 AM
To: Greg Chaney
Cc: Dale Pernula; Eric Feldt; Kim Kiefer
Subject: Re: Conditional Use 2011-27 , Spruce Meadow RV, VZW AK3 Mendenhall Glacier - Appraisal Report

Good morning Greg, Can you please confirm that you received the email last Friday and that the report is being reviewed?

Also, can you project the estimated hearing date for this site so that I can update Verizon?

Thank you much,

Alissa Haynes 907-727-7907

On Fri, Dec 23, 2011 at 6:52 PM, Site Deployment <<u>sitedeployment@gmail.com</u>> wrote: Thank you Greg,

Appreciate you taking the time today to review this. Westower and Verizon both confirm and give consent for this document to become official record of the case and available to the public.

Happy Holidays to everyone as well,

Thank you,

Alissa Haynes 907-727-7907

On Fri, Dec 23, 2011 at 6:28 PM, Greg Chaney <<u>Greg_Chaney@ci.juneau.ak.us</u>> wrote: Hello Alissa,

I can not guarantee that this item will be heard at a specific Planning Commission meeting at this time. I will have to review the report and gather any other pertinent information prior to scheduling.

I did notice that on Page 16 of the attached document, item 12 states "...portions of this appraisal report shall not be given to third parties without prior written consent of the signatory of this appraisal report..." I want to be clear that if this is report is officially submitted as part of the record, it will be a public document and distributed to the public via print and electronic means.

Please respond if you consent to have this document made available to the public.

Thank you for your help.

Happy Holidays,

Greg Chaney CBJ CDD Planning Manager

From: Site Deployment [mailto:sitedeployment@gmail.com]
Sent: Friday, December 23, 2011 2:04 PM
To: Greg Chaney
Subject: Conditional Use 2011-27 , Spruce Meadow RV, VZW AK3 Mendenhall Glacier - Appraisal Report

Good afternoon Greg,

Attached please find the appraisal report for the Spruce Meadows RV Site, Conditional Use 2011-27. Verizon would like to have this reviewed at your earliest opportunity so that we can have our case on the January 10 agenda.

I will be out of the office on the 26th-28th and returning on the 29th. Please feel free to contact Sarah Grant at Westower in my absence. Sarah may be reached at <u>503-853-1065</u> or by email at <u>sgrant@westower.com</u>.

Thank you,

Alissa

Alissa Haynes, Site Acquisition & Leasing Specialist <u>sitedeployment@gmail.com</u> <u>907-727-7907</u> Alaska <u>435-565-1855</u> Utah

	CBJ Law Department EMORANDUM
To:	Eric Feldt, Planner Dale Pernula, Director Community Development Department
From:	Jane E. Sebens Assistant City Attorney
Subject: Date:	Federal Telecommunications Act of 1996 January 22, 2009

You have asked us to review certain provisions of the Federal Telecommunications Act of 1996 ("FTA") to determine what authority the CBJ Planning Commission has in permitting/regulating the construction of wireless telecommunication facilities (e.g., towers for cell phone/ internet services).

This summary opinion is based on a review of §253 and §332 of the FTA, as well as a review of two relatively recent cases from the 9th Circuit Court of Appeals, interpreting these provisions. Of course, nothing in this analysis of federal law should be construed to authorize a condition or other action by the Planning Commission that is not authorized by CBJ Code.

Summary conclusion

Under the FTA, the CBJ Planning Commission may regulate and issue decisions regarding the placement, construction, and modification of personal wireless service facilities. The decisions must be timely, written and supported by substantial evidence. PC decisions may not **unreasonably discriminate** among providers or prohibit, **or have the effect of prohibiting**, the provision of personal wireless services. Finally, the PC's regulation or decision regarding the placement, construction or modification of the facility **may not be based on the "environmental effects of radio frequency emissions**" to the extent that such facility meets federal emission standards. *See* 47 U.S.C § 332 (emphasis added); see also §253.

A relatively high threshold for proving that a local requirement violates the preemption provisions of the FTA was set by the 9th Circuit last year. *See Sprint Telephony PCS v. County of San Diego* 543 F.2d 571 (9th Cir. 2008). The *Sprint* decision narrowly interprets the federal preemption provisions and expressly overrules a prior decision that announced a broad preemption standard (which had been used to invalidate local regulations in a line of cases.)



ATTACHMENT F

Analysis

One purpose expressed by Congress in passing the FTA, generally, was "to provide for a procompetitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition." The law was aimed at "ending the States' longstanding practice of granting and maintaining local exchange monopolies." *See Sprint*, 543 F. 3d at 575.

47 U.S.C. 253 is the FTA's general preemption provision which applies to all telecommunication service providers and ensures the end of monopolistic practices:

Sec. 253. Removal of barriers to entry

(a) In general

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(emphasis added)

. . .

When it comes to wireless telecommunication service providers, the FTA goes one step further to preserve local government authority. Section 332(7) (47 U.S.C. 332) expressly preserves the authority of local governments to make decisions regarding the placement and construction of wireless service facilities, subject to certain enumerated limitations:

Sec. 332. Mobile services

(c) Regulatory treatment of mobile services

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

3

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof -

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

.

(emphasis added)

Radio Frequency Emissions

The FTA and federal case law is unequivocal in stating that a local zoning decision may not be based on concerns over RF emissions, as long as the facility complies with federal (FCC) emission standards. *See e.g., MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d. 715, 736-737 (9th Cir. 2005). This prohibition against local regulation based on RF emissions appears to be the only direct "substantive" restriction on local zoning authority. It has also been given a narrow construction. Id.

While the permit in MetroPCS was not challenged on RF emission grounds, the Court commented that

a Board decision that does not mention RF emissions as a motivation in denying the permit, but includes a finding "that the proposed facility 'will not promote' the health, safety and welfare of the city was not remotely equivalent to basing a zoning decision on a fear of RF emissions." *Metro* 400 F.3d at 737.

Anti-Discrimination

With respect to the anti-discrimination clause in 332(c)(7)(B), the *MetroPCS* court commented that "most courts have held that discrimination based on traditional bases of zoning regulation such as preserving the character of the neighborhood and avoiding aesthetic blight are reasonable and thus permissible." It also quoted the following from the House Conference Report on the FTA:

The conferees also intend that the phrase 'unreasonably discriminate among providers of functionally equivalent services' will *provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services.* For example, the conferees do not intend that if a State or local government grants a permit in a commercial district, it must also grant a permit for competitor's 50-foot tower in a residential district.

MetroPCS, 400 F.3d at 727.

"Effect of Prohibiting" provision of services

The recent 9th Circuit case of *Sprint Telephony PCS v. County of San Diego*, 543 F.2d 571 (9th Cir. 2008) involved an unsuccessful challenge to the "Wireless Telecommunications Facilities" ordinance enacted by the County of San Diego, codified as San Diego County Zoning Ord, §§ 6980-6991 (hereafter "Ordinance"). Because the Court reviewed the Ordinance and highlighted the types of conditions it considered permissible and compatible with the two federal preemption provisions above, it may be instructive to the CBJ Planning Commission. (For purposes of this analysis, case and Ordinance citations are omitted, though all information below is taken directly out of the decision.)

The San Diego Ordinance imposed "comprehensive guidelines for the placement, design and processing of wireless telecommunications facilities" in all zones of San Diego County. These guidelines were in addition to the county's general zoning requirements.

The Ordinance categorized wireless telecommunication facility applications into 4 tiers, depending primarily on the visibility and location of the proposed facility. For instance, a low-visibility structure in an industrial zone generally had to meet fewer requirements than a large tower in a residential zone. Non-camouflaged poles were prohibited in residential and rural zones, and certain height and setback restrictions applied in residential zones.

San Diego's local regulation provided that no more than three facilities were allowed on any site, unless

5

"a finding is made that co-location of more facilities is consistent with community character." With some exceptions, a permit applicant was also required to identify the proposed facility's geographic service area, to submit a "visual impact analysis," and to describe various technical attributes such as height, maintenance requirements, and acoustical information.

The Court noted that the Ordinance required proposed facilities to meet (mostly aesthetic) design requirements and be located within specified "preferred zones" or "preferred locations," unless those locations were "not technologically or legally feasible" or "a finding was made that the proposed site is preferable due to aesthetic and community character compatibility." The applicant also had to perform regular maintenance of the facility, including graffiti removal and proper landscaping.

San Diego County's general zoning requirements required a hearing on the permit application and findings by the zoning board that: the location, size, design, and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures, with consideration given to:

- 1. Harmony in scale, bulk, coverage and density;
- 2. The availability of public facilities, services and utilities;
- 3. The harmful effect, if any, upon desirable neighborhood character;
- 4. The generation of traffic and the capacity and physical character of surrounding streets;
- 5. The suitability of the site for the type and intensity of use or development which is proposed; and to

6. Any other relevant impact of the proposed use.

Finally, under San Diego County's zoning code, the decision-maker retained discretionary authority to deny a use permit application or to grant the application conditionally. (See, San Diego County Zoning Ordinance §7356-7362)

While the Federal District Court had concluded San Diego County's Wireless Telecommunications Facilities Ordinance violated 47 U.S.C. § 253(a) and was invalid on its face under *City of Auburn v. Qwest Corp.*, 260 F.3d 1160 (9th Cir. 2001), the 9th Circuit Court of Appeals <u>overruled Auburn</u> and concluded that the Ordinance did <u>not</u> violate the Federal Telecommunications Act. The Court joined the 8th Circuit in concluding that to show a violation of §253(a) a plaintiff suing a municipality "must show actual or effective prohibition, rather than the mere possibility of prohibition." *Sprint*, 543 F.3d at 578. The Court of Appeals also held that the standard for violating §332(c)(7)(B)(i)(II) is the same as the standard for violating § 253(a).

The 9th Circuit concluded that none of the Ordinance's requirements individually or together prohibited, or effectively prohibited, Sprint from providing wireless services and that camouflage, modest setbacks and maintenance conditions were "reasonable and responsible conditions for the construction of wireless facilities, not an effective prohibition." The 9th Circuit also reasoned that, while the Board could use its discretionary authority to effectively prohibit the provision of services, it was more likely the Board's discretion would be exercised to balance the competing goals of the ordinance.

One theoretical example of an "effective prohibition" of services, under federal law, would be if local planning and zoning requirements operated to prevent a wireless service provider from "filing a significant gap in its own service coverage." *See, MetroPCS, Inc. v. City and County of San Francisco*, 400 F. 3d 715 (9thCir. 2005). What is a "significant gap," is a factually-specific determination, and there is no "bright-line legal rule" set out in the law.

Conclusion

The CBJ Planning Commission has the authority under federal law to regulate the placement, construction, and modification of personal wireless service facilities, within certain limitations. Permits for such facilities are subject to the requirements of the CBJ Land Use Code, as long as the application of those requirements does not unreasonably discriminate among service providers and does not prohibit, or effectively prohibit, the provision of personal wireless services. Finally, the PC may not impose a condition or base a decision on the environmental effects of radio frequency emissions, if the proposed facility is in compliance with applicable federal emission standards. The PC's written decisions should also be supported by substantial evidence and issued in a timely manner.

This is by no means an exhaustive analysis of the federal preemption provisions of the Federal Telecommunications Act. However, I hope this summary analysis will provide useful guidance to staff and the PC in reviewing permit applications for wireless telecommunications facilities in a manner that complies with federal law. Please feel free to contact me if you have further questions or would like more information.

2-5-12

RECEIVED FEB 0 8 2012 PERMIT CENTER/COD

FILE # USE 2011 0027

It sprice Meadows wants to put up a Communications tower they should place it in the back of there property. I do not want to look out my back window and See a tower

Bill Bengett 10206 Horon Way Juncan NK 99801



MEMORANDUM

CITY/BOROUGH OF JUNEAU 155 South Seward Street, Juneau, Alaska 99801

DATE:	November 2, 2011
то:	Planning Commission
FROM:	Eric Feldt, Planner Community Development Department
FILE NO.:	USE2011-0027
PROPOSAL:	Installation of a new 119-foot tall telecommunication monopole at Spruce Meadows RV Park

GENERAL INFORMATION

Applicant:	WesTower Communications		
Property Owner:	Spruce Meadow Recreational Vehicle (RV) Park		
Property Address:	10200 Mendenhall Loop Road		
Legal Description:	Tract B1 USS 1796		
Parcel Code Number:	4-B29-0-102-001-0		
Site Size:	12.5 acres		
Zoning:	D-1		
Utilities:	Public Water & Sewer		
Access:	Mendenhall Loop Road (Back Loop Road)		
Existing Land Use:	Spruce Meadows RV Park		
Surrounding Land Use:	North - D-1; Vacant City Land; Back Loop Road South - D-3; Common-wall Dwelling; Back Loop Road East - D-3; Vacant Private Land; Back Loop Road West - D-1; Vacant City Land; Back Loop Road		



ATTACHMENT H

Planning Commission File No.: USE2011-0027 November 2, 2011 Page 2 of 8

ATTACHMENTS

Attachment	А	Vicinity Map
Attachment	В	Project Drawings
Attachment	С	Spruce Meadow RV Park Map
Attachment	D	Tower Photo-simulations
Attachment	Е	Borough-wide Tower Map
Attachment	F	Public Comment

PROJECT DESCRIPTION

The applicant requests a Conditional Use permit for the development of a 119-foot tall telecommunication tower and accessory electrical structures at the Spruce Meadows RV park property off of Back Loop Road. This location is mapped in Attachment A. The non-illuminated tower will support several antennas and satellite dishes. A small electrical cabinet and back-up power generator will be placed on the ground, adjacent to the tower. Illustrations of all structures are depicted in Attachment B.

BACKGROUND

According to the Land Use Code, towers over 50 feet in height in the D-1 district require an approved Conditional Use permit. The location of the proposed tower is on the Spruce Meadow RV Park property. This 64-space RV park was approved in 1997 and is the only use on the property. Attachment C illustrates the park layout. Forested land surrounds the park and along Mendenhall Loop Road.

ANALYSIS

Project Site

The telecommunication site (Lease Area) covers a small fraction of the property, situated between the RV park and Back Loop Road. The lease area is 2,500 square feet in size (50' x 50'). This is shown in Attachment B. Trees will need to be removed during the construction of the project. The applicant does not know how many will be removed at this time. Trees on this property along the Back Loop Road are vital in buffering views of the RV park from nearby residents, which would provide the same for the subject tower. To ensure trees remain in place for future buffering, staff recommends a condition of approval requiring the applicant work with staff in avoiding removing any trees over 12 inches in diameter where practical.

There are mapped wetlands on the lease area. Effects to wetlands and other regulated habitat is discussed in detail under section 'Habitat.'

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Project Design

The design of the proposed tower and accessory structures are shown in Attachment B. Computerized imagery was used to create post-construction photographic simulations of the tower. See Attachment D for these images. Staff notes that the applicant considered the removal of trees while creating the simulation.

The applicant indicates that the tower would be constructed 95 feet away from the right-of-way (ROW) of Back Loop Road, approximately 300 feet away from the nearest RV campsite, and approximately 250 feet from the eastern side property line. The tower would exceed all yard setbacks at this location.

At a proposed height of 119 feet, the tower would stand adjacent to and be partially screened by existing tall evergreen trees. Looking at the photographic simulations, the tower does not appear excessively tall above the tree line. Views of the higher reaches of the tower will be most visible. Views from vehicles may be less visible due to the relatively high speed limit and curve of Back Loop Road at this area. Some towers in the borough have effectively blended in with nearby trees by being painted dark brown or green. With the nearby trees in the lease area, staff recommends a condition of approval having the applicant paint the tower and all other accessory structures dark green or brown.

Two main accessory structures would be placed on the ground, adjacent to the tower: 1) Radio cabinet powering the antennas and satellite dishes, and 2) 50 kilowatt diesel generator for back up power. Both of these elements are very common among telecommunication sites, and emit different noise levels. Noise levels are discussed in detail under section 'Noise'.

Two, 12-foot tall utility lights will be used to illuminate the accessory structures only during times of maintenance, typically once per month. The location of these lights is indicated on sheet A-3 within Attachment B. To avoid glare from these lights shining onto Mendenhall Loop Road and adjacent properties, staff recommends a condition of approval having the light fixtures be of a full cut-off downward illumination design. All structures of the project will be located within a 6-foot tall chain link fence. This fence is identified on sheet A-1.1 within Attachment B. Since this site is located in a residential district, the use of barbed wire shall be prohibited. Staff recommends this as a condition of approval.

Traffic

Traffic volume generated for the project will be negligible compared to existing traffic levels generated by the RV park. The existing RV park driveway will be used to access the site.

Parking and Circulation

A new parking space will be created in front of the chain link fence. Vehicles will access and exit the site through the established driveway of the RV park.

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Noise

The radio cabinet (seen in A-2 & -3 of Attachment B) will likely be running all day with a somewhat noticeable 'hum' at close distances. While the generator will be running much less frequently, it will, on the other hand, be more noticeable. Staff notes that if noise from the generator is louder than 55 dBa at the nearest residential property line it will need to be reviewed separately as a form of 'Utility' through the Conditional Use permitting process. The applicant indicated that the generator will have an exhaust silencer and will be entirely placed inside a noise attenuating enclosure to comply with the 55 dBa limit. Those features will greatly reduce noise disturbance. Staff recommends a condition of approval indicating that if the generator does exceeds 55 dBa levels, a separate approved Conditional Use permit shall be required.

Public Health or Safety

All telecommunication towers must be designed to meet specific wind and weight bearing loads, as specified in local building codes. This review will be done during the Building permitting process if this Conditional Use permit is approved. The location of the tower is not near any structures, parks, or parking lots; it is however, near Mendenhall Loop Road. With compliance to specific building codes, the monopole will be properly installed.

Antenna arrays distribute electromagnetic radio waves that contain levels of radiation. Radiation emissions from these structures cannot exceed certain levels regulated by the Federal Communication Committee (FCC). According to the 1996 Telecommunications Act, municipalities have zoning authority over towers but may not regulate the location of or deny a personal wireless facility based on environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's (FCC) regulations of emissions.¹ Though municipalities cannot modify FCC's emission levels they can require proof of compliance. Staff recommends a condition of approval requiring the applicant submit a letter from a radio frequency expert indicating compliance with FCC emission levels during pre- and post-construction.

Habitat

Wetlands will be affected during the construction of the facility. The applicant will be responsible for obtaining an approved wetland fill permit from the US Army Corps of Engineer (COE). This requirement shall be recommended as an advisory condition of approval.

Property Value or Neighborhood Harmony

Effects to property value and neighborhood harmony from new telecommunication towers are often perceived as negative with disturbance to the skyline. Tall towers are more contested than short towers as they are more visible from further distances. Preserving tall trees to buffer views from adjacent residential properties' and roadways, and painting the tower an organic color to blend with adjacent trees will lessen the utilitarian look of the tower.

¹ Section 704 (a)(7)(B)(iv) of the Telecommunications Act of 1996 of the US Federal Communications Commission. For further details of this act click on the following internet link: <u>http://transition.fcc.gov/telecom.html</u>

Planning Commission File No.: USE2011-0027 November 2, 2011 Page 5 of 8

A post-construction view of the tower has been created and seen in Attachment C. With the recommended conditions and the photographic simulations, staff finds that the location and height of the tower will not negatively affect property value and neighborhood harmony.

Conformity with Adopted Plans

The 2008 Comprehensive Plan designates the subject neighborhood as Urban/Low Density Residential (ULDR), defined as lands characterized by urban or suburban residential lands with detached single-family units, duplex, cottage or bungalow housing, zero lot-line dwelling units and manufactured homes on permanent foundations at densities of one to six units per acre. Any commercial development should be of a scale consistent with a single-family residential neighborhood. Telecommunication towers are not listed under this definition or specifically identified in the Plan. However, telecommunication services are vital for Juneau as the Capital City and regional hub for Southeast Alaska.

On page 64, the Plan states "As Alaska's Capital, it is vital for the CBJ to offer modern transport and communications systems and facilities to Alaskan residents who wish to participate in State legislative affairs."

Telecommunication infrastructure is also a form of a communication utility. As stated in the Plan, "Together with the transportation network and private utility and communication systems, public services and facilities provide the community's "urban glue" and require efficient and timely provision". The proposed tower would be constructed within the Urban Service Boundary Area.

With increasing demand for telecommunication technology usage throughout the nation, additional communication coverage will be needed in areas not served or underserved. Most telecommunication services in suburban or rural areas are distributed from towers because there are so few tall structures above the tree line. Taking this fact into consideration for the subject area, one can infer that neighborhoods along Back Loop Road are underserved by wireless telecommunication service by the lack of towers. Few existing towers along this road can be seen in Attachment E. Enabling towers to be built throughout the borough in ways that do not disrupt neighborhood harmony, property value, or the public's health or safety would meet the intent of the Comprehensive Plan. With the recommended conditions, the proposed tower will meet the intent of the Plan.

Public Comment

Staff received a letter from the public stating concerns about the tower affecting property value and the lack of regulation requiring setbacks from residential areas. Several years ago a study was initiated for the review of a 150-foot tall tower in an urban residential neighborhood. This tower would have been located very close to several residences. This study concluded that the height of the tower would not negatively affect property value. Since that time other towers have been installed around the borough with little to no affect on property values. Staff finds that with the recommended conditions, the proposed tower will not negatively affect property value.

Planning Commission File No.: USE2011-27 November 2nd, 2011 Page 6 of 8

FINDINGS

CBJ §49.15.330 (e)(1), Review of Director's Determinations, states that the Planning Commission shall review the Director's report to consider:

- 1. Whether the application is complete;
- 2. Whether the proposed use is appropriate according to the Table of Permissible Uses; and,
- 3. Whether the development as proposed will comply with the other requirements of this chapter.

The Commission shall adopt the Director's determination on the three items above unless it finds, by a preponderance of the evidence, that the Director's determination was in error, and states its reasoning for each finding with particularity.

CBJ §49.15.330 (f), Commission Determinations, states that even if the Commission adopts the Director's determination, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the public hearing, that the development will more probably than not:

- 1. Materially endanger the public health or safety;
- 2. Substantially decrease the value of or be out of harmony with property in the neighboring area; or,
- 3. Not be in general conformity with the comprehensive plan, thoroughfare plan, or other officially adopted plans.

Per CBJ §49.15.330 (e) & (f), Review of Director's & Commission's Determinations, the Director makes the following findings on the proposed development:

1. Is the application for the requested conditional use permit complete?

Yes. We find the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

2. Is the proposed use appropriate according to the Table of Permissible Uses?

Yes. The requested permit is appropriate according to the Table of Permissible Uses. The permit is listed at CBJ §49.25.300, Section 18.300 for the D-1 zoning district.

3. Will the proposed development comply with the other requirements of this chapter?

Yes. The proposed development complies with the other requirements of this chapter. Public notice of this project was provided in the Friday, October 28th and Monday, November 7th issues of the Juneau Empire's "Your Municipality" section, and a Notice of Public Hearing was mailed to all property owners within 500 feet of the subject parcel. Moreover, a Public Notice Sign was posted on

Planning Commission File No.: USE2011-0027 November 2, 2011 Page 7 of 8

the subject parcel, visible from the public Right of Way.

4. Will the proposed development materially endanger the public health or safety?

No. As discussed in the staff report, with the recommended conditions and compliance with building codes during the Building permitting process following an approved Conditional Use permit, the tower and accessory structures will not endanger the public's health or safety.

5. Will the proposed development substantially decrease the value of or be out of harmony with property in the neighboring area?

No. Based on analysis above, with the recommended conditions to reduce obtrusive views of the tower such as preserving existing trees and painting the tower, property value and neighborhood harmony will be preserved.

6. Will the proposed development be in general conformity with the land use plan, thorough fare plan, or other officially adopted plans?

Yes. Based on staff's review and with the recommended conditions, staff finds that the intent of the 2008 Comprehensive Plan will be met.

Per CBJ §49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

7. Will the proposed development comply with the Juneau Coastal Management Program?

Yes. As stated earlier, the wetlands in the lease area will likely need to be filled, which requires an approved permit from the COE.

RECOMMENDATION

It is recommended that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow the development of a 119-foot tall tower. The approval is subject to the following conditions:

- 1. Prior to issuance of a Building permit, the applicant shall indicate a type of dark green or brown paint to be used for the monopole and all accessory structures.
- 2. Prior to the removal of any vegetation related to this project, the applicant shall work with staff in avoiding the removal of any trees over 12 inches in diameter where practical.
- 3. Prior to issuance of a Building permit, the applicant shall submit a fixture design of the utility lights showing a full cut-off design.

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- 4. Prior the issuance of a Building permit, the applicant shall submit a letter to the Community Development Department from a radio frequency expert indicating the structures comply with electromagnetic radio emission levels set by the FCC.
- 5. Prior to receiving an Occupancy permit, the applicant shall submit a letter to the Community Development Department from a radio frequency expert indicating the structures as constructed and at optimal emission levels comply with electromagnetic radio emission levels set by the FCC.
- 6. If the generator exceeds 55 dBa levels at the closest residential property line, a separate Conditional Use permit shall be required.
- 7. Use of a barbed wire fence shall not be allowed with this project.

Advisory Condition

1. The applicant shall be responsible for obtaining an approved wetland fill permit from the US Army Corps of Engineers.

ALLOWABLE/CONDITIONAL USE PERMIT APPLICATION

Project Number	Project Name (18	characters)		Case Number USÉ ZOLI OO ²⁷	Date Received
TYPE OF ALLOWAE	BLE OR CON	DITIONAL USE PEI	RMIT REQUEST		<u>.</u>
	essory Apartme	ent (AAP)	Driveway in R	ight-of-Way (ADV	N)
	e Listed in §49.2 able of Permissi		trannov d —		
Please I	list the Table of	Permissible Uses Cate	gory: CBJ 49 25.3	00.18.300 Towers & Ante	nnas more than 50°
An Accessory Apartme	nt Application wil	l also be required.	- /////////////////////////////////////		
NEEDED. This proposal is for the 8'x6' steel platform wit	e installation o hin a propose	f outdoor equipmer d 35'x25' chain link	nt cabinets and d fenced area, als		ed on a proposed lennas on a low
profile climb rated plat	form and (4) 4	Microwave anteni	has mounted on I	ine proposed 119 U. h	ign monopole.
IS THIS A MODIFICA	TION OF AN	EXISTING APPRO	VAL?	NO	
CURRENT USE OF L					
Property is currently	used as a co	mmercial, full-ser	vice RV Park.		
	high monopo	le structure to supp		ecommunications and	
infrastructure to prov	ide services t	o the community a	llong Mendenha	II Loop Road (Back L	000).
UTILITIES PROPOSE	UTILITIES PROPOSED: WATER: Public On Site SEWER: Public On Site				
SITE AND BUILDING	SPECIFICS:				
Total Area of Lot	Total Area of Lot 544,500 approx square feet Total Area of Existing Structure(s) square feet				
Total Area of Prop	Total Area of Proposed Structure(s) 875 square feet				
EXTERNAL LIGHTING:					
Existing to remain Ves - Provide fixture information, cutoff sheets, and location of lighting fixtures					
Proposed					
PROJECT NARRATIVE AND SUBMITTAL CHECKLIST: Image: Step Plan Image: Ploor Plan of proposed buildings Image: Ploor Plan of ploor Plan of proposed buildings Image: Ploor Plan of					
For more information permitting process and required for a complet please see the reverse s	the submittals e application.	ALLOWABLE/CONDITI C/JZ Application Fees Admin. of Guarantee Adjustment	Fees 500.00 8	Check No. Receipt	
If you need any assista this form, please conta Center at \$86-0770.		Pub. Not. Sign Fee Pub. Not. Sign Deposit	50.00 100.00 650.00	анианания на собрание собрание Поприменталия собрание собрание Поприменталия собрание	10/21/11
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NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

Revised December 2009 - 1 FORMS12010 Applications

TO BE COMPLETED BY THE APPLICANT

DEVELOPMENT PERMIT APPLICATION

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	Project Description The proposal is for the metallinger (\$1.13° chain high ferred area, she proposed (19° 0° high executed).	el bulldoor equip <u>ences coloses</u> the massilation elementar pr	and doesn' activities a low anafor chore	i generation a pro recol <u>statione</u> r and	reesi kafi 19 4 Misee	encel <u>ristionn</u> without a proposal wave antegras mounted as the
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	Spruce Meadow RV Park, L			Contact Persa Landa Willia	on: Latis	Wijek Poprat 907-789-1990
	Maimg Address 19200 Mepdenhafi Loop Roa Sanji Addresa		and a state of the	Other Contect		Pax Number: Karlal
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NOTE, DEVELOPMENT PERMIT APPLICATION FORMS HUST ACCOMPANY ALL OTHER COMMUNITY OL VELOPMENT OPPARTMENT APPLICATIONS UPDRESSORS Applications Network Havenber 2009

NOTICE OF PUBLIC HEARING



PROPOSAL: A Conditional Use permit for the installation of a 119' tall monopole.

FILE NO:	USE2011 0027	APPLICANT:	WestTower Communications
то:	Adjacent Property Owners	Property PCN:	4-B29-0-102-001-0
HEARING DATE:	November 08, 2011	Owner(s):	SPRUCE MEADOW RV PARK LLC
HEARING TIME:	7:00 PM	Size:	12.50 acres
PLACE:	ASSEMBLY CHAMBERS	Zoned:	D-1
	Municipal Building	Site Address:	10200 MENDENHALL LOOP RD
	155 South Seward St Juneau, Alaska 99801	Accessed via:	MENDENHALL LOOP RD

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department no later than 8:30 A.M. on the Wednesday preceding the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a few days before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact Eric Feldt at (907) 586-0764 or e-mail: eric_feldt@ci.juneau.ak.us

Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at www.juneau.org/plancomm.





ATTACHMENT A















ATTACHMENT C



ATTACHMENT D









Eric Feldt

From:Hildegard Sellner [hildegard.sellner@hotmail.com]Sent:Tuesday, November 01, 2011 10:28 PMTo:Eric Feldt; Laura BoyceSubject:Public Hearing Nov. 8 - File No: USE2011 0027

Please include this text in the information packet given to the Planning Commission for the November 8 Hearing about the installation of a cell phone tower on Back Loop. File No: USE2011 0027

To the CBJ Community Development Department,

I own a home on Back Loop (10229 Heron Way), and I strongly oppose the erection of the proposed cell phone tower. The more I learn about cell phone towers and cell phone tower politics, the more appalled I am. I have safety concerns, concerns about the impact on property values, and concerns about the lack of a CBJ ordinance regarding tower locations in relationship to residential areas. I will testify at the Hearing. If anyone would like to get in touch with me before the Hearing please contact me at 523-4636 or hildegard.sellner@hotmail.com.

Sincerely,

Hildegard Sellner