

REVIEWED
Bow
LEGAL COUNSEL

95-24352

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

0147-0658

An Ordinance Amending Section *
18.52.050 of the Deschutes *
County Zoning Ordinance to *
permit Microwave and Radio, *
Communication Towers and *
and accessory equipment *
structures as Conditional Uses *
in the SM, Surface Mining Zone, *
and Section 18.128.040, Specific *
Use Standards, to establish *
specific conditional use stand- *
ards for microwave and radio *
communication towers in the SM *
Zone, and Declaring an Emergency. *

95 JUL 12 PM 5:33
MARY SUE PENNELL
COUNTY CLERK

ORDINANCE NO. 95-046

WHEREAS, Central Oregon Cellular, d.b.a Cellular One, has submitted an application for a Text Amendment, File TA-95-1, to amend Section 18.52.040 of the Deschutes County Zoning Ordinance; and

WHEREAS, after notice was give, a public hearing was held before the Deschutes County Planning Commission on March 10, 1995; and

WHEREAS, the Deschutes County Planning Commission supported a revised amendment to Chapter 18.52, Surface Mining Zone-SM; and

WHEREAS, the Deschutes County Board of Commissioners have adopted Ordinance No 95-044, which amended the Deschutes County Comprehensive Plan to permit a new use in the SM, Surface Mining Zone; and

WHEREAS, after notice was given and hearing conducted in accordance with applicable law, the Board of County Commissioners have considered the proposed amendment; now, therefore:

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON ORDAINS as follows:

Section 1. FINDINGS. Findings supporting the amendment of Chapter 18.52 are attached to this ordinance as Exhibit A.

1 - ORDINANCE NO. 95-046
July 05, 1995

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JUL 13 1995

Section 2. AMENDMENT OF CHAPTER 18.52, SURFACE MINING.
Section 18.52.050, "Conditional Uses Permitted", is amended to read as follows:

"18.52.050, Conditional Uses Permitted.

- A. The following uses are permitted outright subject to the conditions set forth in Chapter 18.128:
 - a. Public uses consistent with or dependent upon outright uses allowed in the SM zone.
 - b. Operations and exploration of geothermal resources.
 - c. Excavation, grading and fill and removal within the bed and banks of a stream or river or in a wetland subject to Sections 18.120.050 and 18.128.040(W).
 - d. Construction, expansion and operation of a Disposal Site as defined in this title, for which the operator possess a valid DEQ permit on the effective date of Ordinance No. 92-066 for a Land Disposal Site.
 - e. Microwave and radio communication towers and accessory equipment structures occupying a ground site of no larger than 4,000 square feet and that are necessary to be sited in the SM zone for the public service to be provided.
- B. The following uses are permitted subject to site plan review and the setbacks, standards and conditions set forth in Section 18.52.090, 18.52.110 and 18.52.140, respectively, and are not subject to the conditions in Chapter 18.128.
 - a. Expansion or replacement of a preexisting legal dwelling.
 - b. Crushing of mineral and aggregate materials on sites designated for crushing in the ESEE analysis in the surface mining element of the Comprehensive Plan.
 - c. Sales of minerals and mineral products extracted or produced on parcels other than the subject parcel or contiguous parcels in the same ownership.
 - d. Batching and blending of mineral and aggregate into asphaltic concrete or portland cement concrete."

and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

DATED this 12 day of July, 1995.

**BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON**

Barry H. Slaughter
BARRY H. SLAUGHTER, Chairman

Nancy Pope Schlagen
NANCY POPE SCHLANGEN, Commissioner

Robert L. Nipper
ROBERT L. NIPPER, Commissioner

ATTEST:

Pat Brickey
Recording Secretary

Section 3. AMENDMENT OF CHAPTER 18.128, CONDITIONAL USES. Section 18.128.040(CC) is amended to read as follows:

"CC. Microwave and radio communication towers in the SM Zone.

A conditional use permit for siting of a microwave or radio communication tower and accessory equipment structures in the SM zone shall be subject to these criteria:

- (1) Towers shall be limited to monopole towers of under 150 feet and lighted only as prescribed by aviation safety regulations.
- (2) Towers and accessory equipment structures shall be located only on portions of an SM-zoned site that do not overlay economically viable mineral or aggregate deposits and that minimize conflicts with mining operations at the site.
- (3) Such facilities proposed in an SM zone where the underlying or surrounding comprehensive plan designation is for forest use must demonstrate compliance with the criteria set forth in Section 18.36.040 of the County Code.
- (4) No new parcels or lots shall be created for siting of the proposed tower.
- (5) Such facilities must not conflict with any site plan which has been previously approved by the County."

Section 4. SEVERABILITY. the provisions of this ordinance are severable. If any section, sentence, clause, or phrase of this ordinance is adjudged to be invalid by a court of competent jurisdiction that decision shall not affect the validity of the remaining portions of this Ordinance.

Section 5. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health

Exhibit "A"

Findings in Support of Ordinances 95-044 and 95-046.

1. ORS 215.283 lists the uses that may be permitted in exclusive farm use zones. ORS 215.283(1)(d) permits utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height. The Board finds the proposed text amendments would allow the siting of microwave and radio communication towers in the SM, Surface Mining zone, and that that such facilities are utility facilities for public service. The Board finds that individual applications for siting such facilities in the SM zone must demonstrate the proposed facility is necessary to be sited in an SM zone where the underlying comprehensive plan designation was agriculture, and the Board of County Commissioners did not adopt an exception to Statewide Planning Goal 3, Agricultural Lands, when the Board adopted the Surface Mining Comprehensive Plan Designation.

2. OAR-660-06-025 lists the uses which may be permitted in lands designated for Forest Use. Section 660-06-025(4)(g) permits television, microwave, and radio communication facilities and transmission towers as a use that may be allowed on forest land subject to review standards in OAR-660-06-025(5). As the proposed use falls within this classification, individual applications for the siting of microwave and radio communication towers described above must demonstrate compliance with the compatibility standards of OAR-660-06-025((5), where the underlying Comprehensive Plan Designation was Forest Use, and the Board of County Commissioners did not adopt an exception to Statewide Planning Goal 4, Forest Lands, when the Board adopted the Surface Mining Comprehensive Plan Designation.

3. Deschutes County performed a county-wide review of mineral and aggregate resources in 1990. Upon completing this review, the County determined certain properties included significant mineral and aggregate resource which warranted protection under Statewide Planning Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources. To protect these mining resources, the County applied a Surface Mining designation on the Deschutes County Comprehensive Plan Map, and then applied an SM, Surface Mining zone, to these properties on the County's Official Zoning Maps. The Board finds that, based on the information in the record, that the siting of microwave and radio communication towers and/or accessory equipment structures on a property zoned Surface Mining can occur to avoid conflicts with the proposed communication facility and the uses permitted in the SM zone. The Board finds that proposals to site microwave or radio communication towers can be permitted on portions of properties zoned SM where such locations have already been

EXHIBIT A to Ord. Nos 95-44 and 95-046

June 29, 1995

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mined, or do not include significant mineral and aggregate resource, and on which the location, installation and operation of the tower can occur which minimizes conflicts with the extraction and the use of mineral or aggregate resources.

4. The Board finds that no division of land in the SM zone is necessary to create a separate property for the location and the operation of microwave or radio communication facilities with monopole towers no higher than 150 feet, non-lighted, and occupying a ground site of no larger than 4,000 square feet. The Board finds the creation of new lots or parcels in the SM zone for this purpose could lead to the establishment of conflicting uses in the SM zone.

5. The applicant has demonstrated through Exhibit B that sites zoned SM, Surface Mining, include properties which are most suitable for the location and the operation of microwave and radio communication facilities. The applicant has indicated that sites zoned SM include buttes, which occur at a higher elevation than surrounding properties. The applicant indicates such sites provide topography higher than most areas which assist in the transmission of communications between cellular telephone users. The Board finds the applicant has demonstrated why the proposed use should be permitted in the SM zone.

DPS:dps

0147-0664

February 6, 1995

Cellular One Center
1600 SW 4th Avenue
Portland, OR 97201

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**TEXT AMENDMENT
DESCHUTES COUNTY ZONING ORDINANCE**

APPLICANT: Central Oregon Cellular, Inc.
dba Cellular One
PO Box 1119
Portland, OR 97207

REPRESENTATIVE: Kevin Martin
Land Use Coordinator
Cellular One
PO Box 1119
Portland OR 97207

Telephone: 503-790-2391
Fax: 503-248-7486

PROPERTY OWNER: (not applicable)

SITE DESCRIPTION: (not applicable)

LAND USE DESIGNATION: Surface Mining Zone - SM

REQUEST: Amend Section 18.52.040 of the Deschutes County Zoning Ordinance to allow "television, microwave and radio communication facilities and transmission towers".

EXHIBIT B
Page 1

REQUEST

Cellular One is requesting an amendment to the Deschutes County Zoning Ordinance to add a new use to the Surface Mining (SM) Zone. Section 18.52.040 would be amended to read as follows:

18.52.040 Uses Permitted Outright Subject to Site Plan Review.

The following uses are permitted outright subject to site plan review as provided in this Section:

- A. Extraction of minerals.
- B. Stockpiling and storage of minerals.
- C. Sale of minerals and mineral products extracted and produced on the same parcel or contiguous parcels in the same ownership.
- D. Buildings, structures, apparatus, equipment and appurtenances necessary for the above uses to be carried on.
- (NEW) E. Television, microwave and radio communication facilities and transmission towers.

BACKGROUND

Cellular One is requesting this amendment in order to allow the construction and operation of a cellular telephone communication facility in an SM zone situated near Redmond.

Cellular One's existing cell site on Grizzly Mountain, which serves Bend, Redmond, Madras, Prineville and intervening rural areas, is at capacity. The cell site proposed for location on property zoned SM will provide additional capacity to handle an increasing volume of calls as well as improving service to areas which are currently in topographic "shadows" and unable to "see" the Grizzly Mountain site. As one of the two licensees authorized by the FCC to provide cellular telephone service in this area, Cellular One is obligated to provide adequate capacity and coverage in order to maintain its license.

Approval of this text amendment will enable Cellular One to apply for a land use permit to construct and operate a cellular telephone communications facility that is needed to expand and enhance coverage in the Redmond area, not only for the general public but emergency service providers as well.

GENERAL FINDINGS

1. The SM zone is a "resource" district similar to the Exclusive Farm Use (EFU) and Forest Use (F-1) zones. The purpose of the EFU zone is to preserve and maintain agricultural lands. The purpose of the F-1 zone is to conserve forest lands. According to Section 18.52.010(B) of the Zoning Ordinance, one of the purposes of the SM zone is "...To allow the development and use of identified deposits of mineral and aggregate resources consistent with Statewide Planning Goals."

2. Oregon Administrative Rules allow cellular telephone communication facilities in exclusive farm use zones. OAR 660-33-120 provides for "...utility facilities necessary for public service..." In McCaw Communication, Incorporated vs. Marion County, 96 OR App 522 (1989), the Oregon Court of Appeals determined that cellular telephone facilities and towers are utility facilities that are necessary for public service.
3. Oregon Administrative Rules allow cellular telephone communication facilities in forest zones. OAR 660-06-025(4)(g) provides for "...Television, microwave and radio communication facilities and transmission towers..." This is the language proposed for the Zoning Ordinance text amendment.
4. Mineral and aggregate extraction businesses commonly utilize two-way radio dispatch for their vehicles. Towers and antennas for these radios may not be allowed under the current provisions of the SM Zone.
5. There are at least two radio facilities with communication towers and antennas situated on property zoned SM. These radio facilities are located on tax lots 500 and 600, map 14 13 33.
6. Specific Use Standards for "radio, television tower, utility station or substation" uses are contained in Section 18.128.040(N) of the Zoning Ordinance.

GOAL 5 INVENTORY PROCESS - OAR CHAPTER 660, DIVISION 16

1. Inventory Goal 5 Resources: Lands zoned SM are included on the Deschutes County Comprehensive Plan inventory of significant mineral and aggregate sites.
2. Identify Conflicting Uses: Under OAR 660-16-005, local governments are required to identify conflicts with inventoried Goal 5 resources. Only those uses currently listed in the SM zone have been evaluated for their potential conflicts with mineral and aggregate extraction and processing.

Television, microwave and radio communication facilities and transmission towers are not currently listed as allowed uses in the SM zone and therefore must be considered as potential conflicting uses. OAR 660-16-005(2) requires that the economic, social, environmental and energy (ESEE) consequences of allowing potential conflicting uses be reviewed. Both the impacts on the resource site and on the conflicting use must be considered.

A. ESEE Impacts on Mineral and Aggregate Resources:

Radio communication facilities usually consist of a tower structure with antennas and an equipment shelter. A typical site occupies 4000 square feet or less. These facilities are unoccupied passive uses, and will interfere very little with mineral and aggregate extraction and processing activities. No personnel are stationed at these sites. The shelters are not equipped with water or bathroom facilities and are not designed to house employees. The shelters are intended only to enclose and protect the radios and electronics and to provide a weather-proof enclosure for technicians while doing maintenance work, typically once or twice a month.

There are no activities associated with radio communication facilities that will interfere with mineral and aggregate extraction and processing activities. These installations produce no airborne emissions, odor, vibration, heat, glare, radioactive wastes, or noxious and toxic materials. All equipment and materials needed to operate the site are located in the equipment building. Heating, ventilating and air conditioning apparatus are located inside. Noise levels will comply with DEQ regulations. Since the site does not have water or sanitary facilities it will generate no waste water.

Only three activities associated with the cell site may extend beyond the installation boundaries. First, dust may be generated by the occasional maintenance vehicle visiting the site. This amount of dust would be minute compared to that generated by mineral and aggregate extraction and processing activities. The second activity that may extend beyond the site is the noise from the climate-control equipment. Again, the noise volume would be insignificant when compared to rock extraction and crushing. The third activity that will extend beyond the site is the transmission of radio frequency signals. These will have no effect as evidenced by operations in SM zones with existing radio facilities.

The land which radio installation sites are located on would be unavailable for mineral and aggregate extraction. However, given the small size of radio communication facilities, there would be little effect on the inventory of mineral and aggregate resources. Furthermore, by siting radio communication facilities in areas on SM-zoned properties that are either mined out, slated for mining in the distant future or not intended for extraction at all, would reduce the amount of resource affected to almost nothing.

Summary:

Economic: The location of television, microwave and radio communication facilities and transmission towers in the SM zone would not reduce the inventory of usable material nor affect their extraction and processing. Therefore, the price of these materials would not be increased by radio communication facilities and no negative economic consequences would result.

Social: The noise and dust associated with mineral and aggregate extraction and processing activities may be upsetting to nearby residents. Television, microwave and radio communication facilities and transmission towers are passive uses and would not add to the noise or dust that may be generated by mining. Therefore, no additional social impacts would be experienced by the neighbors of SM zones.

Environmental: Television, microwave and radio communication facilities and transmission towers produce no airborne emissions, odor, vibration, heat, glare, radioactive wastes, or noxious and toxic materials. Therefore, radio communication facilities will not create any environmental problems for mineral and aggregate extraction and processing activities.

Energy: When located out of the way of extraction and processing areas, television, microwave and radio communication facilities and transmission towers would not alter existing operating procedures. As a result, no increase in

fuel consumption by quarry equipment would be caused by radio communication facilities.

B. ESEE Impacts on Television, Microwave and Radio Communication Facilities and Transmission Towers:

Mineral and aggregate extraction activities include blasting, crushing, hauling and earthmoving. However, the noise, dust and vibration created by these activities would not adversely effect television, microwave and radio communication facilities and transmission towers. The equipment shelters are sealed and/or climate-controlled to prevent air contaminants from entering. The electronic equipment housed inside is not affected by vibration. The tower and antennas are designed to survive 80+ mph winds and therefore are more than sturdy enough to withstand any vibration caused by heavy equipment. Dust is unlikely to accumulate on the antennas because they will be located 100+ feet above ground. If significant dust does accumulate on the antennas, it can be easily cleaned off during routine maintenance.

The ESEE consequences of not allowing television, microwave and radio communication facilities and transmission towers in the SM zone could be substantial. Radio communication facilities are highly location dependent. Criteria for selecting a site include: limitations imposed by surrounding topography, the intended service area of the facility, and the proximity to existing other radio communication facilities. Other selection factors include suitable access, availability of electrical service, and a willing property lessor.

Summary:

Economic: Not allowing television, microwave and radio communication facilities and transmission towers in the SM zone means some optimum geographic locations can not be used. Less suitable alternative sites, which would be more costly to develop, must then be selected. Therefore, the cost of radio communication facilities would be higher.

Social: Television, microwave and radio communication facilities and transmission towers serve private businesses and individuals, government and the general public. Using less suitable sites would limit the ability of these groups to communicate. This would be particularly critical for emergency service providers.

Environmental: the noise, dust and vibration created by extraction and processing activities would not adversely effect television, microwave and radio communication facilities and transmission towers. Therefore, no negative environmental impacts are anticipated.

Energy: Television, microwave and radio communication facilities and transmission towers serve private businesses and individuals, government and the general public. Using less suitable sites would limit the ability of these groups to communicate and may require extra vehicle trips and travel time. This would result in an increase in energy consumption.

3. Develop Program to Achieve the Goal: As provided by OAR 660-16-010(3), a jurisdiction may chose to allow a conflicting use as long as the inventoried resource is protected to the desired extent.

The only potential conflict of allowing radio communication facilities in the SM zone is that the land the sites may be located on would be unavailable for mineral and aggregate extraction. However, given the small size of radio communication facilities, there would be little effect on the inventory of mineral and aggregate resources. Furthermore, by siting radio communication facilities in areas on SM-zoned properties that are either mined out, slated for mining in the distant future or not intended for extraction at all, would reduce the amount of resource affected to almost nothing.

The appropriate location of radio communication facilities in the SM zone would be evaluated as part of the Site Plan Review process required by Chapter 18.124 of the Zoning Ordinance.