ORDINANCE NO. 2222

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDMOND. WASHINGTON. APPROVING CONDITIONAL USE PERMIT AND SPECIAL EXCEPTION APPLICATION OF T-MOBILE USA, INC. FOR A WIRELESS TELECOMMUNICATIONS MONOPOLE AND ASSOCIATED GROUND-MOUNTED EQUIPMENT ON THE NORTHWEST CORNER OF NE REDMOND WAY AND 140TH AVENUE NE PURSUANT TO A REMAND ORDER OF THE KING COUNTY SUPERIOR COURT; **ADOPTING FINDINGS** CONCLUSIONS IN SUPPORT OF THE APPROVAL; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on April 1, 2004, the Honorable Judge Robert H. Alsdorf of the King County Superior Court entered an order in *Voicestream PCS III Corporation, d/b/a T-Mobile v. City of Redmond*, Cause No. 03-2-37632-9 SEA, overturning the decision of the City Council denying a conditional use permit and special exception for the location of a wireless telecommunications monopole on the northwest corner of NE Redmond Way and 140th Avenue NE, and

WHEREAS, Judge Alsdorf's order remanded the permit application to the Redmond City Council for further proceedings consistent with his order, and

WHEREAS, the Redmond City Council considered the remand on June 15, 2004 and has determined that it must approve the application as recommended by the Redmond Hearing Examiner on June 26, 2004 for the reasons set forth herein, and

WHEREAS, RCDG 20F.30.45-110 requires that conditional use permits be approved by ordinance, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings and Conclusions. The City Council hereby enters the

following findings and conclusions in support of the action taken by this ordinance:

A. FINDINGS

- 1. T-Mobile USA, Inc. applied for a conditional use permit and special exception in order to construct a wireless telecommunications monopole and associated ground-mounted equipment on the northwest corner of NE Redmond Way and 140th Avenue NE. The application was complete in November 2002.
- 2. The Redmond Hearing Examiner held a public hearing on the application on April 24 and April 28, 2003. On June 18, 2003, the Hearing Examiner issued his Findings, Conclusions and Recommendation on the application. On June 26, 2003, the Hearing Examiner issued an Amended Recommendation. The Hearing Examiner's recommendation was to approve the application, subject to conditions.
- 3. The Redmond City Council considered the Hearing Examiner's recommendation on August 19, 2003 and determined not to accept the recommendation and to deny the application. On September 16, 2003, the City Council entered Findings, Conclusions, and a Decision, holding that T-Mobile had not met its burden of proving its application complied with the special exception criteria found in RCDG 20D.170.45-080.
- 4. T-Mobile filed an appeal to the King County Superior Court under the Land Use Petition Act on October 6, 2003. The appeal was captioned *Voicestream PCS III Corporation d/b/a T-Mobile v. City of Redmond* and given King County Superior Court Cause No. 03-2-37632-9. On April 1, 2004, the Honorable Judge Robert H. Alsdorf entered a judgment and order remanding the matter to the Redmond City Council.
- 5. In the judgment and order, Judge Alsdorf held that the Hearing Examiner's recommendation was supported by substantial evidence that the Council had cited to no evidence in the record which supported rejection of this evidence and rejection of the Hearing Examiner's recommendation. Judge Alsdorf also held that the City Council's action was based at least in part on an error of law, inasmuch as it appeared to require T-Mobile to make a showing of "absolute necessity" in order to meet the special exception criteria. Judge Alsdorf also held that the City Council erred when it considered a staff memo dated August 19 prior to making its decision. Judge Alsdorf ordered the City Council to hold further proceedings consistent with his order.
- 6. On June 15, 2004, the City Council met to consider Judge Alsdorf's April 1 order. The City Council determined that the only evidence in the record supporting its earlier decision is the evidence deemed insubstantial by Judge Alsdorf. Based upon that determination, and Judge Alsdorf's ruling that the Hearing Examiner's findings of fact were supported by substantial evidence, the City Council has no alternative but to adopt the Findings of Fact entered by the Redmond Hearing Examiner in his Amended Recommendation dated June 26, 2003 and hereby does so.

7. Any conclusion of law made or adopted herein deemed to be a finding of fact is hereby adopted as such.

B. CONCLUSIONS

- 1. Given the Findings of Fact adopted above, the Redmond City Council must concur in the conclusions reached by the Redmond Hearing Examiner in his Amended Recommendation dated June 26, 2003 and hereby adopts the same as the City Council's conclusions in this matter.
- 2. Any finding of fact made or adopted herein deemed to be a conclusion of law is hereby adopted as such.

Section 2. Approval of Permit Application. For the reasons set forth in Section 1 above, the Redmond City Council hereby adopts the Amended Recommendation of the Redmond Hearing Examiner dated June 26, 2003 and approves the conditional use permit and special exception application submitted by T-Mobile under City File No. CUP 02-01, with the conditions set forth in Attachment A to such Amended Recommendation.

Section 3. Effective Date. This ordinance, being an administrative action, is not subject to referendum, and shall take effect and be in full force five days after publication of a summary thereof consisting of the title.

APPROVED:

MAYOR ROSEMARIE M. IVES

ATTEST/AUTHENTICATED:

CITY CLERK BONNIE MATTSON

APPROVED AS TO FORM:

FILED WITH THE CITY CLERK: June 10, 2004 PASSED BY THE CITY COUNCIL: June 16, 2004 PUBLISHED: June 21, 2004 **EFFECTIVE DATE:**

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June 26, 2004