

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of	)	
	)	<b>FILE NO. 04 114834</b>
<b>VOICESTREAM WIRELESS</b>	)	
	)	
Conditional use permit and landscape modification	)	
For a wireless communications facility consisting of	)	
a 150-foot monopole with panel antennas and	)	
associated ground equipment	)	

---

DATE OF DECISION: February 8, 2006

OWNERS: *Hector & Margaret Sanchez*

DECISION (SUMMARY): The application is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 110 140<sup>th</sup> Avenue NE, Lake Stevens, on the west side of 140<sup>th</sup> Avenue NE, approximately 450 feet north of the intersection of Meridian Street and 140<sup>th</sup> Avenue NE.

ACREAGE: 6.58 acres

ZONING: Rural 5-Acre (R-5)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:	Rural Residential (1 du/ 5 ac-basic)
Subarea Plan:	Snohomish/Lake Stevens

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to conditions

Public Works: No objections or requirements

**INTRODUCTION**

The applicant filed the Master Application on June 22, 2004. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 25, 26 and 27)

A SEPA determination was made on December 16, 2005. (Exhibit 24) No appeal was filed.

The Examiner held an open record hearing on January 24, 2006, the 127<sup>th</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on January 24, 2006 at 2:07 p.m.

1. The Examiner announced that he has read the PDS staff report, reviewed the file and would view the site post-hearing to be generally apprised of the particular request involved.
2. The applicant, VoiceStream, was represented by Gary Abrahams. Snohomish County was represented by Roxanne Pilkenton of the Department of Planning and Development Services. No member of the public attended.
3. A pre-hearing letter of opposition was received from Doug and Jenni Hunsaker dated July 14, 2004. A letter of concern had been submitted by Ms. Kerry Pray dated August 10, 2004, but was lost in the transition from one Snohomish County Department of Planning & Development Services Project Manager to another and efforts by the new Project Manager to contact Ms. Pray failed.

The hearing concluded at 2:41 p.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.

Unless superseded herein, the PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Protection Act (SEPA). That staff report is by this reference adopted by the Hearing Examiner.

## FINDINGS, CONCLUSIONS AND DECISION

### FINDINGS OF FACT

Based on all the evidence of record, the following findings of fact are entered.

1. The applicant, VoiceStream PCS III Corporation, proposes to construct an un-staffed telecommunications facility on the property of Hector and Margaret Sanchez addressed 110 – 140<sup>th</sup> Avenue NE, Lake Stevens. The 150-foot tower will be located on the northwest area of the subject site, on the north side of massive electrical distribution towers and lines of the Bonneville Power Administration (BPA). The monopole tower will hold three flush-mounted antennas. The monopole will rise from a fenced, 40-by-40-foot compound containing a 7.5-foot by 12-foot building holding the radio transmitting equipment. The compound will also contain a backup battery system, 100 gallon propane tank and backup generator. The fence will be of cedar and six feet in height. Landscaping will be planted on all four sides of the facility.
2. Douglas and Jennifer Hunsaker of 215 – 140<sup>th</sup> Avenue NE objected to the facility in writing in July 2004 and again in January 2006. They point out that the proposed tower is "...directly across from us..." They will see the tower from the front windows of their home and from most places on their property. They bought their home only a year ago. They assert that the tower will reduce the value of their home. They note that such antenna could be mounted on BPA towers on Three Lakes Road and at the intersection of Meridian and 140<sup>th</sup> Avenue NE/140<sup>th</sup> Avenue SE.
3. The Hearing Examiner's site visit at noon on Saturday, January 21, 2006, disclosed that the Hunsaker home is one among several elegant, large homes on rolling, expansive lawns. However, the BPA transmission lines and towers dominate the view as one drives toward the homes. Further, the entire width of the power line easement separates the subject VoiceStream tower from all of those homes: a distance of several hundred feet.
4. In recent weeks, this Hearing Examiner denied a VoiceStream tower that was only 55-60 feet from the front windows of a residence. In the instant matter, distance softens the adverse impact.
5. The record's Exhibit 40 is a letter dated January 21, 2004 from the Wireless Project Manager of the Bonneville Power Administration stating, in pertinent part:

"...BPA will not accept co-location applications for new sites on transmission line towers in the Snohomish Region."
6. The General Policy Plan (GPP) Future Land Use Map (FLUM) designation is Rural Residential and the property is zoned R-5. The proposed utility use is an allowed conditional use in the R-5 zone.
7. Section 30.42 SCC provides standards regarding conditional use permits and upon a review of this request the proposed use meets those standards. The PDS staff has correctly reviewed the application of this request to Chapter 30.42C.100 SCC.
8. Chapter 30.25.040 SCC provides the standards for landscaping. This request is for modification from these landscaping requirements under Chapter 30.25.040 SCC. Upon a review of these Sections, this request will meet those standards.

9. The proposed use would not have any adverse affects on critical areas or wildlife habitat when reviewed under Chapter 30.62 SCC nor is a Habitat Management Plan required in this location.
10. With regard to radio frequency radiation exposure limits and CFR 47 § 24.52 RF Hazards (FCC Limits), the ground level power density would have to be many times greater (a thousand times greater) to reach the maximum public exposure limits established by the Federal Telecommunications Act. The County, under the terms of this Act, is therefore precluded from considering any further health impacts.
11. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

### **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The request is in compliance with the Conditional Use Permit standards and the existing zoning classifications of R-5 and is an allowed utility use. It is therefore consistent with the Growth Management Act Comprehensive Plan (GMACP) and the land use regulations of Snohomish County.
3. The request will provide additional and better service for telecommunications facilities in this area, which will therefore furnish better service to the citizens of Snohomish County.
4. SCC 30.22.110 allows “Electromagnetic Transmission and Receiving Facilities” in the R-5 District as a conditional use. The subject site is so zoned. The County Council at that Code Section also allows such a facility as a conditional use in the following zones: R-9,600, R-8,400, R-7,200, T, LDMR, MR, NBFS, RD, RRT-10, R-5 (as noted above), RB, RFS, F, F&R, A-10, MC, SA-1, RC, RU, R-20,000, R12,000 and WFB. In every other zoning district, such facility is permitted outright. In no zoning district is such facility prohibited. In view of such broad authorization for the location of “cell towers” by the County Council, there is a rebuttable presumption that the County Council intended to permit the tower height typically needed in order for such a facility to meet its intended purpose. By logical extension, the County Council is presumed to have known that such typical heights for the facilities would cause them to be visible. Thus, visibility alone is not a basis for denial of an application.
5. However, if lighting of the tower is required, the extent, intensity, blinking, colors and other characteristics of the light may support conditioning or denying an application, especially if the tower is in proximity to a residential zone. The facts entered above herein do not support that conditioning or denial here because the subject tower will not be lighted. If it becomes necessary to light the structure in the future, that will not be consistent with the intent of this conditional use permit and might support a revocation proceeding. Snohomish County Code provides a mechanism by which review of conditional use permits can occur. SCC 30.71.027 authorizes the PDS Director to initiate a review hearing on an existing conditional use permit. In the past, a review hearing has typically been convened when it appeared that a permit condition was not being fulfilled properly, that a permit condition needed to be revised in order to be effective, or that permit revocation should be considered.

6. Other assertions by opponents of record are either not relevant or are not supported by persuasive evidence. The BPA towers are not available for the subject antennas. The distance separating the proposed facility from homes such as that of the Hunsakers cushions the impact sufficiently that denial of the application is not warranted.
7. The request should be approved subject to compliance by the applicant with the following Conditions:

**CONDITIONS**

- A. The site plan(s) (Exhibit 23 A-S) shall be the official approved development plan(s) for this project. Any discrepancy between the content of the official approved development plan(s) and the performance standards of the UDC SCC shall be resolved in favor of the standards contained within the UDC SCC. Revision of official approved development plan(s) is regulated by SCC 30.42C.110.
  - B. The co-location of additional carriers on this facility for whose antennas do not pose a significantly greater visual appearance than those shown on the approved plans, shall constitute a minor revision to this conditional use permit as allowed by SCC 30.43A.105.
  - C. Nothing in the permit/approval shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statues, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.
  - D. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)
8. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

**DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The requests for a Conditional Use Permit and Landscape Modification for a Wireless Communications Facility are hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Decision issued this 8<sup>th</sup> day of February, 2006.

---

Ed Good, Deputy Hearing Examiner

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **FEBRUARY 21, 2006**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with

the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **FEBRUARY 22, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

---

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

---

Staff Distribution:

Department of Planning and Development Services: Roxanne Pilkenton

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.
--