

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the matter of the application of)
)
VOICESTREAM PCS III CORPORATION)
dba T-MOBILE/Chase Lake)
)
for a conditional use permit for a wireless)
communication facility)

FILE NO. 05 117411

DATE OF DECISION: August 25, 2005

APPLICANT/OWNER: T-Mobile USA

TYPE OF REQUEST: Major modification of a conditional use permit (CU-2-76) and landscape modification for a wireless communications facility to attach three sets of paired antennas (a total of six) to an existing water tank with an associated 266 square foot equipment building.

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

BASIC INFORMATION

GENERAL LOCATION: The property is located at 8130-228th Street SW, Edmonds.

ACREAGE: 1.6 acres

ZONING: R-8400

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Medium Density Residential (6 -12 DU/AC)
Subarea Plan: Southwest County
Subarea Plan Designation: Medium Density (3.5 – 5.4 DU/AC)

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 March 29, 2005. (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 22, 23 and 24)

A SEPA determination was made on May 19, 2005. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on August 10, 2005, the 41st 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 August 10, 2005 at 9:03 a.m.

1. The Examiner announced that he has read the PDS staff report, reviewed the file and had viewed the site to be generally apprised of the particular request involved.
2. The applicant, VoiceStream PCS III Corporation, dba T-Mobile, was represented by Gary Abrahamson. Snohomish County was represented by Tom Barnett of the Department of Planning and Development Services. No member of the public supported the application by letter or by testimony at the hearing. Concern was expressed by letter of Stephen A. and Wendy S. Coopey dated April 26, 2005 and was focused on opposition to the proposed new equipment shelter building.

The hearing concluded at 9:39 a.m.

Note: The above information summarizes the information submitted to the Examiner at the hearing. However, for a full record, verbatim audio tapes of the hearing are 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. VoiceStream/T-Mobile is requesting approval of a Major Modification to Conditional Use Permit CU-2-76 and a Modification of Landscape Requirements, to locate a Wireless Telecommunications Electromagnetic Transmission and Receiving Utility Facility on the subject property. It is filed pursuant to SCC 30.42C and 30.25.040.
2. The applicant is requesting approval of the Conditional Use modification to attach six antennas to the existing water tank for use in providing wireless communications coverage. Carriers already existing on the site include Verizon, Sprint and XM Satellite Radio.
3. The antennas will be serviced by ground-based equipment to be located in a proposed 12'8" X 21' wood-framed building. Cables will run from the equipment building to the water tank and up the tank to the antennas. The facility will operate 24 hours a day a very low power levels. Approximately one-half of the new building will be used by the Olympic View Sewer and Water District for equipment necessary to maintain the quality of the drinking water in the existing tank, and the existing storage building used by the district will be removed upon completion of the new one. (Exhibit 31)
4. The Coopey's concern about the project is primarily a concern about preventing any adverse impacts to the Coopey's property, which adjoins the southwest corner of the subject site. At hearing, the applicant's representative pointed out that the proposed new shed will be located southeast of the existing facilities on a parcel owned by the Olympic View Sewer & Water District. That building will replace a deteriorating shed, which will be removed from the premises. Also, additional landscaping will be installed further shielding the Coopey property from intrusion by the building. Access to the new shed will be approximately one maintenance visit per month absent emergency visits.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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 classification of R-8400 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. The request should be approved subject to compliance by the applicant with the following conditions:

CONDITIONS

- A. The site plans, marked Exhibit 3A through 3P, shall be the official approved development plans for this project. Any discrepancy between the content of the official approved development plans and the performance standards of the UDC shall be resolved in favor of the standards contained within the UDC. Revision of official approved development plans is regulated by SCC 30.42C.110.
- B. The terms and conditions in this Decision supersede and replace all terms and conditions previously applied to this conditional use permit (CU-2-76).
- C. An eight-foot high security fence shall surround the facility.
- D. 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.
- E. In the event that the FAA requires the tower/structure to be lighted or marked, all lighting and marking shall be done per the FAA's specifications. All lights shall be shielded from the ground below to the maximum allowed.
- F. Prior to approval of the last inspection for this project the existing equipment shed shall have been removed from the site.
- G. That portion of the equipment building to be used by the Olympic View Water and Sewer District shall be used solely for equipment necessary to maintain the quality of the drinking water in the district's water system.

- H. 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 statutes, 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.
- I. 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)

5. 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 4 above.

Decision issued this 25th day of August, 2005.

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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 6, 2005**. 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, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 8, 2005** 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: Tom Barnett

| |
|---|
| <p>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.</p> |
|---|