

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: March 9, 2006

PLAT/PROJECT NAME: *SEA ECHO WIRELESS COMMUNICATION*

APPLICANT/
LANDOWNER: WFI/VERIZON WIRELESS

FILE NO.: 05 122993

TYPE OF REQUEST: Conditional Use Permit and Landscape Modification for a wireless facility, including a 200-foot antenna, equipment building, fencing and a Native Growth Protection Area

DECISION (SUMMARY): Requests APPROVED subject to conditions

BASIC INFORMATION

GENERAL LOCATION: The property is located at 23109 119th Avenue SE, Woodinville

ACREAGE: 9.92 acres

ZONING: Rural 5-Acre

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Residential-5
Subarea Plan: Cathcart-Maltby-Clearview
Subarea Plan Designation: Rural

UTILITIES:

Water: Cross Valley Water District
Sewage: N/A

SCHOOL DISTRICT: Monroe

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:
Planning and Development Services: Approve subject to conditions
Public Works: No comments

INTRODUCTION

The applicant filed the Master Application on August 3, 2005. (Exhibit 1)

The Hearing Examiner (Examiner) made a site familiarization visit on January 9, 2006 in the afternoon.

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 21, 22 & 23)

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

The Examiner held an open record hearing on January 11, 2006, the 85th 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 11, 2006 at 3:00 p.m. After the hearing, the Examiner took the matter under advisement and on January 26, 2006 issued a report opening and continuing the hearing until February 22, 2006 at 11:00 a.m. (Exhibit 33) On February 22, 2006 the hearing was re-opened at 11:03 a.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. Mr. Paul Lichter, Department of Planning and Development Services (PDS) submitted a supplemental staff report. Additional exhibits were also submitted.
3. Mr. Walker, representing the applicant appeared and stated that the parcel is not near a public road and he showed where he had located signs and notices which were sent to private property owners, and published in the newspaper. He stated that he had met with the Dragavons, whose property is 58 feet away, with the tower being an additional distance. i.e. 88 feet from the Dragavons' property line and 65 feet from the Hill property. He stated that the area is difficult to locate the tower from the road.
4. Mr. Alan Burt, a noise consultant appeared, and indicated that the noise would only come when there are power outages, which are emergencies, and these are exempt. He stated that at other times the generator will run for 15 minutes at a time, once a week for checking.
5. Mr. John Dragavon appeared and stated that the survey which they have is acceptable to them. He also stated that the flags were removed from his trees and that the noise probably won't be a problem.
6. Ms. Dragavon appeared and thanked the parties.
7. No one else appeared on this matter.

The hearing concluded at 11:36 a.m.

NOTE: Audio tapes of this hearing are available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS:

1. 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.
2. 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) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. The request is for approval of a conditional use permit and a landscape modification to construct an unmanned radio telecommunications facility consisting of a 200-foot lattice steel tower and a 12'x30' prefabricated shelter used to house the associated radio equipment and backup emergency generator. The site will be enclosed with a six-foot high chain link fence.
4. The site is located on a 9.92 acre parcel and the terrain is rolling and heavily wooded, with both deciduous and evergreen trees, shrubs and grass, which would support the landscape modification request.
5. The site is zoned R-5 and the surrounding area is rural in nature. The site and surrounding properties consist of large heavily treed lots, some pastures and a few scattered residences.
6. The GPP Future Land Use Map (FLUM) designation is Rural Residential-5 (1 du/5acres). The subject property is zoned Residential-5. The proposed use is allowed as a conditional use in the R-5 zone. Existing regulations in regard to electromagnetic transmission and receiving facilities are found in SCC 30.42.C.100.
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. The Examiner, therefore, concludes that this analysis, found on Pages 3-4 of the PDS staff report (Exhibit 32), is correct.
8. Exhibit 42 shows with very detailed pictures and graphics where the tower will be in the area, and how it will look.
9. With regard to radio frequency radiation exposure limits and CFR 47 § 24.52 RF Hazards (FCC Limits), the evidence in Exhibit 13, which is based on a worse case scenario, shows that this site complies with FCC rules. The ground level power density would have to be many 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.
10. The request is consistent with Chapter 30.70.100 SCC and the elements and Comprehensive Plan or Subarea Plan elements adopted under Chapter 36.70A RCW.
11. Any Finding of Fact in this Report and Decision, which should be deemed a Conclusion, is hereby adopted as such.
12. Exhibit 40 is an explanation of the noise generation and its minimum effect on the area.

13. Exhibit 23 is a statement regarding the notice, publication, and posting; and which appears to be proper. Furthermore, Exhibit 18 shows the location of the tower on an aerial photograph.
14. The Examiner must compliment Mr. and Ms. Dragavon for working with the applicant. The applicant has also worked with them in resolving the issues that were raised and as long as the facility is constructed in the manner proposed and at the location listed, should have no serious adverse affects upon the area.

CONCLUSIONS:

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 Department of Public Works had no comment.
3. The FAA indicates that there will not be an adverse impact on the airspace; and the non-ionizing electromagnetic exposure analysis and FCC certification as shown in Exhibit 10 will not violate any FCC regulations.
4. 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.
5. 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.
6. SCC 30.42C.200 requires execution and recording with the County Auditor of a Land Use Permit Binder (LUPB) in conjunction with the issuance of any conditional use permit, special use permit or variance.

SCC 30.42C.110 establishes procedures by which conditional use permit, special use permit or variance site development plans or permit conditions may be revised. The procedures allow minor site development plan revisions to be handled administratively by PDS but require open record hearing consideration of requests for major site development plan revisions and for changes to permit conditions.

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.

7. The request should be approved subject to compliance by the applicant with the following Conditions:

CONDITIONS

- A. The site plan(s) marked Exhibits 3A-3U shall be the official approved plan(s) for this project. Any discrepancy between the content of the official approved development plan(s) and the performance

standards of the SCC shall be resolved in favor of the standards contained within the 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 30.42C.110.
- C. All exposed antennas, coax, and mounting hardware shall be painted a neutral color.
- D. 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.
- E. The applicant shall file with the County Auditor the required Land Use Permit Binder (LUPB) on a form provided by the Department.

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.

- 8. Any Conclusion in this Report and Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION:

The requests for a CONDITIONAL USE PERMIT and LANDSCAPE MODIFICATION to construct a 200-foot radio telecommunications facility, along with a waiver of landscaping requirements are hereby APPROVED, SUBJECT TO COMPLIANCE by the applicant, with the CONDITIONS set forth in Conclusion 7, above.

Decision issued this 9th day of March, 2006.

Robert J. Backstein, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

This 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 Examiner's action on reconsideration would be subject to appeal to the Council.) 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, 2802 Wetmore Avenue, 2nd Floor, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **March 20, 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 Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation;
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the Examiner’s decision which could not reasonably have been produced at the Examiner’s hearing; and/or
- (f) changes to the application proposed by the applicant 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. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **March 23, 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 and PROVIDED FURTHER that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing under SCC 30.72.075.

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 are limited to the following:

- (a) the Examiner exceeded his jurisdiction;
- (b) the Examiner failed to follow the applicable procedure in reaching his decision;
- (c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or
- (d) the Examiner’s findings, conclusions and/or conditions are not supported by the record.

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 this case.

Staff Distribution:

Department of Planning and Development Services: Paul Lichter

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.