

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

In the Matter of the Application of)
) **FILE NO. 06 136143 LU**
VERIZON WIRELESS)
)
Conditional use permit for a wireless communications)
facility consisting of 150 foot monopole with 12 panel)
antennas and a equipment building)

DATE OF DECISION: May 11, 2007

PLAT/PROJECT NAME: *SEA Green Mountain*

DECISION (SUMMARY): The conditional use permit application for a 150-foot high monopole wireless communication facility and equipment building is **CONDITIONALLY APPROVED.**

BASIC INFORMATION

GENERAL LOCATION: The property is located at 12909 279th Avenue NE, Granite Falls, Washington.

ACREAGE: 20 acres

ZONING: Forestry (F)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Low Density Residential (1 du/ 20 ac)

INTRODUCTION

The applicant filed the Master Application on December 19, 2006. (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 16, 17 and 18)

A SEPA determination was made on February 13, 2007. (Exhibit 15) No appeal was filed.

The Examiner held an open record hearing on May 1, 2007, the 106th day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing. The record was held open for supplemental analysis of decisional criteria required by Snohomish County Council Motion No. 06-172.

PUBLIC HEARING

The public hearing commenced on May 1, 2007 at 10:03 a.m.

1. The Examiner stated that he had read the PDS staff report, reviewed the file and had viewed the site.
2. The applicant, Verizon Wireless, was represented by Bill North of The North Group. Snohomish County was represented by Paul Lichter of the Department of Planning and Development Services.
3. Two letters were received from vicinity residents voicing concern. Jack Kosydar (Exhibit 21) wrote a single sentence asking if he would be paid for having the proposed 150-foot tower "...basically in my back yard." Janis Downs wrote to protest having the tower every day in the "fabulous view" from her home's front windows without payment. Mrs. Downs also asked if the proposed tower would interfere with her existing Verizon cell service. (The applicant responds that there will be no interference. See Exhibit 9.) Snohomish County Sheriff Rick Bart wrote (Exhibit 29) to support the proposed tower as a "vital public safety communications" facility for persons along the Mountain Loop Highway and for search and rescue and other emergency responses. Fire Protection District No. 23 submitted a letter (Exhibit 30) and sent a representative (Pete Iverson) to support the proposed tower as a tool for firefighters, especially because there is no cell phone service five miles beyond Granite Falls. From the Fire Hall in the Robe Valley, the fire and medical personnel respond as far as Barlow Pass. Up to 5,000 weekend visitors are common in peak season in the huge recreation area.
4. At the hearing, the Hearing Examiner noted that the record did not address decisional criteria required to be addressed by Snohomish County Council Motion No. 06-172. The Examiner held the record open until May 8, 2007 for a supplemental staff report of those criteria, extended at the applicant's request for two days until May 10, 2007 to allow the applicant's response to the supplemental County staff report. All parties complied with the Examiner's request for the supplemental analysis.

The hearing concluded at 10:28 a.m.

NOTE: For a complete record, an electronic recording of this hearing is available in the Office of 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, Verizon Wireless, filed an application to place a wireless communication facility (a cell phone tower) at 12909 279th Avenue NE, Granite Falls to serve primarily areas along the Mountain Loop Highway not now having cellular phone service. The project includes a monopole of 150-foot height with 12 attached antenna along with a 12-foot by 30-foot equipment shelter placed within a 50-foot by 60-foot secured fenced area with a 50-foot perimeter landscape buffer for visual screening. That buffer exceeds the 20-foot vegetative buffer required by the County Code.
2. The applicant submitted a detailed application narrative (Exhibit 3) addressing each applicable section of Snohomish County Code 30.28A, which governs wireless communication facilities. The narrative describes co-location, site selection criteria, locational priorities, support structure design criteria, support facilities design and landscaping. The tower will be painted dark green to best blend visually into the mature, second-growth forest. Photo-simulations and testimony show that the proposed facility will be minimally intrusive upon residential or other uses in the vicinity. (Exhibits 6A-D) The facility will be visible to some neighbors, including the two mentioned above, but the intrusion is not unreasonable nor greater than is required to provide signals to fill the documented service gaps in the area.
3. The applicant has submitted into the record a geotechnical engineering evaluation by Adapt Engineering (Exhibit 8), a non-ionizing electromagnetic exposure analysis by Hatfield & Dawson (Exhibit 9) and a noise survey by SSA Acoustics, LLP (Exhibit 10) as well as service coverage maps and radio frequency analysis (Exhibits 5A-C).
4. The applicant also submitted into this record a copy of Section 704 of the Telecommunications Act of 1996 which controls state and local government regulation of personal wireless facilities. (Exhibit 32-A)
5. 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 Policy Act (SEPA). That staff report is by this reference adopted by the Hearing Examiner
6. The General Policy Plan (GPP) Future Land Use Map (FLUM) designation is Low Density Residential and the property is zoned Forestry. The proposed use is an allowed conditional use in the Forestry zone.
7. Section 30.42 SCC provides standards regarding conditional use permits and 30.28A governs wireless communication facilities. Upon review of this request the proposed use meets those requirements. The PDS staff has correctly reviewed the application of this request to those standards. In supplemental reports requested by the Examiner, the County staff (Exhibit 31) and the applicant (Exhibit 32) succinctly addressed the additional review criteria set out at County Council Motion No. 06-172.
8. 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. The applicant obtained the opinion of WDFW biologist Ruth Milner that no priority bird species habitat is within 1,000 feet of the proposed tower. (Exhibit 23)

9. 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.
10. 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.
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.
2. The request is in compliance with the Conditional Use Permit standards and the existing zoning classification of Forestry and is an allowed use. It is therefore consistent with the Growth Management Act Comprehensive Plan (GMACP) and the land use regulations of Snohomish County. Specifically, the proposal is consistent with Objectives UT 5.A, 5.B1 and 5.D
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 Forestry 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. The new Snohomish County regulations for wireless communications facilities at SCC 30.28A are consistent with the “least intrusive” standard adopted by the Ninth Circuit in 2005 in METROPCS, INC. v. City and County of San Francisco, 400 F.3d 715 (9th Cir.2005), in which the United States Court of Appeals held that that standard allows for:

“...meaningful comparison of alternative sites before the siting application process is needlessly repeated. It also gives providers an incentive to choose the least intrusive site in their first siting applications, and it promises to ultimately identify the best solution for the community, not merely the last one remaining after a series of application denials.”

That standard has been met herein, as shown by the findings of fact above.

6. The applicable regulatory provisions in the instant matter are at Snohomish County Code Chapter 30.28A. The applicant has provided analysis (Exhibit 3) of how this proposal meets the applicable regulatory decisional criteria of SCC 30.28A and the conditional use permit criteria (SCC 30.42C), covering a gap in service, impact on bird species, setbacks, landscaping and screening, location priorities, co-location, siting criteria, propagation maps, design criteria and facility maintenance.
7. It is concluded as a matter of law that the decision herein is consistent with prior Hearing Examiner decisions in Snohomish County in factually similar settings and under substantially similar regulatory provisions.
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 for a wireless communications facility is hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

CONDITIONS:

- A. The site plan(s) marked Exhibit 4A-4O shall be the official approved plan(s) for this project. Any discrepancy between the content of the official approved site 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 site 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.
- F. 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)

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from 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.

Decision issued this 11th day of May, 2007.

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 **MAY 21, 2007**. 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 **MAY 25, 2007** 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]

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: Paul Lichter

<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>
