



**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

M/S 405
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Everett, WA 98201

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DATE OF DECISION: January 18, 2011

PROJECT NAME: **SEA Port Susan - Verizon Wireless**

APPLICANT: Verizon Wireless
15900 Eastgate Way
Bellevue, WA 98008

Contact: Mr. Rod Michaelis
2607 Southeast Boulevard, Suite B-214
Spokane, WA 99223

FILE NO.: 09-105651 LU

TYPE OF REQUEST: **Conditional Use Permit (CUP)** to allow construction of a 180 foot tall non-staffed wireless communications facility, including 12 Verizon wireless antennas, microwave dishes, and other supporting infrastructure

DECISION (SUMMARY): **APPROVED WITH CONDITIONS**

LOCATION: 6823 126th Street NW, Marysville, Washington.

INTRODUCTION

Verizon Wireless, the applicant, is requesting approval of a CUP to locate a Wireless Telecommunications Facility on the subject property pursuant to Chapter 30.42C SCC. Verizon Wireless proposes to construct a 180-foot monopole tower, antenna, and associated ground equipment. The perimeter of the tower and equipment area will be secured with an eight foot tall fence with soundproofing. Twelve Verizon Wireless antennas and microwave dishes will be located on the proposed tower. The proposed tower is 177 feet tall with an antenna tip height of approximately 180 feet. The tower will be able to accommodate future co-locations of additional wireless telecommunication equipment. A complete application was submitted on August 18, 2009. (Exhibit A1)

PUBLIC HEARING

The Examiner held an open record hearing on January 4, 2011. Witnesses were sworn *en masse*, testimony was presented, and all of the exhibits were entered into evidence at the hearing, including the Tape Log and a new Exhibit I-9, which is an e-mail comment from Corinna and Wil Lasa expressing support for the project. Roxanne Pilkenton appeared for the Department of Planning and Development Services (PDS). Rod Michaelis appeared on behalf of the applicant. Several citizens appeared at the hearing to express their support for the application.

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

FINDINGS, CONCLUSIONS AND DECISION

Based on a preponderance of the evidence in the record, the following Findings of Fact, Conclusions of Law and Decision are entered:

FINDINGS OF FACT

1. The introductory information set forth herein and the master list of Exhibits and Witnesses which is a part of this file, and testimony of witnesses received at the public hearing, which were all considered by the Examiner, is hereby made a part of these Findings of Fact.
2. The PDS Staff Recommendation 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 report is hereby adopted by this reference as if set forth in full herein. (Exhibit J)
3. PDS gave proper public notice of the open record hearing as required by the County Code. (Exhibits F1, F2 and F3)
4. A State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) was issued on November 1, 2010. No appeals of the SEPA Determination were filed. (Exhibits E1, E2, F1, F2 and F3)
5. Six citizens testified about the project including Don Franks, Ron Renzoni, John Morgan, Judy Johnson, Joseph Pirak, and Maggie Lawrence. They each expressed their support for the project and testified to the urgent need for cell service within the Port Susan Camping Club, which is adjacent to the project. Many expressed concern and described their past experiences related to their inability to contact E-911 services, noting that medical emergencies were common, given that the Club consists of many retired persons. It is clear that there is a need for improved wireless coverage in the vicinity of the project site.
6. In addition, the Examiner received several letters and e-mails in support of the application, mainly based on the critical need for improved cell service to the nearby Port Susan Camping Club members and residents. (Exhibits I-1 through I-8) No issues of concern were raised during the processing of the application by any public agencies.
7. The existing site is forested with some cleared areas. The site is surrounded by thick forest land with heavy underbrush. The topography slopes to the west ranging from two to 15 percent. The U.S. Department of Agriculture Soil survey of Snohomish County Area indicated Alderwood Gravelly Sandy Loam soil conditions for the site. There are no critical areas on the property.
8. The application must meet the requirements of SCC 30.42C.100, the CUP criteria. Each criterion is analyzed below:

A. The proposal is consistent with the comprehensive plan;

- i. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan ("GMACP"), which became effective on December 12, 1996, as revised through the completeness date of the application. The subject property is designated Rural Residential-10 (Resource Transition) (RR-10RT: 1 dwelling unit per 10 or more acres). The Hearing Examiner finds that the application is consistent with the GMACP designation for the subject property.
- ii. The implementing zone is the RRT-10 zone. On the Tulalip Reservation only, lands designated RR-10-RT are zoned RRT-10. The RRT-10 zone requires a minimum lot size of 10 acres for each house in a new subdivision. The rural cluster subdivision technique may be used in the RRT-10 zone. The subject proposal is not a new subdivision nor does it propose residential uses. As such, these implementing zoning restrictions do not apply.
- iii. The following Land Use Goal and Policies are applicable to this application: GOAL UT 5, UT 5.A.1, UT 5.B, UT 5.B.1, GOAL ED 4, ED 4.A.6, and Objective LU 6.E. Verizon Wireless presented a detailed analysis of the project's consistency with these policies. (Exhibit A3) The Hearing Examiner has reviewed each policy and finds that the proposed application is consistent with each of them or that they are inapplicable to the proposed application.
- iv. The Hearing Examiner finds that the proposed application is consistent with the GMACP and the current zoning for the site.

B. The proposal complies with applicable requirements of this title;

- v. As shown in the Staff Report (Exhibit J) and Exhibits in the record, the proposal meets the applicable requirements of the Snohomish County Code, including:
 - Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC) - No requirements related to transportation are needed;
 - Park and Recreation Impact Mitigation (Chapter 30.66A SCC) - The project is not subject to fees associated with Chapter 30.66A SCC;
 - School Impact Mitigation (Chapter 30.66C SCC) - The project is not subject to fees associated with Chapter 30.66C SCC;
 - Drainage and Grading (Chapters 30.63A, 30.63B, and 30.63C SCC) - No impact of any kind is expected from this relatively small development proposal.
 - Fire Code (Chapter 30.53A SCC) - There are no specific requirements or recommendations related to fire protection.
 - Federal Aviation Administration. The Federal Aviation Administration (FAA) issued a Determination of No Hazard to Air Navigation on 25 April 2006 (Exhibit G13). This aeronautical

study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation. Based on this evaluation, marking and lighting are not necessary for aviation safety.

- Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC) There are no critical areas located on or within 300 feet of the subject property.
 - Zoning and Development Standards (Chapters 30.21, 30.22, and 20.23 SCC) - This project meets zoning code requirements for bulk regulations and other zoning code requirements. The maximum building height in the RRT-10 zone is 45 feet. Towers used to support private antennas are exempt from height restrictions pursuant to SCC 30.23.050(2)(b). The height of the proposed tower will be 180 feet and the placement of the 12 proposed antennas will be at 177 feet. The minimum setback for the tower is 50 feet, as required at SCC 30.23.110(25)(c). The proposed eight foot fence surrounding the area housing the 180-foot lattice tower, antenna, and associated ground equipment will meet the minimum setback requirements. The site plan shows adequate graveled area to accommodate the occasional vehicular visits needed for maintenance and operation of the facility. Finally, a landscape plan (Sheet L1, Exhibit B1) has been submitted that shows that the proposed project meets the 20 foot Type A landscape requirements as noted in SCC 30.25.025 and SCC 30.25.020(1). It is a recommended condition of approval that prior to final inspection approval of the completed facility, the proposed eight foot tall fence and the 20-foot Type A landscape buffer identified in Exhibit B1 shall be installed per the official site plans
 - Environmental Review (SEPA) (Chapter 30.61 SCC) – SEPA has been complied with and no appeals were filed.
- vi. Accordingly, the Examiner finds that the request for a CUP meets zoning code requirements for building height and setbacks, parking, landscaping and other code requirements.

C. The proposal will not be materially detrimental to uses or property in the immediate vicinity;

- vii. Having reviewed the entire record, the Examiner finds that the proposed construction and use of a wireless telecommunication tower and attendant equipment and facilities will provide a material benefit to the uses and properties in the immediate area. In particular, there was significant public comment and testimony demonstrating the need for wireless communication coverage in the immediate area, especially with regard to the adjacent uses at the Port Susan Camping Club, which has 2,500 camping sites, 300-400 of which are used by senior citizens that live in the area full time. During the summer, the property is full. The periodic running of a backup generator for 30 minutes at a time will not be significantly detrimental to adjacent landowners and the Noise

Study concludes that it will meet the County's noise regulations. Impacts to aesthetics and views will be shielded by the heavily wooded area. In addition, no aesthetic objections were raised by surrounding property owners that will have views of the 180-foot monopole tower. Accordingly, the Examiner finds that the proposal will not be materially detrimental to uses or properties in the immediate vicinity.

D. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property;

- viii. The area surrounding the site contains a mix of medium and large residential lots along with medium and large forested undeveloped lots. The nearest neighbor to the proposed tower would be the Port Susan Camping Club, which has documented its support of the proposed tower. (Exhibits I-1 to I-9) The area is heavily treed and gently varies in topography. The proposal meets the development standards and siting process for personal wireless telecommunications services facilities in SCC 30.28A. The applicant has provided evidence (Exhibits G4, G6, G7 and G12) that shows that the proposed location has been chosen and evaluated based on needed coverage and propagation maps. The applicant provided visual simulations of the facilities (Exhibit G8) to demonstrate the visual impact on the view of the neighboring properties.
- ix. The proposed tower is being proposed on a site that is heavily treed, and located on a portion of the subject property that would take maximum advantage of the existing trees. The existing trees will remain and be incorporated into the required 20 foot Type A landscape buffer surrounding the tower and associated ground equipment. The proposed project meets and exceeds the required setbacks for a wireless communications facility from all property lines and existing structures. No signals, lights or signs will be permitted on the tower unless required by the Federal Communication Commission (FCC) or FAA. The tower and antennas will be painted, as a recommended condition of approval, to minimize the visual impact and there will be little noise and no odors from the proposed development. The applicant has demonstrated through analysis (Exhibits G4, G6, G7 and G12) that the tower and antenna height is not greater than the minimum height required to function satisfactorily. The tower and associated ground equipment will be surrounded by an eight foot tall fence which will be bordered by the required 20 foot Type A landscaping. The applicant has provided an analysis on the impact of the proposed tower on surrounding property values (Exhibit G9).
- x. A Non-Ionizing Electromagnetic Radiation (NIER) report has been submitted for review (Exhibit G5). Each year after the facility becomes operational, the facility operator will be required to

conduct a safety inspection and file a report with PDS within 60 days of the inspection. A report documenting that the facility complies with FCC Non-Ionizing Electromagnetic Radiation (NIER) limits shall be submitted with the report when any modifications of the facility have been made subsequent to any previous NIER report submittal.

- xi. The Examiner finds that the proposal is consistent with the provisions of SCC 30.28A and 30.42C. The Examiner further finds that the proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
9. Any Finding of Fact in this decision which should be deemed a Conclusion of Law is hereby adopted as such.

CONCLUSIONS OF LAW

The Examiner having fully reviewed the entire record and testimony provided at the public hearing and being fully informed hereby enters the following Conclusions of Law:

1. The Hearing Examiner has jurisdiction over the issuance of a CUP pursuant to SCC 30.72.020. The Examiner concludes that the application is consistent with the requirements of SCC 30.42C.100.
2. The proposal is consistent with the GMACP; GMA-based County regulations, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
3. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
4. The proposed CUP, with the recommended conditions of approval, will be consistent with the comprehensive plan and comply with the applicable requirements of Title 30 SCC. Adequate public services exist to serve the proposal.
5. The CUP, with recommended conditions of approval, will not be materially detrimental to uses or properties in the immediate vicinity.
6. The CUP, with recommended conditions of approval, will respond to as well as maintain compatibility with surrounding uses and incorporate specific features, conditions, or revisions that ensure it responds appropriately to the character, appearance, quality of development, and physical characteristics of the site and surrounding properties.
7. The proposal, as conditioned and designed, meets all of the requirements of Chapter 30.42C SCC and a CUP should be granted to Verizon Wireless for the construction of the improvements described in the Exhibits, and for the operation

of a 180-foot monopole personal wireless telecommunications facility and its supporting equipment.

8. The recipient of any CUP shall file a Land Use Permit Binder on a form provided by PDS 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 CUP and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)
9. Any Conclusion of Law 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 request for a **CONDITIONAL USE PERMIT** is hereby **CONDITIONALLY APPROVED**, subject to the following **CONDITIONS**:

CONDITIONS

- A. The site plans received on August 27, 2010 (Exhibit B1) shall be the official site plan.
- B. Revisions to the official site plan are governed by SCC 30.42.110 and SCC 30.28A.
- C. The tower and all proposed and future antenna/attachments, for all carriers, shall be **FACTORY** painted a color that is selected by the tower owner and is similar to and no lighter than, Sherwin Williams Black Forest #SW2238 or Valspar Deepest Night #802A-4 and shall be completed prior to the final of the building permit and/or activation of the facility. All antennas and attachments shall paint their antennas and attachments the same color as the other carriers on the structure.
- D. Each year after the facility becomes operational; the facility operator shall conduct a safety inspection and file a report with the county within 60 days of the inspection. A report documenting that the facility complies with FCC Non-ionizing Electromagnetic Radiation (NIER) limits shall be submitted with the report when any modifications of the facility have been made subsequent to any previous NIER report submittal.
- E. Prior to final inspection approval of the completed facility, the eight foot tall fence and the 20 foot Type A landscape buffer identified in Exhibit B1 shall be installed per the official site plans.
- F. The conditional use permit approval shall expire after five years if construction of the proposed tower has not been started.

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.

Decision issued this 18th day of January, 2011.


Millie Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before January 28, 2011**. 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 **within 14 days from the date of this decision**. 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) **on or before February 2, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily 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 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 PDS. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

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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.

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