

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Verizon Wireless  
c/o Lexcom Development  
Attn: Jeffrey Smith  
615 8th Avenue South  
Seattle, WA 98104
- Request/File No:** Special Use Permit, PL 12-0032  
Administrative Variance, PL 12-0083
- Location:** The proposed location is on the site of a Public Utility District water tank at 7004 Sunrise Estate Drive, within a portion of SE1/4NE1/4 Sec. 18, T34N, R2E, W.M.
- Land Use Designation:** Rural Reserve
- Summary of Proposal:** To install a wireless telecommunication facility, consisting of a 120-foot monopole, equipment cabinets and a diesel generator within a 15' by 42' leased area on an approximate .5 acre parcel. The applicant proposes to attach six panel antennas to the monopole. Included is an application for an administrative variance to reduce the setbacks for the location of the pole.
- SEPA Compliance:** Determination of Non-Significance (DNS) issued June 5, 2012. No appeals.
- Public Hearing:** July 25, 2012. Owners of two nearby properties testified in opposition. Planning and Development Services (PDS) recommended approval. The Examiner visited the site after the hearing.
- Decision:** Approval, subject to conditions.
- Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 days of the date of decision or decision on reconsideration, if applicable.
- Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner).

## FINDINGS OF FACT

1. Verizon Wireless seeks a Special Use Permit to erect and operate a wireless telecommunication facility, consisting of a 120-foot monopole and ground equipment (cabinets and diesel generator).
2. The address is 7004 Sunrise Estate Drive. The site is within a portion of the SE1/4NE1/4 Sec. 18, T34N, R2E, W.M. The location is at the end of the access road to a small parcel owned Skagit County Public Utility District. The parcel (#113958) is currently occupied by a PUD water tank.
3. The site is near a ridge top, at an elevation of approximately 405 feet. Tall trees on vacant properties border the site on the east and north. To the south is the access road. To the immediate west is a single family residence which has a panoramic westerly view toward Lake Campbell and Mount Erie. To the east the land slopes down toward the Gibraltar Road and Similk Bay.
4. The zoning of the property is Rural Reserve. Telecommunications facilities (cell towers) are permitted in the zone by Hearing Examiner Special Use Permit. SCC 14.16.320(4)(y).
5. The cell tower will share the small PUD parcel (.5 acre) with the water tank, and be located within a 15' x 42' leased area located off the northeast quadrant of the water tank, close to the east property line. The tower will occupy the south part of the leased area with the equipment cabinets and diesel generator to the north.
6. The applicant proposes to attach six panel antennas to the projected monopole, using a "top hat" design. The pole is to be located 13 feet from the east property line, 104 feet from the north property line, 101 feet from the south property line, and 88 feet from the west property line.
7. For cell towers in areas such as this, where residential uses are permitted or existing, the set back from all property lines is a distance equal to 100% of the tower height. Thus a 120 foot tower on this small parcel will not meet the standard setback in any direction.
8. The purpose of this setback was self-evidently to protect residences from the potential of a cell tower falling over. The applicant's agent, a person of experience in cell tower siting, testified that knowledge and technology have advanced since ordinances with this kind of provision were enacted. He said that cell towers in other jurisdictions are frequently located near residences and he is aware of no instance of tower falling on a house.
9. The 120 foot height here was determined by the height of the surrounding trees. The height is needed for radio signals to clear the tree tops. The applicant has convincingly shown a coverage deficit in the immediate area. The proposed tower will change this. It will provide coverage for residential customers and for people using their phones in nearby recreation areas. Use of the site will improve indoor coverage in the Lake Campbell area and the Snee-oosh

Road/Swinomish Reservation area. Southwest of Lake Campbell there will be more reliable coverage outdoors or inside a car.

10. There are no existing structures, including other cell towers, within a 2,500 foot radius of the chosen site upon which the proposed antennas could be co-located.

11. The residence to the immediate west of the site is within the fall zone of the tower. The homeowners strongly object to the tower. They say that for safety and possibly insurability reasons the tall tower next door would prevent them from expanding their existing home up to the allowable eight-foot setback.

12. This neighboring residence, the only home nearby, faces a spectacular vista to the west. The cell tower will be in back of the house and will not affect significant views. The tower will be partially obscured by the existing water tower and set against a backdrop of tall trees.

13. A slatted fence will be built around the leased area within the water tank tract. This will effectively obscure the ground equipment to be installed. In addition there is a row of evergreens between the water tank tract and the residence to the west. These trees presently provide some screening and will provide more as they grow.

14. For aesthetic reasons, PDS proposes that the antennas be flush mounted rather than using the proposed "top hat" array. The facility is required to accommodate two additional carriers. The applicant states that a flush mount might impair the practicability of future co-location on the tower by others without making the tower even higher. In this setting, the aesthetic difference between the two types of mountings would not be significant. The applicant is willing to paint the tower if required to do so to insure that it will blend with the background.

15. There is a fear of health risks. This issue is federally pre-empted and beyond the Examiner's jurisdiction. However, authoritative information showing human health dangers from cell towers has not been identified. Moreover, there is no evidence that the presence of the cell towers will have any adverse impacts on the wildlife population of the area.

16. Review was conducted pursuant to the State Environmental Policy Act (SEPA). A Determination of Non-Significance (DNS) was issued on June 5, 2012. The DNS was not appealed.

17. The tower will comply with applicable engineering standards and meet all known Federal requirements. Lights will not be required. State noise standards will not be exceeded.

18. The site will be unmanned. There will be short visits monthly for inspection and maintenance purposes. Parking is available at the site. Traffic generation will be minimal.

19. In conjunction with the Special Use Permit, the applicant sought an administrative variance from the 120 foot setback. This is necessitated by the small parent property on which

the PUD water tank is located. The parcel is substandard to the zone but was permitted under a previous code provision that allowed such parcels to be created for "non-residential building purposes." The height of the tower is the minimum necessary at the site to meet coverage objectives in light of other Verizon facilities.

20. The proposed cell tower is a reasonable development of this small publically-owned parcel that would be precluded by application of the standard setbacks. The site meets all of the requirements for cell tower siting, except for setbacks. In addition there are advantages -- an existing access road for construction and maintenance, and available electricity needed to provide 110-volt service to power the facility. It should be noted that the lot's substandard size is not the result of action by the applicant.

21. In light of all the facts and circumstances, the Examiner finds that the public health, safety and welfare will be maintained if the requested setback reductions are allowed.

22. The Staff Report analyses this application in light of the standard criteria for Special Use Permit approval and determines that, as conditioned, it will comply with the criteria. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

23. The applicant agreed to consolidate the special use and variance application processes, with both considered in a single hearing before the Hearing Examiner.

24. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.06.050(1) (b)(2), SCC 14.06.060.

2. The requirements of SEPA have been met.

3. Because this facility meets the requirement for 2,500 feet of separation between towers, it is irrelevant that service by other carriers reaches the site. SCC 14.720(6)(b). The cell tower regulations do not allow discrimination between providers of functionally equivalent personal wireless services. SCC 14.16.720(3).

4. The requirements for the siting of personal wireless communications facilities have been met. SCC 14.16.720.

5. While understanding the concerns of the neighbors of this proposal, the Examiner concludes that the tower does not pose a significant threat to their health and safety, and that the tower will not obstruct or diminish an important view.

6. The Examiner holds that the project, as conditioned meets the requirements for Special Use Permit approval, SCC 14.16.900(1)b)(v) and the requirements for the administrative reduction of setbacks. SCC 14.16.810(4)

7. Any finding herein that may be deemed a conclusion is hereby adopted as such.

### **CONDITIONS**

1. The applicant shall construct and operate the project in accordance with the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all necessary local, state and federal permits prior to the start of construction, including but not limited to building permit(s).

3. Prior to construction, full detailed plans and engineering shall be submitted for the tower and foundation.

4. The applicant shall paint the tower a color that blends with the background, to be agreed upon with PDS.

5. The chain link fencing around the leased area shall be slatted to provide additional screening.

6. All equipment -- Verizon and future carriers -- must be located within the leased area and must meet the underlying zoning setback requirements. A modification to this permit will be required in the future to expand the current leased area when needed for equipment of additional carriers.

7. The building permit(s) shall be issued in accordance with the approved reduction in setback as shown on the approved site plan.

8. At such time the tower is not in use or has been abandoned, the applicant shall comply with the Non-Use/Abandonment regulations in place at that time.

9. Temporary erosion/sedimentation control must be utilized during construction pursuant to Chapter 14.32 SCC, Drainage Ordinance.

10. All outstanding planning review fees shall be paid in full prior to submittal of the building permit(s).

11. This permit shall be void if the use permitted has not been established or a complete building permit filed with PDS within two years of permit approval.

12. A copy of this permit decision shall be submitted with the building permit(s).

13. Failure to comply with any condition hereof may result in permit revocation.

**DECISION**

The requested Special Use Permit (PL12-0032) and Administrative Variance (PL12-0083) are approved, subject to the conditions set forth above.

**DONE**, this 13th day of August, 2012.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant and interest parties on August 13, 2012.

See Notice of Decision, Page 1, for Reconsideration and Appeal information.