



Appeal or Request for Reconsideration

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File #: PL24-0191 05.22.2024
Received by:

Appeal

What are you appealing?

- Appeal of an Administrative Interpretation/Decision/Action to the Hearing Examiner
- Appeal of an Administrative Order to Abate (code enforcement order) to the Hearing Examiner
- Appeal of Impact Fees to the Hearing Examiner (impact fees must be paid) (SCC 14.30.070)
- Appeal of Hearing Examiner Decision/Action to the Board of County Commissioners
- Request for Reconsideration of a Hearing Examiner Decision (SCC 14.06.180)

File # of Appealed Decision or Permit	PL23-0463, PL23-0464	Appeal Fee	\$	PDS will calculate
Date of Appealed Decision or Permit	5/21/24	Publication Fee	\$	PDS will calculate

PDS staff: do not accept appeal form without full payment of fees

Appellant

Standing to appeal	<input type="checkbox"/> Permit applicant <input checked="" type="checkbox"/> Party of Record <input type="checkbox"/> Party subject to code enforcement order <input type="checkbox"/> Other			
Name	Paul & Helene Zawila			
Address	15159 Rosario Road			
City, State	Anacortes, WA	Zip	98221	Phone 864-980-0168
Email	pwzawila@yahoo.com	Signature		

Attorney or Representative None

Name	To be determined			
Address				
City, State		Zip		Phone
Email				

Attachments

- For any of the **appeals** listed above, please attach a concise statement with numbered responses to the following questions.
 1. What is your interest in this decision?
 2. How are you aggrieved by the decision you are appealing?
 3. What are the specific reasons you believe the decision is wrong?
e.g. erroneous procedures, error in law, error in judgment, discovery of new evidence
 4. Describe any new evidence.
 5. List relevant sections of Skagit County Code.
 6. Describe your desired outcome or changes to the decision.
- For a request for **reconsideration** of a Hearing Examiner decision, attach a statement identifying the specific errors alleged.

Appeal Form Requested Information

1. What is your interest in this decision?

We are the adjacent Western neighbors that own approximately 25-26 acres (Attachment 1 contains our highlighted parcels P19530, P19557, P19571, P19574, P19474, P19580). We have several Lot of Record Certifications, but of relevance are Lot of Record Certification No. PL07-0782, recorded October 29, 2007 and Lot of Record Certification No. PL07-0849, recorded October 29, 2007 (Attachment 2). We have an existing permitted home and an Accessory Dwelling Unit (ADU) on our property.

2. How are you aggrieved by the decision you are appealing?

We (or someone) could build a second home at the top of our Eastern property meeting all of Skagit County's Rural Reserve (RRv) zoning requirements (SCC 14.16.320) with the result of a residential home within 185 feet of a 150 foot cell tower.

This is not a hypothetical situation:

- The location is the best site to build an additional house on our property as it is the highest elevation (Attachment 1 shows topography of our property in iMaps) and offers beautiful views of the water and islands North of Anacortes (Attachment 3 contains representative views from this area);
- We have Lot of Record Certification No. PL07-0849; and
- have previously looked at this site with an architect and two builders

The Hearing Examiner's decision acknowledges that the 150 foot cell tower adversely impacts use of our property. "The Hearing Examiner grants that new houses may be built in the vicinity in the future, but, given the large size of lots in the area, the Hearing Examiner is confident that sites for future houses can be selected that will not result in adverse visual impacts to the future houses." The Hearing Examiner did not consider other factors that determine sites such as views, terrain, etc.

Approval of the Special Use Permit and/or Variance for the applicant's 150 foot cell tower is injurious to the use and value of our adjacent property as well as our health.

3. What are the specific reasons you believe this decision is wrong?

The decision is wrong because according to Skagit County Code the Hearing Examiner does not have the authority, for macro cell towers, to recommend approval of a special use permit and, if applicable, height variance.

If one were to assume the authority were allowed in the Skagit County Code, the Hearing Examiner's decision is wrong since the proposed 150 foot cell tower does not meet various Skagit County Code Special Use Permit and Variance approval criteria as listed in detail in this section.

Authority, Skagit County Code, as copied below, clearly states the approval criteria that the Board of County Commissioners shall consider in their decision on whether to approve macro cell towers special use permit and, if applicable, height variance.

Approval Criteria -In addition to other requirements of the County Code, the Board of County Commissioners shall consider the following approval criteria in determining whether to recommend approval of a special use permit and, if applicable, height variance. SCC 14.16.720(22)(d)

The Hearing Examiner erroneously concludes that it is the Hearing Examiner, not the Board of County Commissioners, who has jurisdiction over the SUP application. This conclusion contradicts the very clear language in SCC 14.16.720(22)(d). Given the size and impact of a macro cell tower, it seems logical only the Board of County Commissioners would have the authority to make that decision.

For the Special Use Permit Approval, the approval/denial criteria shall include: (SCC 14.16.900(1)(b)(v))

- The proposed use will be compatible with existing and planned land use (SCC 14.16.900(1)(b)(v)(A)) – The 150 foot cell tower is not compatible with the adjacent Western neighbor’s planned land use. Specifically, a 150 foot cell tower is not compatible with a likely residential home 185 feet away. The applicant’s submitted documentation doesn’t acknowledge or speak to our existence (e.g., the subject parcel is vacant and undeveloped as are the abutting parcels to the north, east and to the west). Staff also did not evaluate impacts on a home 185 feet away as demonstrated by staff’s response in the Hearing that they didn’t know if someone could build on the adjacent Western property. In addition, we also believe the 150 foot cell tower is broadly inconsistent with the intent of Rural Reserve zoning (RRv) and why RRv areas are essentially at the bottom (5th out of 7; SCC 14.16.720(j)) of Skagit County’s prioritized zoned area list to locate a macro cell tower in.
- The proposed use complies with the Skagit County Code (SCC 14.16.900(1)(b)(v)(B)). The proposed 150 foot cell tower cannot meet the Skagit County Code without a variance to the 40 feet height restriction in the RRv zoning regulations (SCC 14.16.320(5)(d)). It also unclear why the applicant, who references a 5.1 acre parcel throughout their application, does not need a variance to the RRv minimum lot size of 10 acres (SCC 14.16.320(5)(f)). The Hearing Examiner notes Mr. Cricchio presented a lot certification, issued by the County, allowing this lot to be built upon even though its area is only just over five acres (Hearing Examiner decision, p. 9). A 150 foot cell tower can be built on a less than 10 acre lot that homeowner couldn’t build a house on per the RRv zoning regulations (SCC 14.16.320(5)(e))?
- The proposed use will not cause potential adverse effects on the general public health, safety, and welfare (SCC 14.16.900(1)(b)(v)(E)). As mentioned, the applicant’s application did not really acknowledge the Western neighbors (e.g., the subject parcel is vacant and undeveloped as are the abutting parcels to the north, east and to the west). The applicant did not demonstrate there would be no potential adverse health impacts on a residential house that could be as close as 185 feet away. No site specific NIER analysis, RF engineering report(s) or other health analyses were conducted.
- The proposed use is not in conflict with the health and safety of the community (SCC 14.16.900(1)(b)(v)(G)). Please see response to above bullet.

- The proposed use will maintain the character, landscape and lifestyle of the rural area (SCC 14.16.900(1)(b)(v)(I)). The 150 foot cell tower will adversely affect the character, landscape and lifestyle of its Western neighbors future house location.

As mentioned, the Hearing Examiner's decision acknowledges that houses may be built in the vicinity in the future, but that "future site houses can be selected that will not result in future adverse impacts". This conclusion is erroneous for a few reasons. First, this statement acknowledges that the Western neighbor's potential future property use will be adversely affected by the 150 foot cell tower (by having to select an alternate house location). Second, as discussed, the best location for a future house on our property is at the highest Eastern elevation which is also where the applicant wants to locate their 150 foot cell tower (applicants likely selected the highest elevation to optimize their signal). Finally, the property is sloped bedrock (from approximately 200 to 500 feet elevation) with significant limits on potential house locations.

In summary, the Special Use Permit decision is erroneous because the it did not meet the approval criteria. Specifically, the proposed 150 foot cell tower is not consistent with the planned land use of its Western adjacent neighbor, cannot meet Skagit County Code without a RRv height and lot size variance, and did not demonstrate there would be no adverse health impacts on a residential house 185 feet away.

For the Variance, In order to approve a variance, the approving authority must make findings that the reasons set forth in the application and record justify the granting of the variance and all of the following: (SCC 14.10.040(1))

- The granting of the variance will be in harmony with the general purpose and intent of this Title and other applicable provisions of the Skagit County Code, and will not be injurious to the neighborhood, or otherwise detrimental to public welfare. (SCC 14.10.040(1)(c)) – To not be repetitive, please see above arguments. It is not reasonable to believe that a 150 foot cell tower located 185 feet from a residential home is not injurious to the use and value of that home.
- For all Level II variances and all setback variances: (i) The requested variance arises from special conditions and circumstances, including topographic or critical area constraints, which are peculiar to the land, structure, or building involved and which are not ordinarily found among other lands, structures, or buildings in the same district. (SCC 14.10.040(1)(d)(i)) – The alternative siting analysis was inadequate. Mr King erroneously testified in the hearing that "The only properties in this area are in the RRv zone, so there is no avoiding this zone." (Hearing Examiner decision p. 10). Washington State owns the majority of land in South/Southwest Fidalgo Island (Please see Attachment 4 for Washington State owned lands) with several locations having elevations at or higher that the applicant's proposed location elevation. For example, there is a 500 foot contour in the adjacent Eastern Washington State owned land (see Attachment 1). Skagit County's iMap classifies these properties zoning as "Skagit County - Public Open Space of Regional/Statewide Importance". These other potential sites were not considered in the alternative siting analysis even though they are higher prioritized sites (i.e., other nonresidential and nonagricultural zones). SCC 14.16.720(j). If the 150 foot cell tower is truly needed and in the public interest, it would seem a public agency landowner would support it on their land.

In summary, the Variance decision is erroneous because the proposed 150 foot cell tower is not consistent with the planned land use of its Western adjacent neighbor, and the alternative siting analysis was inadequate as it did not consider other higher priority potential sites at similar or higher elevations.

In addition, applications for SUPs and height variances relating to macro cell towers the Board of County Commissioners shall consider the following approval criteria (SCC 14.16.720(d)):

- Nature of uses on adjacent and nearby properties (SCC 14.16.720(d)(i)) – To not be repetitive, please see above arguments. It is not reasonable to believe that a 150 foot cell tower located 185 feet from a residential home is not injurious to the use and value of that home.
- Design of the macro cell tower that has the effect of reducing or eliminating visual obtrusiveness (SCC 14.16.720(d)(iii)) – Attachment 5 shows the view from the likely future house location looking East (towards the proposed 150 foot cell tower location). The ground is bedrock and the large trees are spaced approximately 50 to 100 feet apart. It is not possible to reduce or eliminate the visual obtrusiveness of a 150 foot cell tower that is located 185 feet from a residential home.

Further, Staff's review was insufficient since they never evaluated the 150 foot cell tower's impact on a residential house 185 feet away, despite receiving that public comment. The applicant also has not addressed it. In the Hearing, "In response to the testimony of Michelle Gilcrease (summarized below), Mr. King testified that any potential future house on her property would be quite far away from the proposed tower, around 1,800 or 2,000 linear feet." (Hearing Examiners decision p. 10). Mr. King did not acknowledge nor speak to the distance of any potential house on our property to the proposed 150 foot cell tower.

4. Describe any new evidence?

The Hearing process was unclear and not well understood to this member of the public. This appeal contains significantly more documentation/arguments including Skagit County Code citations. Please see the above sections for the new evidence

5. List relevant Sections of the Skagit County Code

Please see other sections as Skagit County Code was referenced, as applicable, in the responses to other sections.

It was not clear where to put them so a couple of other comments on the Hearing Examiner's decision document:

- P. 1, "Afterward, the Hearing Examiner held the record open for additional materials, which were received by April 18, 2024."
 - The Hearing Examiner did not allow the public to provide any additional comments/materials.

- P. 3, “The neighbor commented that they or some future owner of the neighbor’s property might, in the future, build a house or ADU on a portion of the neighbor’s property, which might, hypothetically, be within 185 feet of the tower. The neighbor believed the distance between the hypothetical future house and the tower was too close.”
 - The above public comment was not considered / analyzed /addressed in the staff’s analysis since, in the Hearing, staff responded they didn’t know in response to the Hearing Examiner’s question whether someone could build on the adjacent West property.
- P. 6, “Additionally, the literal interpretation of the landscape requirement for Macro cell tower per Skagit County Code 14.16.720(20)(e), would require landscaping around the proposed monopole in an area that is already densely forested with native confers. The existing forest that surrounds the proposed monopole location will be adequate to buffer any potential visual effects the monopole could have.”
 - Again demonstrates staff did not consider a residential home 185 feet away despite the public comment. Attachment 5 clearly shows it is not possible to make a 150 foot cell tower non visually obtrusive, but the landscape requirement is being waived?
- The proposed 150 foot cell tower will stand 75-100 feet above the existing trees based on the Applicant’s landscaping plan noting tree heights of 50-75 feet (Exhibit 13. Applicant’s Landscaping Plan, prepared by Parallel Infrastructure, dated April 16, 2024). This will not maintain the rural characteristic of this area. Attachment 6 shows the top of the hill where the existing 50-75 feet tall trees are and once can clearly see the visual impacts from a cell tower sticking up another 75-100 feet above the trees. The picture was taken at the mailboxes on Rosario road before the right hand turn on Cougar Gap road.
- It also does not seem anyone is comparing the need for the coverage versus the impact to the rural character. Attachment 7 contains the applicants coverage map after installing the 150 foot cell tower. The new coverage areas are primarily Deception Pass State Park areas and Washington State owned property. These are rural, undeveloped, park areas. Again, if the State of Washington felt this coverage was needed, they would allow the 150 foot cell tower on their property as they own the majority of the land (can compare Attachments 4 and 7). We have sufficient coverage and I don’t hear any of our neighbors complaining about internet or cell phone service or wanting the visual obtrusiveness of a 150 foot cell tower.

6. Describe you desired outcome or changes to the decision.

The Special Use Permit and the RRv zoning height and possibly minimum lot size variance should not be approved/issued for the reasons outlined above.

Attachment 2

Lot of Record Certifications

Return Name & Address:



200710290148

Skagit County Auditor

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SKAGIT COUNTY PLANNING & DEVELOPMENT SERVICES

LOT OF RECORD CERTIFICATION

File Number: PL_07-0782

Applicant Name: _ Allan Redstone

Property Owner Name: Brenton Davey

Having reviewed the information provided by the applicant, the Department hereby finds that the parcel(s) bearing Skagit County Parcel Number(s):

P#(s): _ 19580; 340122-0-050-0010; within a Ptn of the Northeast ¼ of Sec. 22, Twp. 34, Rge 1.

Lot Size: _approximately 2 acres with existing residence.

1. CONVEYANCE

- IS**, a Lot of Record as defined in Skagit County Code (SCC) 14.04.020 or owned by an innocent purchaser who has met the requirements described in SCC 14.18.000(9) and RCW 58.17.210 and therefore IS eligible for conveyance.
- IS NOT**, a Lot of Record as defined in SCC 14.04.020 or owned by an innocent purchaser who has met the requirements described in SCC 14.18.000(9) and RCW 58.17.210 and therefore IS NOT eligible for conveyance or development.

2. DEVELOPMENT

IS, the minimum lot size required for the _____ zoning district in which the lot is located and therefore IS eligible to be considered for development permits.

- IS NOT**, the minimum lot size required for the _Rural Reserve zoning districts in which the lot is located, but does meet an exemption listed in SCC 14.16.850(4)(c)(vii)(A) and therefore IS eligible to be considered for development permits.

IS NOT, the minimum lot size required for the _____ zoning district in which the lot is located, does not meet an exemption listed in SCC 14.16.850(4)(c) and therefore IS NOT eligible to be considered for certain development permits.

Authorized Signature: _____

Howe Rood

Date: _10/29/2007_

See attached map for Lot of Record boundaries.

Return Name & Address:



200710290145
Skagit County Auditor

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SKAGIT COUNTY PLANNING & DEVELOPMENT SERVICES

LOT OF RECORD CERTIFICATION

File Number: PL_07-0849

Applicant Name: _ Allan Redstone

Property Owner Name: Brenton Davey

Having reviewed the information provided by the applicant, the Department hereby finds that the parcel(s) bearing Skagit County Parcel Number(s):

P#(s): _19574, 19474, and an area labled "No Legal Description; 340122-0-044-0043, 340115-0-021-0049; within a Ptn of the Northeast ¼ of Sec. 22, and within a Ptn of the Southeast ¼ of the Southeast ¼ all in Twp. 34, Rge 1. All as one parcel.

Lot Size: _approximately 10 acres

1. CONVEYANCE

- IS*, a Lot of Record as defined in Skagit County Code (SCC) 14.04.020 or owned by an innocent purchaser who has met the requirements described in SCC 14.18.000(9) and RCW 58.17.210 and therefore IS eligible for conveyance.
- IS NOT*, a Lot of Record as defined in SCC 14.04.020 or owned by an innocent purchaser who has met the requirements described in SCC 14.18.000(9) and RCW 58.17.210 and therefore IS NOT eligible for conveyance or development.

2. DEVELOPMENT

- IS*, the minimum lot size required for the _ Rural Reserve zoning district in which the lot is located and therefore IS eligible to be considered for development permits.
- IS NOT*, the minimum lot size required for the _____ zoning districts in which the lot is located, but does meet an exemption listed in SCC 14.16.850(4)(c)(viii)(B) and therefore IS eligible to be considered for development permits.
- IS NOT*, the minimum lot size required for the _ zoning district in which the lot is located, does not meet an exemption listed in SCC 14.16.850(4)(c) and therefore IS NOT eligible to be considered for certain development permits.

Authorized Signature: _____

Maed Roeder

Date: _10/29/2007_

See attached map for Lot of Record boundaries.

Attachment 3

Representative Southwest, West and Northwest views from the area

Southwest view



West view

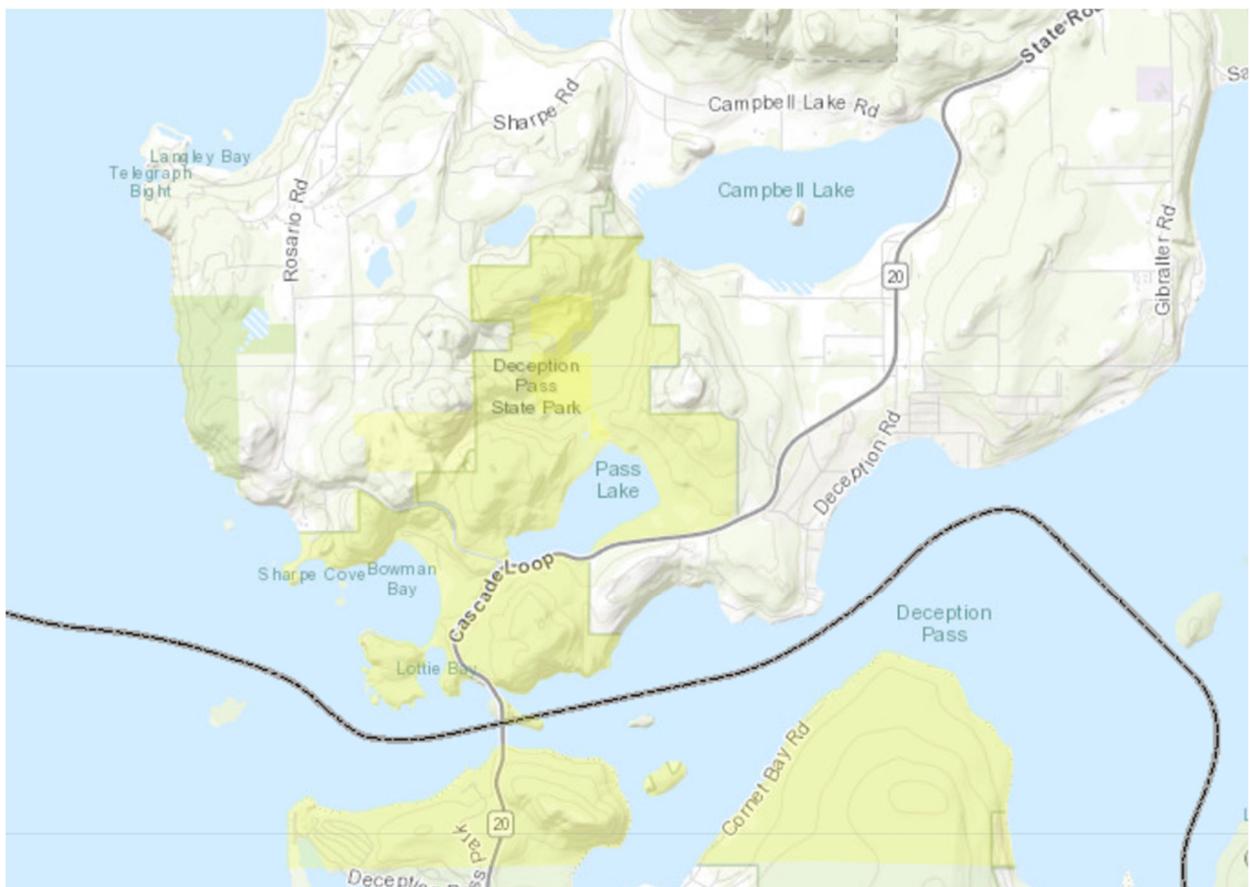


Northwest view



Attachment 4

Washington State owned lands in South / Southwest Fidalgo Island



Attachment 5

Representative East view from the area towards proposed 150 foot cell tower location



Attachment 6

Picture taken at Rosario road mailboxes before the right hand turn on Cougar Gap road.
150 foot cell tower with stick up another 75-100 feet above the 50-75 feet tall trees.



Figure C—Projected New AT&T Coverage of Targeted Service Area AFTER Proposed AT&T Facility—150ft Antenna Tip Height is at 95%

