

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

(EXHIBIT A)

REVISED FINDINGS, CONCLUSIONS AND DECISION

Applicant: Wireless Facilities, Inc. (Philip Hall)
for New Cingular Wireless
575 Andover Park West, Suite 201
Tukwila, WA 98188

File No: PL05-0173

Request: Special Use Permit

Location: Adjacent to 16901 Mountain View Road, northeast of the hairpin turn, within a portion of NW1/4 Sec. 36, T34N, R4E, W.M.

Land Use Designation: Rural Reserve

Summary of Proposal: To erect a 60-foot wireless communication facility and install associated ground equipment. A wooden pole with two flush mounted antennas at the top will replace an existing Puget Sound Electric (PSE) utility pole located within the right-of-way of Mountain View Road. The equipment cabinets will be located below the pole.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on February 8, 2006. The Examiner left the record open for one week for additional information. Three additional submissions were received: (a) Jerry Vander Veen, (b) Wireless Facilities, Inc., (c) County Staff. These were assigned exhibit numbers. The record closed on February 15, 2006.

Reconsideration: After issuance of the initial decision on March 7, 2006, Jerry Vander Veen filed a timely Request for Reconsideration. The Examiner called for further argument which was received May 10, 2006. This revised decision responds to the arguments made in the Request of Reconsideration and responsive submissions.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Wireless Facilities, Inc. submitted an application on behalf of New Cingular Wireless for a Special Use Permit authorizing the installation of a new cellular phone antenna facility.

2. The proposed facility is a 60-foot wooden pole topped by two flush-mounted antennas with ground equipment below the pole. The pole will replace an existing 33-foot wooden utility pole. The new pole will continue as a power pole.

3. The location is northwest of Big Lake. Mountain View Road is a two-lane county paved road which ascends from West Big Lake Boulevard. The new facility will be northeast of a sharp switchback turn on Mountain View Road about a quarter mile from its intersection with West Big Lake Boulevard. The site is adjacent to 16901 Mountain View Road, within a portion of the NW1/4, Sec. 36, T34N, R4E, W.M. The zoning is Rural Reserve.

4. Cellular towers are allowed in the Rural Reserve zone, subject to a Hearing Examiner Special Use Permit. SCC 14.16.320(4)(cc). The special use criteria, in effect, require the provisions of the Personal Wireless Service Facilities ordinance (SCC 17.16.720) to be met.

5. The lot of record for this request consists of two parcels with a total acreage of approximately 5.5 acres. The project site is located on the south parcel which is about 1.29 acres in size. The parcel is irregularly shaped with Mountain View Road along the southeast boundary.

6. The pole tower lease area is a generally level, grass and brush covered area on the shoulder of the road. From the view impact standpoint, it was chosen because it is removed from the view corridors of existing neighbors, and is in close proximity to a stand of mature fir trees. There are no residences immediately adjacent to the site. Parcels located to the southeast and northwest are developed with single family residences. The topography and vegetation provide screening of views from these homes.

7. The electrical coaxial cables will be placed inside conduits which will be attached to the surface of the pole. Both the antennas and the conduit runs will be painted brown to match the pole.

8. The equipment lease area is approximately 40 feet southeast of the proposed tower location in an area that was once a "borrow pit." This area is covered with trees and vegetation. The equipment area measures 16 by 28 feet and will be surrounded by a six-foot-high cedar fence. At its closest point, the equipment area is approximately 35 feet from the road right-of-way. A gravel driveway from the road, with a parking space

and turn-around area, will be built to provide access to the equipment. The site will not be manned. Work activity will be limited to a monthly maintenance check

9. The site was selected to fill a gap in Cingular's coverage. The objective is to improve indoor and vehicular coverage along Highway 9, West Big Lake Boulevard and surrounding roads. The site selected is the optimum site from the standpoint of radio energy transmission. Moreover, the antennas usage will not interfere with the transmission or reception functions of other communication facilities.

11. Jerry Vander Veen, owner of adjoining undeveloped property, objected to the site selected because of what he believes will be a negative impact on views from the residence he hopes some day to build on his view lot. A real estate agent who sells in the area testified that the proposed pole would likely have an adverse impact on property values in the view corridor. Both she and Mr. Vander Veen suggested that the site be moved further uphill to the north.

12. The presentation of the applicant demonstrated that if the same type of facility were to replace a pole further uphill, dense conifers would compromise its usefulness. The only alternative to the type of installation proposed would be a free standing monopole of about 120 feet in height able to extend above the tree line. The height required would exceed the maximum capability of wood poles.

13. Based on all the evidence, the Examiner finds that the pole selected is the only viable possibility for location in the near vicinity using the functional equivalent of an existing support structure. There are no other feasible locations with a higher priority on the list of siting priorities. See SCC 14.16.720(10).

14. The replacement pole in fact will be located across the road from a corner of the Vander Veen property in the south right-of-way of the road. It will be 26 of 27 feet higher than the existing pole. It will present a slender silhouette and occupy a small portion of his view. It will be painted the color of the existing pole.

15. The replacement pole and antennas will not obstruct or diminish views from major transportation corridors or public open space. No lights will be installed. The equipment will not emit undue noise. The height proposed is the minimum necessary for satisfactory function.

16. The applicant engaged a geotechnical firm to perform soils analysis and engineering data for the design of the facility. Assuming that the recommendations of the report are followed, it is unlikely that any environmental damage will result from its installation. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued for this project on December 8, 2005. The DNS was not appealed.

17. A letter was received from one other area resident (Gary Johnson) who lives about 300 yards from the proposed replacement pole at the base of Mountain View Road. He supported the project because of the need for better cell phone reception in the area.

18. Comments of reviewing agencies can be accommodated with conditions of approval.

19. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) for special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.
- (h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

20. The Staff Report analyses the proposal in light of the above criteria and concludes that, as conditioned, it will be consistent with them. 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.

21. 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 persons and the subject matter of this proceeding. SCC 14.16.320(4)(cc), 14.16.720(12)(c)(iv).
2. The requirements of SEPA have been met.
3. The special use requirement for compliance with the County Code necessitates compliance with the special provisions for siting personal wireless service facilities. SCC 14.16.720. These provisions involve a balancing on factors. The regulation recognizes the increased need for towers/antennas to serve the wireless communications needs of County residents. At the same time it seeks to “minimize” adverse visual impacts of towers through careful design, siting, landscape screening, and innovative camouflaging techniques.
4. One of the primary methods by which the objectives of the regulation are realized is through co-location on existing towers. See 14.16.720(6). The purpose of co-location is to minimize the proliferation of individual towers. Locating the subject antennas on a replacement power pole serves the same purpose. It is also consistent with minimizing visual impacts by its position in an existing utility corridor.
5. There is a priority list for locating new facilities. SCC 14.16.720(10). The priority level here is level (g). The applicant has demonstrated that all other locations with a higher priority on the list are not feasible.
6. It was argued that replacement of a power pole located further north would meet the same objective of avoiding tower proliferation while avoiding adverse visual impacts. This alternative was considered and found incapable of meeting the RE propagation needs that prompted the proposal to install the new antennas in the first place. See SCC 14.16.720(9). The only way such a site could be used is by building a free-standing monopole that would be twice as high as the proposed replacement pole. Under the regulation, the project as proposed is clearly preferable.
7. The proposed site takes into consideration the topography, vegetation and existing structures, and seeks to “minimize” adverse visual impacts to the extent possible consistent with the applicant’s system needs. The view-line of the only neighboring up-hill home is not materially affected. The equipment cabinets are located within dense native vegetation.

8. The record demonstrates that the design does what can be done to limit the visual impacts. The replacement pole and antennas will be painted the same color as neighboring power poles. The antennas will be flush mounted. The structure will occupy an additional 26 or 27 feet of vertical profile with a pencil-like silhouette. This is the minimum height required to function satisfactorily.

9. It is true that a small portion of the view from Mr. Vander Veen's potential home would be affected. However, the ordinance does not prohibit all adverse impacts. Rather, it asks that such impacts be "minimized." Here there is no alternative feasible site that would meet the applicant's coverage objectives and at the same time comply with goal of preventing the proliferation of towers. Given the careful consideration of topography, vegetation and existing structures, and the low-impact design, the Examiner concludes that the proposal "minimizes" adverse visual impacts consistent with the applicable requirements.

10. Under the facts, the proposal, as conditioned, is consistent with SCC 14.16.720 and the Special Use Permit criteria. SCC 14.16.900(2)(b)(v).

CONDITIONS

1. The applicant shall install and operate the structure as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other necessary local, state or federal permits prior to the start of construction. This includes a Utility Permit from Public Works for work performed in the County right-of-way and an access permit for any new access point.

3. The replacement pole shall be moved away from the travel way edge in accordance with Skagit county Road Standards. Section 3.20 requires a minimum clear zone distance of 10 feet from the edge of the travel way for roads with posted speed limits of 35 mph or less.

4. The project shall comply with the recommendations of the geologic hazard site assessment prepared by LSI Adapt, Inc. The equipment cabinets shall be located a minimum of 10 feet from slopes exceeding 80%.

5. The applicant shall comply with all requirements of the County Code, including SCC 14.16.720 (Personal Wireless Service Facilities), and Chapter 14.32 (Drainage Ordinance). In particular, temporary erosion/sedimentation control measures shall be used during construction.

6. A such time as 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.

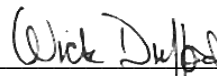
7. This permit shall be void if the use permitted has not been established or if a complete building permit has not been filed within two years of permit approval.

8. Prior to construction, all additional planning review fees shall be paid. A copy of this permit decision shall be submitted with any building permit application.

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

DECISION

The requested Special Use Permit is approved, subject to the above conditions.



Wick Dufford, Hearing Examiner

Date of Action: June 5, 2006

Date Transmitted to Applicant: June 5, 2006

APPEAL

As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.