

## **BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

### **FINDINGS, CONCLUSIONS AND DECISION**

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| <b>Applicant:</b>             | Verizon Wireless<br>5900 SE Eastgate Way<br>Bellevue, WA 98008   |
| <b>Agent:</b>                 | Sarah Telschow<br>RealCom Associates<br>14432 SE Eastgate Way, Suite 260<br>Bellevue, WA 98007   |
| <b>File No:</b>               | PL08-0515  |
| <b>Request:</b>               | Special Use Permit   |
| <b>Location:</b>              | Near 34820 State Route 20, Hamilton WA, within a portion of the NE1/4 and SE1/4NW1/4 Sec. 14, T35N, R6E, W.M.  |
| <b>Parcel Nos:</b>            | P41175, P41174, P41207, P41215.  |
| <b>Land Use Designations:</b> | Comprehensive Plan: Hamilton Urban Growth Area<br>Zoning: Hamilton Industrial  |
| <b>Summary of Proposal:</b>   | To construct a wireless telecommunication facility within an approximately 50' by 50' leased area. The proposed facility would consist of a 150-foot tall monopole with 12 panel antennas and an equipment shelter which will house radio equipment, batteries and an emergency back-up generator. The tower is designed for co-location of two additional carriers. |
| <b>Public Hearing:</b>        | After reviewing the Report of Planning and Development Services, the Hearing Examiner conducted a public hearing on April 15, 2009.  |
| <b>Decision:</b>              | The application is approved, subject to conditions.  |

## FINDINGS OF FACT

1. Verizon Wireless (applicant) seeks a Special Use Permit to construct a wireless communication facility in an area that was within the Hamilton Urban Growth Area (UGA) when the complete application was filed.
2. The application was deemed complete on December 9, 2008. The property has since been annexed to the Town of Hamilton. At the time of vesting, the property was zoned Hamilton Industrial under the County Code. Prior to the adoption of the Hamilton UGA, the property was zoned Natural Resource – Industrial.
3. Prior to submitting the application, Verizon sought an Administrative Interpretation concerning the permits needed. The Administration Official determined that a Hearing Examiner Special Use Permit is required for this use in both the Natural Resource Industrial Zone and the Hamilton Industrial Zone.
4. The site is near 34820 State Route 20, Hamilton, within a portion of the NE1/4 and SE1/4NW1/4, Sec. 14, T35N, R6E, W.M. The site lies south of SR 20 and north of the Lyman Hamilton Road, immediately west of the Town of Hamilton. It is adjacent to designated natural resource land.
5. The subject property is approximately 8.5 acres in size and rectangular in shape. It runs in a north-south configuration. The leased site is in the southwestern portion of the property. It will be accessed via a gravel road off of Lyman Hamilton Road.
6. The request is to construct a wireless communication facility within a 50' x 50' leased compound. The facility is proposed to consist of a 150 tall monopole and 12 panel antennas, plus a raised platform for radio equipment, batteries and an emergency back-up generator. The tower will be in the southeast corner of the leased area, about 10 feet from both the south and east boundaries of the compound. The leased area is located approximately 47 feet from the west property line, 217 feet from the south property line, 142 feet from the east property line and 528 feet from the north property line. The tower will be able to accommodate a minimum of three carriers.
7. The equipment will occupy a 22' by 25' area located in the southwest corner of the leased compound, approximately three feet from the west property boundary. The equipment will be on a raised platform for protection from floods. A space north of the tower and northeast of the Verizon equipment area is set aside for equipment of future co-locators.
8. The leased compound will be surrounded by a chain link fence at least six feet high with a barbed wire top. There will be a landscaped buffer surrounding the compound, consisting of 10-foot emerald green arborvitae trees next to the fence, a layer of three foot laurels, and ground cover.

9. The proposed tower will be located in an area that currently does not have coverage by this carrier. The goal of the project is to provide continuous coverage along SR 20 between Concrete and Sedro Woolley, with additional coverage in the towns of Lyman and Hamilton. To meet this coverage objective the applicant states that the antennas must be placed above existing tree heights and situated so that terrain does not block signals. This is the basis for the 150 foot height.

10. The proposed site is more than 2,500 feet from an existing tower and there are no existing structures within the area suitable for mounting this facility on. Under Federal rules, there will be no need for a light atop the tower. The proposal is to paint it grey to blend with the surrounding environment.

11. The application included photo simulations, a noise analysis, a radio frequency exposure study and information on coverage needs and probable facility performance.

12. The technical information demonstrates that the proposed installation will meet noise standards, will not interfere with neighboring transmissions and reception, will not cause adverse effects on health, and will accomplish the applicant's coverage objectives.

13. The only significant issue is over the appearance of the facility. The applicant wishes to use a typical "top hat" or "delta frame" configuration for the antennas. This would provide better performance and give greater flexibility in accommodating future technologies.

14. The Town of Hamilton supports the tower, but asks that flush mounted panels be required. If possible, the Town asks for use of a design that would disguise the tower as an evergreen tree. The Town's concern is that the visual appearance of multiple antennas sticking out from the tower will present a look that is not compatible with the State Scenic Route designation for SR 20. The Town argues that the aesthetic problem will be aggravated by additional co-locating units and, further, that the structure might set a precedent for other tower designs within the scenic corridor.

15. The County Staff agrees with the Town and recommends that an alternative design – either evergreen tree or flush mount – be required.

16. The applicant disagrees, noting that the proposed facility is on level ground on the valley floor, with no trees immediately adjacent. The applicant states that the "top hat" tower, while visible from the highway and portions of the Town, will not impede views of any significant landscapes, mountain views or expansive views. In the applicant's opinion, where there is no view interference, visibility alone should not be determinative of the design required, particularly on industrial property.

17. Two members of the Hamilton Town Council and a landscape architect on contract with the Town testified for the tree design. Verizon's agent, in opposing this design, advised that there is only one such tower in the state and that it is located among other trees. Such a facility, she said, would not look good in isolation away from other trees. She pointed out that in open areas you cannot really disguise a tower. The Examiner was not convinced that the use of the tree "disguise" in this setting would be an aesthetic success.

18. The Examiner sees the choice as between system efficiency and appearances. He determines that, in this situation, efficiency should prevail. Use of a standard flush-mount design will increase the height of the tower by 20 feet while diminishing performance. It will also limit possibilities for co-location, raising the possibility of a greater proliferation of towers.

19. As against the efficiency losses, the aesthetic gain would be minimal. The photo simulations show that the tower will be backgrounded by mountains in many locations. The grey tower, with either "top hat" or flush mount, will tend to blend into such viewscapes. The property cannot be developed residentially and there was no showing that residential views will be affected. The tower will be a minimum of 450 feet from the highway. Under the circumstances, the Examiner was not persuaded that the flush-mounted design would make an important visual difference. This is not the purely rural or wild scenery one encounters further up the river corridor. It is in a town within industrial zoned property. If there is any property within the scenic corridor where such development should occur, this is it.

20. The proposal was reviewed under the State Environmental Policy Act (SEPA). A Determination of Non-Significance (DNS) was issued on February 5, 2009. No comments were received. The DNS was not appealed.

21. The Staff Report analyzes the proposal in light of the requirements for wireless telecommunication facilities (SCC 14.16.720) and in light of requirements for a Special Use Permit (SCC 14.16.900(1)(b)(v)). The Report finds that the proposal is consistent with these 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.

22. 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 14.06.050(1)(b)(ii).
2. The requirements of SEPA have been met.
3. As noted, a personal wireless services tower requires a Hearing Examiner Special Use Permit in the Hamilton Industrial zone. SCC 14.16175(5)(f). The Examiner concurs with the administrative interpretation of the Code in this regard.
4. In this situation, the complete application vested to the County's Hamilton Industrial zoning and that zoning governs the land use and design issues for the tower. The Town of Hamilton will need to issue a building permit for this project, but that permit will be limited in scope to whether the project approved by the County meets the applicable building codes.
5. The project as proposed and as conditioned below meets the criteria for approval of a wireless communication facility and of a Special Use Permit. SCC 14.16.720, 14.16.900(1(b)(v).
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## **CONDITIONS**

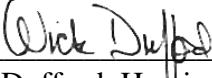
1. The project shall be constructed and operated as described in the application materials, except as the same may be altered by these conditions.
2. The applicant shall obtain all other required permits and abide by the conditions of same.
3. Prior to issuance of the building permit, provide the Town of Hamilton with documentation from the Federal Aviation Administration that no lighting is required.
4. Full detailed plans and engineering will need to be submitted for the tower and foundation.
5. A building permit will be required for any of the chain link security fence above six feet in height.
6. All electrical and support equipment will be elevated to one foot above the Base Flood elevation.

7. The applicant shall meet the general landscaping standards of SCC 14.16.830(5).
8. Prior to final approval of the building permit, the landscaping shall be installed per the approved landscaping plan, or bonded.
9. The applicant shall comply with SCC 14.16.870, Notification of Development Activities on or Adjacent to Designate Natural Resource Lands.
10. At such time as the tower is not in use or have been abandoned, the applicant shall comply with the non-use/abandonment regulations in place at that time.
11. Temporary erosion/sedimentation control shall be used during construction pursuant to Chapter 14.32 SCC, Drainage.
12. This permit shall be void if the use permitted has not been established or a complete building permit has not been filed with the Town of Hamilton within two years of the permit approval.
13. A copy of this permit decision shall be submitted with the building permit application.
14. Failure to comply with any condition may result in permit revocation.

## **DECISION**

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

DONE this 6<sup>th</sup> day of May, 2009.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant, Town of Hamilton on May 6, 2009

## **RECONSIDERATION/APPEAL**

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. 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.