

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Verizon Wireless
c/o Becky Todd/ MD7 LLC
9725 3d Ave. NE, Suite 410
Seattle, WA 98115
- Request:** Special Use Permit 14-0124
Setback Variance PL16-0301
- Location:** Parcel 20486, northeast of Hoxie Lane and west of Sunrise Estates Drive, adjacent to 7004 Sunrise Estates Drive, within a portion of SE1/4NE1/4 Sec. 18, T34N, R2E, W.M.
- Land Use Designation:** Rural Reserve (RRv)
- Summary of Proposal:** To construct a wireless telecommunication facility, consisting of a 125 foot monopole located 100 feet from the west property line of Parcel 20486. The development requires a Special Use Permit for the cell tower and related equipment, and a Variance for placement of the tower within the 125-foot setback.
- SEPA Compliance:** Determination of Non-Significance (DNS), dated January 12, 2016 for cell tower development. Setback variance is SEPA-exempt.
- Public Hearings:** May 11, 2016 for cell tower and related equipment. September 28, 2016 for setback variance. Testimony by Staff and on behalf of applicant. Public testimony in opposition by neighbors.
- Decision/Date:** The applications are approved, subject to conditions. October 12, 2016.
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the Board of County Commissioners by filing within 14 days of this decision or decision on reconsideration, if applicable.
- Online Text:** The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

PROCEDURAL BACKGROUND

This case has followed a tortuous path to this point. Verizon Wireless seeks to build a 125-foot cell tower on the ridge between State Route 20 and Gibraltar Road in order to fill a gap in its coverage. Initially, the proposal was to build a cell tower within the fenced enclosure containing a hill-top PUD water tower located behind residences located just downslope to the west. The Examiner's approval of this first proposal was remanded back to him by the County Commissioners because he did not correctly apply variance criteria.

However, rather than undergoing review of the issues identified on remand, the Applicant sought a new site for the proposal, eventually settling on a location nearby to the east, a little more than 125 feet from the water tower. The new location is 100 feet from the property line for the water tower parcel.

The old case was dismissed and a new application was processed for the new site. A hearing on the cell tower proposal for the new site was heard on May 11, 2016.

Initially, the Examiner entered an order denying the new application. However, he subsequently granted a Motion for Reconsideration, and remanded the matter to Planning and Development Services (PDS), ruling that the setback of 100% of tower height from all property lines applies. See SCC 14.16.720(13)(b).

In his remand order, the Examiner asked for a "health, safety and welfare" analysis of granting a variance from the standard setback.

PDS completed this review, issued a Staff Report, and then presented the matter for hearing on September 28, 2016, with a recommendation for approval. At the hearing Verizon was represented by Charles Maduell, Attorney at Law, and Becky Todd, Consultant. The County was represented by Annie Matsumoto-Grah, Planner. Four citizens, residents of nearby houses, testified: Randy and Vicki Hawkinson, Joyce Holmes and Ken Bullock.

FINDINGS OF FACT

1. The factual matters set forth in the foregoing "Procedural Background" are adopted by the Examiner as findings.
2. The cell tower site is within an approximately 39.5 acre parcel (Parcel 20486), square in shape, relatively hilly with some flat areas. The only development is a road to access the 550,000 gallon PUD water tank on the parcel immediately to the west (Parcel 113958).
3. The site is in a Rural Reserve (RRv) zoning district within which personal wireless service towers are allowed as a Hearing Examiner Special Use. Residential uses in the zone are permitted outright. In zones where residential uses are permitted or existing, the setback for cell towers from all property lines is 100% of the tower height as measured from ground level.
4. The tower height proposed here is 125 feet. The west property line of the tower's parcel is 100 feet from the tower itself. The variance request is to allow this 100-foot setback from the west property line, in lieu of a setback of 125 feet which would otherwise apply.

5. The cell tower will be located within a 40' x 40' leased area that will be fenced and graveled. The location is the flattest portion of the property closest to the elevation high point between SR 20 and Gibraltar Road. The tower cannot be placed farther to the east because of steeply down-sloping terrain that would prevent obtaining the required height.

6. Except for the measurement to the west, the proposed tower will be well within the required setback. The monopole will be 527 feet from the south property line, 789 feet from the north property line and 1,137 feet from the east property line.

7. The tower-site parcel is forested with tall trees. The reason for the height of the proposed tower is to prevent these trees from interfering with signals. The antennas will be mounted at an elevation that will allow signals to clear nearby tree tops.

8. Verizon's signal coverage expert demonstrated that the proposed 125-foot tower height at the proposed site is required for effective signal propagation. He also showed that the tower's signal will cover a substantial gap in Verizon's coverage.

9. He likewise provided persuasive testimony that no alternate sites meeting Verizon's coverage needs are available, noting that several years were expended looking for such sites. He said that use of Mr. Erie, on the other side of the intervening valley, would not be appropriate because of interference with other towers.

10. There are no existing towers or eligible structures of adequate height upon which to locate antennas within a 2,500 foot radius of the chosen site.

11. In addition to the monopole, the lease area will contain outdoor radio equipment cabinets and a 30KW diesel generator for backup power in the event of a commercial power outage. Three flush mount panel antennas will be placed on the top of the monopole with six remote radio units and three amplifiers mounted directly below the antennas. The low profile antennas were selected to reduce the tower's visual impact to neighboring properties. A 6 foot chain link fence will surround the leased area.

12. According to the applicant's measurements, 125 feet from the cell tower is still 13 feet short of the water tank. Thus, the tank is not within the "fall zone" boundary. There is no basis in the record for disputing this measurement.

13. For the portion of the PUD'S property within the "fall zone", Verizon wireless was required to obtain a fall zone easement. No structures may be built within the easement area.

14. The principal concerns of the neighbors are the possible effects of a fire on the tower to surrounding forest and homes, or its collapse, causing a rupture in the nearby water tower, subjecting houses below to serious flooding.

15. A highly qualified structural engineer testified for Verizon. He noted that the structure is designed to withstand winds of up to 120 miles per hour, providing an unusual factor of safety in a non-hurricane zone. In the highly unlikely case of a tower failure, he said, the typical result would not be a collapse but a bending over. In his view, no possible failure mode would allow this tower to hit the water tank. The County noted that additional review of structural safety will be conducted at the building permit level.

16. The Examiner takes notice that there are numerous cell towers in forested areas within the County. The record does not support a finding that this particular cell tower development presents a serious or unusual fire danger.

17. The Staff observed that the tower “will not create any more of a fire hazard than a residence due to the fact that the tower facilities components (electrical/fuel) will be designed and engineered far beyond that of any residential structure.” The applicant will be required to construct an access road to the tower meeting fire marshal standards.

18. Given the forested state of the site, additional landscaping here to mitigate visual impacts may not be necessary. Photo simulations show that the facility will have limited visibility from adjacent parcels. If the removal of trees for construction occurs, replacement trees providing comparable screening will be required.

19. The wireless communication facility proposed is a reasonable development of the subject property. It is permitted by Special Use Permit and does not exceed the lot coverage requirement. The examiner is persuaded that the proposed location of the tower on the subject site is dictated by the topography.

20. Under SCC 14.16.810(4), the required setbacks may be reduced where topography impacts the reasonable development of the property. The Examiner finds that application of 100% of tower height setback would have such an effect as to the west property line.

21. As further required by SCC 14.16.810(4), the Examiner finds, based on the entire record, that if the subject telecommunication facility is built as proposed, the public health, safety and welfare will be maintained.

24. The general variance criteria found in SCC 14.10.030(2) are as follows:

- (a) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or building in the same district.

The function of the monopole is a peculiar condition that limits the sites at which it can be built and work effectively. Here this function, in conjunction with this site’s particular topography and existing tree line, constitute the requisite special circumstances.

(b) Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of SCC Titles 14 and 15.

Application of the 100% of tower height setback would prevent the applicant from filling this identified service gap. Wireless facilities on other properties in this district have been allowed in order to fill similar gaps.

(c) The special conditions and circumstances do not result from the actions of the applicant.

The topography and tree line, as they affect the functionality of the proposed tower are not the result of the applicant's actions.

(d) The granting of the variance requested will not confer on the application any special privilege that is denied by SCC titles 14 and 15 to other lands, structures, or buildings in the same district.

Wireless facilities are allowed in the district if Special Use Permit criteria are met.

(e) Other specific criteria for the type of variance requested

None

(f) If applicable, an explanation from the applicant as to why, if a variance is denied, the applicant would be denied all reasonable use of his or her property.

This criterion does not apply. There are other uses that could be made of this RRv property.

25. The Examiner finds that the reasons set forth in the application justify the granting of the variance. It is the minimum variance that will make possible the reasonable use of the property. The granting of the variance will be in harmony with the general purpose and intent of applicable provisions of the Skagit County Code.

26. The County Staff reviewed the Special Use Permit approval criteria for this proposal in its Staff Report for the original hearing on PL14-0124, held May 11, 2016. The Staff found that the proposal, as conditioned, will meet the criteria. After further review, the Examiner concurs with this determination and adopts the same. The Staff Report for PL14-0124 is by this reference incorporated herein as though fully set forth.

27. In particular, the finding that the proposed use will not cause potential adverse effects on the general public health, safety and welfare is hereby reiterated and endorsed See SCC 14.16.900(1)(b)(v)(G).

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.06.050(1)(i),(ii). The administrative setback reduction provisions of SCC 14.16.810(d) have been applied by the Examiner by virtue of the consolidation of applications pursuant to SCC 14.06.060.

2. The requirements of SEPA were met for the Special Use Permit application. The variance application is exempt from the procedural requirements of SEPA.

3. The proposed wireless communications facility project, as conditioned, meets the Special Use Permit approval criteria of SCC 14.16.900(1)(b)(v).

4. In the Rural Reserve zone, the standard cell tower setback is 100% of tower height 14.16.720(13). In this case, a reduction of setback from 125 feet to 100 feet was requested.

5. The proposed setback variance meets the variance criteria of SCC 14.16.810(4) and 14.10.030(2).

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 may be modified by these conditions.

2. The applicant shall obtain all other applicable permits and abide by the conditions of same.

3. Full detailed plans and engineering shall be submitted for the tower and foundation.

4. A Geotechnical report and P.E. stamped structural calculations must be submitted at the time of building permit submittal.

5. A full Drainage Analysis of the project area must be submitted at the time of building permit submittal.

6. The building permit shall be issued in accordance with the approved reduction of setback as shown on the approved site plan. At the time of building permit review a full structural review of the proposed facility will occur.

7. In order to ensure that adequate screening around the tower site will be maintained, if any of the existing trees that currently provide screening are removed they must be replaced with trees that will provide comparable screening.

8. The monopole must be painted a forest green color to blend in with the surrounding vegetation.

8. The support facility structures/equipment must be painted in muted colors, earth tones and subdued shades.

9. The chain link fence surrounding the leased area shall be slatted to provide additional screening.

10. All equipment – Verizon and future carriers – must be located within the leased area. A modification to this permit will be required in the future to expand the current leased area.

11. Access into the parcel/project must be compliance with SCC 15.04.030(2)(f).

12. Temporary erosion/sedimentation control must be used during construction of the facility and access road.

13. Construction and operation of the facility shall not exceed performance standards of SCC 14.16.840. The project shall comply with all other local and State regulations, including but not limited to Chapter 14.32 SCC (drainage), Chapters 173-200 and 173-201A WAC (surface and ground water quality), Chapter 173-60 WAC (noise).

14. Per SCC 14.16.720(12)(d) yearly inspections of the facility will be required. The facility operator shall conduct a safety inspection and file a report with Skagit County within 60 days of the inspection.

15. All outstanding planning review fees shall be paid in full prior to submittal of the building permit application.

16. A copy of this decision shall be included in the building permit file.

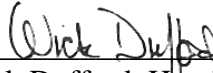
17. Per SCC 14.16.900(2)(d), the Special Use Permit shall be void if the use permitted has not been established or a complete building permit filed with Planning and Development Services (PDS) within two years of the permit's approval.

18. Failure to comply with any permit condition may result in permit revocation. SCC 14.16.900(b)(iii).

DECISION

The requested Special Use Permit (PL14-0124) and Setback Variance (PL16-0301) are approved, subject to the conditions set forth above.

DONE, this 12th day of October, 2016.



Wick Dufford, Hearing Examiner

Transmitted to parties, October 12, 2016

See Notice of Decision, page 1, for appeal information.