



199912060004

Kathy Hill, Skagit County Auditor
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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SPECIAL USE PERMIT SP 99 0246 and
VARIANCE VA 99 0439

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: U.S. WEST WIRELESS, LLC

ASSESSOR PARCEL NO: P17437

ABBREVIATED LEGAL DESCRIPTION: located at 22966 North Starbird Road, Mount
Vernon, WA; within the SW 1/4 of the SE 1/4 of Section 29, Township 33 North, Range 4
East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
U.S. WEST WIRELESS, LLC)	SP99-0246, VA99-0439
)	
For a Special Use Permit and Variance)	FINDINGS OF FACT,
For a Wireless Communications Facility)	CONCLUSIONS OF LAW
at 22966 (1761) North Starbird Road)	AND DECISION
)	

PROCEDURE

THIS MATTER relates to an application for a Special Use Permit filed on behalf of U.S. West Wireless, LLC. The application came on for public hearing on November 10, 1999, after due notice. The Planning and Permit Center's Staff Report was presented by Marge Swint. Mark Riley appeared on behalf of the applicant. Members of the public were given an opportunity to be heard.

Testimony was taken, exhibits were admitted and argument was made. On the basis thereof, the following is entered:

FINDINGS OF FACT

1. U.S. West Wireless, LLC (applicant) seeks approval for a wireless communication facility at 22966 (1761) North Starbird Road. The location is within a portion of the SW1/4 SE1/4, Sec. 29 T33N, R4E, W.M.

2. Two permits are sought: a Special Use Permit for the communication facility with a "stealth" antenna mounted to a Puget Sound Energy utility pole; and a Variance to allow placement of the utility pole within the required setbacks. The property is designated Rural Reserve by the Comprehensive Plan and zoned Rural.

3. The subject site is situated on the east side of North Starbird Road on a parcel of approximately 1.14 acres, basically square in shape. The property is developed with a single-family residence and outbuildings. The adjacent properties are either vacant or developed with single family residences.



4. There is an existing 45-foot power distribution pole on the property that will be removed. The pole for the wireless facility will replace it at a slightly different location. The replacement pole, with the "stealth" antenna on top, will be 65 feet in height. It will be situated on flat ground, about 46 feet from the south property line and approximately 14.65 feet from the east property line. The applicable setback from all property lines is a distance equal to 100% of the tower height. Therefore, a variance for the pole from the south and east property lines is needed.

5. On top of the pole, the antenna will be shrouded within a painted cylinder designed to blend with the pole. Trees will be planted around the pole's base. The existing overhead power/telephone lines crossing North Starbird Road will be buried as part of this project. A utility permit will be needed for the underground line. The location of the replacement utility pole was chosen to minimize visual impact for neighboring properties and to retain functional electric service provided by the pole.

6. The applicant proposes a vertical equipment rack (4' by 6') consisting of a microcell cabinet, remote units, primary distribution cabinet, battery backup cabinet and GPS antenna. The rack, to be located approximately 8 feet from the south property line and about 43 feet from the east property line, will comply with residential setback requirements. It will be completely screened from public view.

7. SCC 14.04.223(1)(f) sets forth the following criteria for approval of a variance:

- a. That 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 buildings in the same district.
- b. The 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 this chapter.
- c. That the special conditions and circumstances do not result from the actions of the applicant.
- d. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures



or buildings in the same district.

8. The Staff's analysis, applying these criteria to the instant application, is set forth in the Staff Report under Finding 10 therein. The Examiner concurs with this analysis and hereby adopts it.

9. SCC 14.04.150(3)(d) requires consideration of the following elements in evaluating a Special Use application:

- (i) Conformity to the Comprehensive Plan in respect to the compatibility with existing and future land use and circulation.
- (ii) The zoning of subject property and surrounding properties and the conformance of the application with the Zoning Ordinance.
- (iii) Automobile or truck traffic and parking and its effect on surrounding community.
- (iv) Noise, odors, heat, vibration, air and water pollution potential of the proposed use.
- (v) Intrusion of privacy.
- (vi) Design of site and structures as to possible effects on the neighborhood;
- (vii) In addition to possible effects on the neighborhood in which the use is to be located, the potential effects on the region shall be considered.
- (viii) Potential effects regarding the general public health, safety, and general welfare.

10. The Staff's analysis of the proposal in relation to these elements is contained in Finding 11 of the Staff Report. The Examiner concurs in this analysis and hereby adopts it. The proposal will have little physical impact on the environment and its visual effect will not be significant. It will not be appreciably more intrusive than the pole it replaces. The location and screening will ensure compatibility with a relatively low density residential environment.

11. SCC 14.04.153 codifies separate criteria for the siting of personal wireless service facilities. The proposed site meets the priority calling for placement on property whose primary purpose is residential greater than or equal to 2.5 acres in size. Likewise it meets the basic intent of minimizing the proliferation of poles by use of a replacement utility pole. This is a form of co-location. There will not be an increase in the number of poles in the immediate vicinity.

12. Co-location of multiple personal wireless service facilities on the same tower is also encouraged. Such co-location is not feasible in this instance, consistent with neighborhood



compatibility. Achieving the required separation for other carriers would deprive them of usable height on the 65 foot tower proposed. For other personal wireless antennas to work here, the tower would have to be substantially taller.

13. The frequencies to be used in connection with the proposed facility are selected and assigned to avoid interference with other electronic uses. No health hazards have been identified with the use of such facilities

14. There was no public testimony at the hearing and no written public comments were received.

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

CONCLUSIONS OF LAW

1. The proposed facility requires a Special Use Permit. SCC 14.04.150(2), 14.04.153(4)(d) (6)(h).

2. The proposal meets the requirements for a setback Variance. SCC 14.04.223(1)(f).

3. With the variance, the proposal meets the requirements for site selection, design and other special requirements for personal wireless facilities. SCC 14.05.153.

4. The Staff has recommended reasonable conditions of approval.

5. The findings support a conclusion that the proposal, if conditioned as set forth below, will meet all relevant requirements for Special Use Permit Approval. SCC 14.04.150(3)(d).

6. The proposal should be approved, subject to the following conditions:

1. The applicant shall obtain all necessary local, state and federal permits prior to start of construction.

2. The development shall be carried out as described in the application submissions.

3. The applicant shall comply with all requirements stated in Skagit County Code Ordinance #17419.

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

5. Outstanding planning review fees shall be paid prior to installation.

6. The permit shall be void if installation is not started within one year of the date of this decision.

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



DECISION

The requested Special Use Permit and setback Variance are **APPROVED**, subject to the conditions set forth in Conclusion 6 above.



Wick Dufford, Hearing Examiner

Date of Action: December 2, 1999

Copy Transmitted to Applicant: December 2, 1999

RECONSIDERATION/APPEAL

This decision shall become final unless a request for reconsideration or appeal is filed. A request for reconsideration shall be filed with the Hearing Examiner within ten (10) days from the date of this decision. An appeal shall be filed with the Board of County Commissioners within fourteen (14) days from the date of this decision, or if reconsideration has been requested, within fourteen (14) day from the decision after reconsideration.



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