

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Appeal of:)	
)	
MICHAEL GEERTS AND)	APPEAL: PL16-0348
DAVID GEERTS,)	SPU: PL16-0007
)	
Appellants,)	
)	
SKAGIT COUNTY, AND)	FINDINGS OF FACT,
PARALLEL INFRASTRUCTURE/)	CONCLUSIONS OF LAW
SKAGIT 911 EMERGENCY SVCS,)	AND ORDER
)	
Respondents.)	
_____)	

PROCEDURE

On January 8, 2016, Parallel Infrastructure, on behalf of Skagit 911 Emergency Communications, applied for a Special Use Permit (PL16-0007) for construction of a Wireless Telecommunication Facility, including a 195-foot steel lattice tower. After a public hearing, on June 22, 2016, the Hearing Examiner issued a decision approving the permit with conditions.

This decision was timely appealed to the Board of County Commissioners by Michael Geerts and David Geerts, owners of property adjacent to the project site. At the conclusion of the hearing before the Commissioners, the parties agreed that information required by SCC 14.16.720(9)&(10) was lacking from the original application, and, on September 20, 2016, the Commissioners remanded the matter to the Examiner to review the matter under the cited sections after the submittal of additional information.

The Skagit County Planning and Development Services Department (PDS) received additional information from the applicant and issued a Staff Report on November 30, 2016.

The remand came on for hearing before the Examiner on December 7, 2016. The appellants were represented by Scott Thomas, Attorney at Law. The County was represented by Annie Matsumoto-Grah, Planner. The applicant was represented by Meridee Pabst, Attorney at Law. The County's Staff Report on the remand issues contained 16 exhibits. The applicants submitted three additional exhibits. Appellants' counsel filed a Brief on Remand. All of these items were admitted into the record.

REMAND ORDER

1. The Board hereby remands this appeal to the Hearing Examiner for consideration of additional evidence and additional findings as to the following matters

a. Whether the Application meets the siting criteria set forth by SCC 14.16.720(10) (Priority of Location).

b. Whether the Application meets the requirements of SCC 14.16.720(9)

FINDINGS OF FACT

1. Factual matters set forth above are hereby adopted as findings.

2. Skagit 911 Emergency Services, through Parallel Infrastructure, seeks a Special Use Permit for the construction of a wireless telecommunication facility to provide enhanced 911 call coverage to the town of Marblemount and the surrounding areas.

3. The nearest existing 911 facility is in Concrete. Coverage from the Concrete site does not extend nearly as far east as the Marblemount vicinity. In fact it does not extend as far as Rockport. Currently the sheriff has virtually no portable radio coverage and limited mobile radio coverage in the Marblemount Area. Fire and EMS agencies in the area have very limited portable radio coverage and varied mobile radio coverage.

4. The proposed site is at 7089 Powerline Road on Parcel No. P45149. The parcel is within NE1/4NE1/4 Sec. 12, T35N, R10E. W.M. The land use designation is Rural Reserve (RRv).

5. The Marblemount community is located in the area near the confluence of the Skagit and Cascade Rivers. Except for limited areas of valley floor near the rivers, the surrounding terrain is mountainous.

6. Under SCC 14.16.320(4)(y) a Special Use Permit is required for a personal wireless facility in the Rural Reserve zone, subject to SCC 14.16.720.

7. SCC 14.16.720(9), the Site Selection Criteria subsection, reads as follows:

“The following site selection criteria shall govern the issuance of permits and must be demonstrated by the applicant:

(a) Any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate by a propagation map that the facility must be located at the site to satisfy its function in the applicant’s grid system. An analysis by an engineer documenting these demonstrations shall accompany the propagation maps.

(b) Further, the applicant must demonstrate by a propagation map that the height requested is the minimum height necessary to fulfill the site's function within the applicant's grid system. An analysis by an engineer documenting these demonstrations shall accompany the propagation maps.

(c) Personal wireless service facilities shall be located and designed to minimize adverse impact on residential property values. Facilities shall be placed in locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening.

8. SCC 14.16.720(10), Priority of Locations, reads as follows:

The order of priorities for locating new personal wireless service facilities shall be as follows and the applicant shall demonstrate that all other locations with a higher priority on the list are not feasible:

(a) Co-locate on existing antenna support structures.

(b) Place in districts zoned Bayview Ridge Light Industrial (BR-LI), Bayview Ridge Heavy Industrial (BR-HI), Natural Resources Industrial (NRI), Industrial Forest-Natural Resource Lands (IF-NRL), Rural Marine Industrial (RMI), Rural Village Commercial (RVC), Rural Business (RB) Open Space Regional Statewide Importance (ORSI), Master Planned Resort (MPR), and Rural Freeway Services (RFS) districts.

(c) Place on appropriate rights-of-way and existing structures such as buildings, towers, water towers and smokestacks located on non-residentially property.

(d) Place on public property if practical, i.e., Skagit County property, fire halls, etc.

(e) Place on other property, i.e., Secondary Forest-Natural Resource Lands (SF-NRL), Agricultural Natural Resource Lands (Ag-NRL), and Rural Resource-Natural Resource Lands (RRc-NRL).

(f) Place in view sheds and corridors.

(g) Place on property in Rural Reserve (RRv), Rural Center (RC), Small Scale Business (SSB), Small Scale Recreation and Tourism (SRT), and Rural Intermediate (RI).

(h) Place on Rural Village Residential (RVR).

9. On remand, the applicant submitted a supplemental project narrative and alternative site analysis to address the issues raised on appeal. In addition, the applicant submitted an engineering report containing coverage prediction maps and a microwave path profile.

10. The Engineering Report entitled "Coverage Prediction Maps and Microwave Path Profile, New Public Safety Land Mobile Radio Site Marblemount, WA, dated October 21, 2016,

was prepared by Thomas M. Eckels, PE, of Hatfield and Dawson Consulting Electrical Engineers. Eckels is registered as a professional engineer in the State of Washington.

11. The supplemental project narrative states that the purpose of the project is “to provide coverage to the rural residential community in and around Marblemount as well as to the east, west, and north along the Highway #20 corridor as well as east up the Cascade River Road.”

12. Mike Voss, Technical Services Manager for Skagit 911, provided a map showing the search area used in the antenna siting process. He stated that “the tower was sited with regard to providing the best coverage to the populated areas in an around Marblemount as well as the Highway 20 corridor.” This coverage objective together with other relevant factors, such as terrain and trees, produced the search area used. The search area is an oval which encompasses the area north and west of the bend in the Skagit River where the Cascade River joins it.

13. The existing uses in the search area are low density rural residential, the North Cascades National Park Wilderness Information Center, gas stations, restaurants, a small inn and the Marblemount Community Center.

14. Particular focus in siting was given to the UHF spectrum used by the County Sheriff. Maps were provided showing the lack of coverage in the UHF spectrum. Currently, the Sheriff has virtually no portable radio coverage in the Marblemount area.

15. The only 911 facility in the area is an antenna atop a wood utility pole at the Marblemount Community Center on SR#20 which provides coverage that is limited because the pole is less than 20-feet tall and surrounded by taller trees. Separating multiple antennas on the pole to avoid interference is not possible. The pole supports only VHF service for Fire and EMS agencies.

16. In addition to coverage within the search area, Skagit 911 also needs a tower location that provides line of sight to its proposed new Rockport facility, approximately eight miles to the southwest of Marblemount. The Rockport facility will be co-located on an existing 250-foot lattice tower at 54335 Illabot Creek Road. The Marblemount site will be the donor site for providing fiber backhaul via microwave to the Rockport site. The proposed Rockport facility is dependent upon the siting of the Marblemount site at the place selected.

SCC 14,16,720(9) - Site Selection Criteria

17. Propagation Maps. The propagation maps provided depict UHF frequency coverage for both transmitting and receiving, providing the 50 foot separation on the tower required by the antenna combining systems used by Skagit 911. These maps show coverage in the valley around Marblemount as well as down the Skagit and up the Cascade Rivers. The report states that “the maps show that the proposed Marblemount site provides “good portable radio belt level coverage through most of the more populated areas in and around Marblemount.” The engineer’s report says that VHF coverage will be somewhat more extensive, because propagation losses at VHF frequencies are lower than at UHF frequencies.

18. Additional mapping showing the nearest existing Skagit 911 coverage in the area of Concrete was also submitted. There is no overlap in coverage between the proposed installation and the nearest existing one. Indeed, the area around Rockport will not have good portable radio coverage even with the new Marblemount facility.

19. There is no evidence that Skagit 911 has a grid system as that term is used by commercial cell phone providers. The Examiner finds that the proposed facility at the site proposed will satisfy the function desired.

20. Height Requested. The tower height assumed was dictated by (1) the need to separate transmit and receive antennas, (2) by the requirement to provide space for co-location, and (3) by the potential height of trees in the immediate vicinity. The proposed 195' elevation is justified by these factors.

21. Visual Impact. The proposed tower is to be located where existing conditions provide the greatest amount of screening. The tower site is near the center of a densely forested 20-acre parcel. Only a small portion of the tower will protrude above the tree line. One of the reasons this site was chosen was because of its remote location surrounded by larger forested parcels with few nearby homes.

22. In addition to meeting the general site selection criteria, the proposed site will provide a tower location that will have line of sight to the proposed new Rockport facility.

SCC 14.16.720(10) – Priority of Locations

23. The applicant presented an alternatives analysis designed to show that all other locations with a higher priority on the “Priority of Locations” list are not feasible.

24. Early in the search a parcel located west of Rockport-Cascade River Road and south of Willow Lane in RRC-NRL zoning was identified but it was located too far to the south and west and would not fulfill Skagit 911's coverage objectives. It was not located within the search area. Another parcel on the east side of Ranger Station Road was not pursued due to title issues.

25. Co-Location. Under SCC 14.16.720(6)(b), applications for “personal wireless services facilities” must show that an effort has been made to mount the facility on an existing structure within a 2,500 foot radius of the chosen site. Such an effort was made here and proved unavailing.

26. The existing Seattle City Light transmission towers located north of SR 20 were evaluated for co-location but such use of these towers was rejected. Impulse noise generated by the high voltage transmission lines would present a problem and this type of noise would likely be sufficient to degrade performance of Skagit 911's receivers.

27. Other priorities. OSRI properties outside the search area are too far from that area to meet coverage objectives. This is also true for RI zoning located along Highway #20 and west of Tessa Lane, and various NRL properties in the vicinity,

28. RB and RVC zoned properties within the search area do not have adequate unencumbered ground space to accommodate the proposed lease area and none meet screening requirements. RVR parcels are lower in priority than the subject site.

29. County and school district properties within the search area are in a lower priority zone (RVR) and are not appropriate anyway because of flood zone designation, critical areas concerns or lack of screening. Nothing in the record establishes a “view shed or corridor,” in the search area. There are no natural resource lands there.

30. Within the search area, other properties were rejected because of physical unsuitability, title issues, or lack of owner interest.

31. The Examiner finds that no location with a higher priority on the list set forth in SCC 14.16.720(10) is feasible.

32. The Hearing Examiner’s prior decision in this matter (Special Use Permit, PL16-007) entered on July 25, 2016, is by this reference incorporated herein as though fully set forth. Said decision is attached hereto as Exhibit A.

32. 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)(b)(ii)

2. The Conclusions of Law entered on July 25, 2016 are affirmed. In particular, the Examiner concludes that the additional materials considered on remand establish that the proposal, as conditioned, meets the requirement for approval of personal wireless service facilities under SCC 14.16.470.

3. The appellants argue that nothing in the record justifies the limitation of the search to the designated “search area” and that the “search area” used was arbitrary. The explanation given was that the area was selected with the desired coverage in mind under the topographic and forest conditions extant.

4. The concept of a “search area” is not explicitly provided for in the regulations, but looking for a site in the area of desired coverage is an entirely rational approach to limiting the examination of possible sites. The search area selected was not arbitrary.

5. The applicant has established that within the search area, there exist no other sites of higher priority where location of the subject tower is feasible. SCC 14.16.720(10).

6. The applicant has demonstrated that the site selection criteria of SCC 14.16.720(9) have been satisfied.

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

CONDITIONS

The Conditions of Approval set forth in the Examiner's decision of July 25, 2016, attached hereto as Exhibit A are ratified and shall remain as the Conditional of Approval applicable to this permit decision.

DECISION

The Special Use Permit (PL#16-0007) is approved, subject to the conditions set forth in Exhibit A hereto.

DONE, this 11th day of January, 2017.



Wick Dufford, Hearing Examiner

RECONSIDERATION/ APPEAL

Reconsideration may be requested by filing the Planning and Development Services (PDS) within 10 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 14 day of this decision or decision on reconsideration, if applicable.

The entire decision can be viewed at: www.skagitcounty.net/hearingexaminer

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Parallel Infrastructure/Skagit 911
c/o Andy King, The Meridian Group
1910 North 41st Street
Seattle, WA 98103

Request: Special Use Permit, PL16-0007

Location: 7089 Powerline Road, Marblemount, on P45149, within a portion of NE1/4NE1/4 Sec. 12, T35N, R10E, W.M.

Land Use Designation: Rural Reserve (RRv)

Summary of Proposal: To construct a wireless telecommunication facility for Skagit 911, including a 195' steel lattice tower with an antenna array consisting of four omni antennas, one 6-foot wide microwave dish antenna, a 15' x 12' foot equipment shelter, and a 50KW backup diesel generator, all located within an 80' x80' fenced leased area.

SEPA Compliance: Determination of Non-Significance (DNS), dated March 28, 2016. No appeals.

Public Hearing: June 22, 2016. Testimony by Staff and Applicant. One member of the public testified in opposition on aesthetic grounds. Planning and Development Services (PDS) recommended approval.

Decision/Date: The application is approved, subject to conditions. July 25, 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 with PDS 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

FINDINGS OF FACT

1. Parallel Infrastructure/Skagit 911 (applicant) seeks to install a new wireless telecommunication facility to provide enhanced 911 call coverage to the town of Marblemount and surrounding residential and recreational areas.
2. Current maps show little or no present 911 coverage in and around Marblemount.
3. The site is 20.72 acre parcel zoned Rural Reserve at 7089 Powerline Road on P45149. The parcel is located east of Ranger Station Road, south of Emerald Lane and approximately ½ mile west of State Route 20, within a portion of NE1/4NE1/4 Sec. 12, T35N, R10E, W.M.
4. The parcel is rectangular in shape and the topography is generally flat. Olson Creek runs along a portion of the western property line. Most of the parcel is heavily forested with a mixture of evergreen and deciduous trees and shrubs. Except for several unused rundown structures (including a dilapidated manufactured home in the northeastern portion), the site is vacant.
5. The proposed tower will be placed in the north central portion of the property approximately 450 feet east of Powerline Road. The 80' x 80' leased area is approximately 400 feet from the west property line, 214 feet from the east property line, 400 feet from the south property line and 200 feet from the north property line. The proposed tower height is 195 feet.
6. The antenna array will consist of four omni antennas mounted to the top of the lattice tower and one 6-foot wide microwave dish antenna at the 130-foot level. The installation will also include a 12' x 15' outdoor equipment shelter located northwest of the tower and a 50 KW diesel powered generator to provide emergency backup power in case of a commercial power outage.
7. A 6' foot high chain link fence, with barbed wire around the top, will surround the leased area. Entry to the area will be via two swing gates located on the west side. Access to the tower site will be via Powerline Road, a private road west of the site. A new 400' long, 12' wide driveway will be constructed to the site from Powerline Road. The project will entail approximately 100 cubic yards of fill and grade activity.
8. The facility will be unmanned except for routine maintenance inspections on a monthly basis. Parking space for maintenance workers will be provided west of the tower outside of the leased area.
9. The 195' tower is required for signals to clear the tops of the surrounding trees. This height is considered the minimum necessary to provide satisfactory levels of coverage to the surrounding area, given existing vegetation and terrain. The antenna used presently is completely inadequate. It consists of a single whip attached to an ordinary telephone pole near the community hall. It does not extend above the surrounding trees.

10. The parcels surrounding the proposed antenna site are also zoned Rural Reserve. They range from two to twenty acres in size. Many are vacant forested parcels. However, there are some single family residences in the vicinity. The parcel directly to the west contains the North Cascades National Park Wilderness Information Center. Seattle City Light's transmission line is located along the entire length of Powerline Road, including the west boundary of the subject parcel.

11. The proposed installation will require the removal of approximately 19 trees. But the remaining tall trees will be many and should provide screening around the perimeter of the leased area. The tower site is over 500 feet from any existing residence. A portion of the tower will protrude above the tree line and will be visible along Powerline Road and from parcels to the south.

12. Two owners of parcels to the south wrote letters of opposition, maintaining that the tower will have a negative impact on the natural beauty of the views from their properties. One of these, Mike Geerts, also testified to the same effect at the hearing.

13. Photo-simulations from nearby public vantages along Powerline Road show the top of the tower as visible above the trees, but the visual intrusion appears minor. While the preference of neighbors for a completely natural vista from their properties is certainly understandable, the Examiner finds that the adverse visual impact of the proposed tower will not be significant.

14. The owners also expressed concerns about exposure to electro-magnetic frequencies. This is an area pre-empted by Federal legislation. The Skagit County Code requires merely that Federal requirements be met. See SCC 14.16.720(12)(f).

15. The applicant commissioned a professional study which showed that the maximum level of public exposure to the RF signal from the proposed antennas will be less than 1% of the FCC general population exposure limit. The study stated that from the point of view of FCC exposure limits the RF signal levels will be "entirely negligible." The FCC limits are represented as broadly similar to existing health standards.

16. No existing towers or structures are present within a 2,500 foot radius of the site that would be suitable for location of the proposed facility. The tower is designed to accommodate up to three additional wireless carriers' antenna arrays.

17. The equipment cabinets and generator will meet the setback requirements for the Rural Reserve zone. Because residential uses are permitted within this zone, the setback for the tower is a distance equal to 100% of the tower height. As proposed, the 195' tower will meet this standard.

18. The tower and foundation design and structural calculations showing that the tower complies with all applicable regulations and standards will be submitted at the time of building permit application. The design will be by a licensed engineer in Washington State.

19. The application was determined complete for processing on February 9, 2016. A Notice of Development was posted, published and mailed as required by law. Review under the State Environmental Policy Act (SEPA) culminated in the issuance of a Determination of Non-Significance (DNS) on March 28, 2016. The DNS was not appealed.

20. The application was circulated to various County departments and none has objections. Comments received are reflected in conditions of approval.

21. On prior review, no critical areas were observed within 200 feet of the site.

22. The Staff reviewed the proposal for conformity with the criteria for cell tower citing and with the general criteria for Special Use Permit approval. The Staff found, that as conditioned, the proposal will be consistent with the applicable approval 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.

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

CONCLUSION OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.06.050(1)(b)(ii).
2. The requirements of SEPA have been met.
3. A Special Use Permit is required for a personal wireless service tower in the Rural Reserve zone. SCC 14.16.320(4)(y).
4. The proposal, as conditioned, meets the requirements for approval of personal wireless service facilities. SCC 14.16.720.
5. The proposal, as conditioned, meets the requirements for approval of a Special Use Permit. SCC 14.16.900(1)(b)(v).
6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The proposal shall be constructed and operated as described in the application materials, except as the same 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. This includes P.E. stamped structural calculations which must be submitted at the time of building permit submittal.

4. In order to ensure that adequate screening around the tower will be maintained, if any trees that currently provide screening are removed they shall be replaced with trees that will provide comparable screening.

5. The support facility structures and equipment shall be painted in earth tones and muted colors.

6. All equipment, including equipment for future carriers, shall be located within the leased area and shall meet zoning setback requirements. A modification of this permit will be required in the future to expand the leased area.

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

8. Temporary erosion/sedimentation control must be used during construction of the facility and access road, pursuant to the Drainage Ordinance, Chapter 14.32 SCC.

9. Construction activity and operation of the facility shall not exceed standards for noise, light and vibration as set forth in SCC 14.16.840 and Chapter 173-60 WAC.

10. In accordance with the Skagit Instream Rule, Chapter 173-503 WAC no plumbing is allowed and no water approval is given.

11. Per SCC 14.16.720(12)(f), the tower and antennas shall meet or exceed standards and regulations of the FAA and FCC and any other agency of the Federal government that has the authority to regulate towers and antennas.

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

13. The permittee shall comply with all other applicable federal, state and local regulations,

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

15. The Special Use Permit shall be void if the use permitted by the permit has not been established or a complete building permit filed with PDS within two years of permit approval.

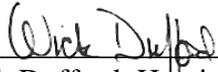
16. A copy of this decision shall be submitted with the building permit.

17. Failure to comply with any conditions may result in permit revocation. SCC 14.16.900(1)(b)(iii).

DECISION

The requested Special Use Permit (PL16-0007) is approved, subject to the conditions set forth above.

DONE, this 25 day of July, 2016.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and interested parties, July 25, 2016

See Notice of Decision, page 1 for appeal information.