

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Verizon Wireless
c/o Becky Todd
MD7 LLC (previously Lexcom Development)
617 8th Ave. South
Seattle, WA 98104

Request: Special Use Permit, PL14-0124

Location: Parcel P20486 directly north of 7008 Sunrise Estates Drive, east of State Route 20, northeast of Hoxie Road and west of Sunset Estates Drive; within a portion of SE1/4NW1/4 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' monopole, three flush mount antennas, equipment cabinets and a backup diesel generator, within a 40' x 40' leased area on a parcel of approximately 39.5 acres.

SEPA Compliance: Determination of Non-Significance (DNS), dated January 12, 2016. No appeals.

Public Hearing: May 11, 2016. Testimony by Staff and Applicant's agent. Public testimony in opposition by owners of two neighboring properties.

Decision/Date: The application is denied. May 31, 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 Test: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner).

FINDINGS OF FACT

1. Verizon Wireless (applicant) seeks to install a wireless communication facility close to an existing water tank owned and operated by the Skagit Public Utility District (PUD).
2. The zoning of the site is Rural Reserve (RRv). Residential uses are permitted in this zone. There is residential development on adjacent properties to the west and south.
3. The site is near the high point of property which overlooks Lake Campbell and SR 20 to the west. To the east, below the site is Gibraltar Road. The site's parcel is largely undeveloped and features tall trees up to 80 feet in height. Just east of the proposed tower site, the land starts to slope down rapidly.
4. Nearby to the west of the proposed tower site is a small parcel owned by the PUD which is occupied by a water tank which provides public water. Immediately to the west of the tank is a single family residence.
5. The 125 height proposed for the monopole is needed in order to avoid interference from the surrounding trees. Three flush mounted antennas would be installed at the top. The design is for what are described as low-profile antenna mounts.
6. The lease for the installation covers a 40' x 40' area, surrounded by a fence. Inside the fence, in addition to the monopole, would be two equipment cabinets on a concrete slab and an emergency generator on a separate concrete pad. The tower would have the ability to co-locate two other providers.
7. 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. No other feasible locations with a higher priority under the Personal Wireless Facilities ordinance were shown. Photo simulations were provided demonstrating that the facility would have limited visibility from adjacent parcels.
7. A noise study was conducted and concluded that the equipment location is compatible with the noise standards established for the protection of nearby residential properties.
8. The facility, as proposed, would not be manned. After construction, visits would be limited to periodic maintenance checks. The tower and equipment would be placed within a locked enclosure. Access would be via a driveway built from the nearby water tower access. A vehicle turn-around area would be provided.
9. The leased area's western boundary is 69 feet from the water tower parcel. If the proposed monopole were to fall, a portion of the top of it could fall within the water tank parcel. Exhibit 11 shows the "fall zone" of the tower ending in an arc which is 13 feet from the existing water tank. This measurement assumes a fall zone of exactly 125 feet.
10. The PUD and Verizon have executed a "fall zone easement" which covers the area within the water tank parcel that is 125 feet from the monopole site.

11. In testimony Randall Hawkinson, who lives in the nearest residence to the tower site, questioned the accuracy of the measurement which showed that the water tank is not within the proposed monopole's fall zone. He said that if the water tank were punctured by a falling tower, his house would be washed off the hill.

12. Under SCC 14.16.720(13)(b), in zones where residential uses are permitted or existing, cell towers shall be set back 100% of the tower height as measured from ground level. The proposed tower does not meet this standard.

13. In an earlier case, a proposal to place the tower within the small PUD water tank lot was remanded to the Hearing Examiner by the County Commissioners because, among other things, the Examiner misused the standard allowing a setback variance when lot size impacts the reasonable development of property. (See SCC 14.16.810(4)).

14. The remand was never heard because the parties ultimately agreed to the dismissal of the application in order to pursue an alternative site. The subject application is for such a site. But, the alternative selected is located only a very short distance to the east of the earlier proposed site.

15. The subject application was published, mailed and posted as required by law. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on January 12, 2016. The DNS was not appealed.

16. 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 requirements of SEPA have been met.

3. Residential uses are permitted in the Rural Reserve (RRv) zone and therefore the 100% of tower height setback applies. See SCC 14.16.720(13)(b). Because this setback requirement is not met, the application must be denied.

4. The Staff contends that the 100% standard should not apply here because the setback violated is not from a residential lot, but rather from a lot that is used for a utility parcel by Skagit PUD. The Examiner disagrees. The setback standard applies within the applicable land use zone regardless of the use of the neighboring lot.


5. In the instant case, the facts militate against making a distinction based on the particular use of the neighboring lot. Here, it is not clear that there is no potential for a falling tower to hit the water tank. And should this occur, the damages to life and property could be more severe than those from a tower hitting a house.

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

DECISION

The application (PL14-0124) is denied.

SO ORDERED, this 31st day of May, 2016.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and interested parties May 31, 2016.

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