

Douglas County Hearing Examiner

Andrew L. Kottkamp, Hearing Examiner

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CUP-09-01)	DECISION AND
Verizon Wireless)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on June 18, 2009, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is Verizon Wireless, 15900 SE Eastgate Way, Bellevue, WA 98008.
2. General Description: Verizon Wireless has submitted a conditional use permit application to replace an existing 60' tall wooden telecommunication tower with a 120' tall steel monopole telecommunication tower.
3. Location: The subject property is located off Kropp Road. The property is further described being in Section 5 Township 29N Range 25 E.W.M. The Douglas County Assessor Number for the subject property is 29250510001.
4. Site Information:

Total Project Size:	+/- 551 acres
Power/Electricity:	Douglas County PUD
Fire Protection:	Okanogan/Douglas Fire District No. 15
5. Site Characteristics: The existing facility is located west of Bridgeport Bar. Access to the telecommunication facility is off of Kropp Road. The site is described as rolling hills with bluffs.
6. Surrounding Property: The surrounding property is farmland.

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7. Access: The project accesses off Kropp Road, a public road and continues on a private drive.
8. The site is designated as Dryland Agriculture and Rural Resource 20 in the Countywide Comprehensive Plan and as conditioned is consistent with the goals and policies of the plan.
9. The site is located in the Dryland Agriculture (A-D) and Rural Resource 20 (RR-20) Zoning District classification.
10. Telecommunication facilities are permitted in the Dryland Agriculture (A-D) Zoning District and Rural Resource 20 (RR-20) Zoning District upon approval of a conditional use permit.
11. Comments from reviewing agencies have been considered and addressed where appropriate.
12. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
13. A neighborhood meeting was held on March 4, 2009 at the Columbia Cove Recreation Center in Brewster, Washington.
14. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
15. The applicant has demonstrated siting criteria per D.C.C. 18.76.100(E).
16. Douglas County Transportation and Land Services Department issued Determination of Non-Significance accordance with RCW 43.21C and WAC 197-11-340, on May 12, 2009.
17. RCW 58.17.040 permits the leasing land for facilities providing personal wireless services.
18. Soil mapping from the Natural Resource Conservation Services Department indicate the presence of steep and severe building soils on the subject property. The applicant has submitted a geotechnical report prepared by Adapt Engineering Inc. dated March 19, 2009 in order to meet the requirements of Douglas County Code Chapter 19.18D, "Resource Lands/Critical Areas-Geologically Hazardous Areas."

19. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
20. This Application was found to be Technically Complete as required by law.
21. The entire Planning Staff file was admitted into the record at the public hearing.
22. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
23. Public hearing after due legal notice was held on June 18, 2009. Appearing and testifying on behalf of the applicant was Mary Lou Frosch. Ms. Frosch testified that she was an agent authorized to appear and speak on behalf of the applicant. She testified that they did not expect that the FAA would have any requirements for lighting on the tower. She testified that the tower was being designed to accommodate co-location of other antennas. She testified that all of the suggested conditions of approval were acceptable to the applicant.
24. No members of the public testified at the hearing.
25. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
26. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
27. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.
28. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
29. The location, size, and height of buildings, structures, walls and fences, and screening vegetation for the proposed use will not unreasonably interfere with allowable development or use of neighboring properties.
30. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.
31. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified.

32. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the development will not adversely affect the general public health, safety and general welfare.
3. As conditioned, the proposal is consistent with Title 18, "Zoning"; Title 19, "Environment"; and Title 20, "Development Standards", of Douglas County Code and the goals and policies of the County-wide Comprehensive Plan.
4. As conditioned, the development meets the goals, polices and implementation recommendations as set forth in the Douglas County Countywide Comprehensive Plan.
5. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
6. Public use and interests will be served by approval of this proposal.
7. As conditioned, the proposal is consistent with Title 18 "Zoning" and Title 19 "Environment" and Title 20, "Development Standards" of Douglas County Code.
8. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Douglas County Code and Comprehensive Plan.
9. As conditioned, the proposal does conform to the standards specified in Douglas County Code.
10. As conditioned, the use will comply with all required performance standards as specified in Douglas County Code.
11. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Douglas County Code or the Comprehensive Plan.
12. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
13. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Application CUP-09-01, Verizon Wireless is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The Project shall proceed in substantial conformance with the plans and application materials of file dated March 26, 2009 except as amended by the conditions herein.
3. The applicant is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
4. Per D.C.C. 18.76.100; telecommunication service providers shall cooperate with other service providers to grant co-location of antennas.
5. Per D.C.C. 18.76.180; the property owner, applicant and/or co-applicant shall maintain the telecommunication facility and the site in good repair. Such maintenance shall include, but shall not be limited to, painting, structural integrity and landscaping. Failure to maintain the facility may result in enforcement action pursuant to DCC Chapter 14.92, including permit revocation.
6. Per D.C.C. 18.76.200; any telecommunications support structure that has been discontinued for a period of one hundred eighty successive days, or if the antenna(s) mounted thereon are not operated for a period of one hundred eighty successive days, shall be considered abandoned, and the owner thereof shall remove such structure and any accompanying equipment enclosure within ninety days. If such structure and equipment enclosure are not removed, the county may seek and obtain a court order directing such removal and impose a lien upon the real property upon which such structure is situated in an amount equal to the cost of the removal.
7. A commercial building permit needs to be submitted with plans for the replacement tower and site plan.
8. Prior to issuance of the building permit a weed management plan for the site must be submitted to and approved by Douglas County.

9. Prior to issuance of the building permit a off-street parking plan for the site must be submitted to and approved by Douglas County.
10. The building permit shall be signed by the property owner.

Dated this 23rd day of June, 2009.

DOUGLAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Any aggrieved party or agency of record may request a reconsideration of this Hearing Examiner's decision. Motions for reconsideration must be filed with the Department within ten (10) days from the date of issuance as defined by RCW 36.70C.040(4)(a). Unless otherwise provided, the filing of a motion for reconsideration shall not stop or alter the running of the period provided to appeal the Hearing Examiners decision to Superior Court. Motions for reconsideration are governed by Douglas County Code 2.13.150.

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Douglas County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.