

Douglas County Hearing Examiner

Andrew L. Kottkamp, Hearing Examiner

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CUP-09-04)	DECISION AND
MACC Tower)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Douglas County Hearing Examiner on January 21, 2010, 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 Multi Agency Communications Center (MACC),, 6500 32nd Ave. NE, Suite 911, Moses Lake, WA 98837.
2. General Description: Multi Agency Communications Center (MACC) has submitted a conditional use permit application to install a new 150 foot self-supporting tower and 27'6"x11'6" pre-fabricated equipment building.
3. Location: The subject property is located on Rd 5 NE (Ted Rice Rd), East of the SR 17 intersection, near Coulee City WA, and is further described as being located in the Southwest ¼ of Section 7, Township 25 North, Range 28 East, W.M., Douglas County, Washington. The Douglas County Assessor Number for the subject property is 25280710000.
4. Site Information:
Total Project Size: +/- 156 acres, tower to be located in leased 100'x100' area
Power/Electricity: Douglas County PUD
Fire Protection: Douglas County Fire District #8
5. Site Characteristics: The site is relatively flat to rolling.
6. Surrounding Property: The surrounding property is farmland, or vacant land.

CUP-09-04
MACC Tower
Page 1 of 8

7. Access: The project accesses Road Rd 5 NE, a public street.
8. The subject property is located in the A-D Zoning District.
9. Telecommunication facilities are permitted in the Dryland Agriculture (A-D) Zoning District upon approval of a conditional use permit.
10. Comments from reviewing agencies have been considered and addressed where appropriate.
11. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
12. 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.
13. The applicant has demonstrated siting criteria per D.C.C. 18.76.100(E).
14. Douglas County issued a Determination of Non-significance on January 7, 2010 in accordance with WAC 197-11-355 (Optional DNS).
15. RCW 58.17.040 permits the leasing land for facilities providing personal wireless services.
16. A setback of 115% of the tower height is required by DCC 18.76.160.B.1. The proposed project does not meet the required setback, however the special exception provision of DCC 18.76.120 has been met. Relocation of the tower does not appear possible while maintaining the required redundant communication signals with two other sites. The elevations of obstructing terrain which would obstruct signal transmissions have been verified by a professional land surveyor. Additional measures have been proposed by the applicant, including upgrading of the tower design to a higher standard for wind and ice load conditions.
17. 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 GeoEngineers, Inc. dated October 2, 2009 in order to meet the requirements of Douglas County Code Chapter 19.18D, "Resource Lands/Critical Areas-Geologically Hazardous Areas"
18. An exterior storage tank, located in compliance with IFC has lower requirements for fire protection.

19. The public ROW (Road 5 NE) currently serves only one residence, and an alternative route via public ROW is available to access that residence if Road 5 NE were obstructed. Douglas County Transportation is supportive of approval of the project as submitted.
20. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval.
21. This Application was found to be Technically Complete as required by law.
22. The entire Planning Staff file was admitted into the record at the public hearing.
23. The Douglas County Department of Land Services recommended approval of the requested permit, subject to the recommended conditions of approval.
24. Public hearing after due legal notice was held on January 21, 2010. Appearing and testifying on behalf of the applicant was Dean Hane. Mr. Hane testified that all of the proposed conditions of approval were acceptable. He also confirmed that the propane tank would not be inside of any building on the site.
25. No members of the public testified at the hearing.
26. 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.
27. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
28. 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.
29. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
30. 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.
31. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood.

32. Land uses, activities, and structures that are allowed by this conditional use permit will comply with the required performance standards specified.
33. 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 Douglas County Countywide Comprehensive Plan.
4. As conditioned, the development meets the goals, policies 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" of the 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-09-04, MACC Tower, 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 submitted November 24, 2009 and on file except as amended by the conditions herein.
3. Concurrent with the submittal of a building permit application, the applicant must provide a letter from a licensed geotechnical professional that all site, construction, and building plans are consistent with and conform to the recommendations contained in the geologic hazards assessment from GeoEngineers, dated October 2, 2009.
4. The commercial building permit must meet all IFC requirements.
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. Utility installation/replacement/upgrade within the Douglas County right-of-way, including but not limited to Road 5 NE (Ted Rice Road) shall be approved by Douglas County. A permit for work within the right-of-way shall be obtained prior to construction. Contact Tracy Petersen, Utilities Coordinator, (509) 884-7173. Damage to existing roads, both public and private, (including but not limited to Road 5 NE (Ted Rice Road)) resulting from construction activities (including utility extensions required to provide necessary services to the proposed development) shall be repaired to the satisfaction of Douglas County, by the applicant. The extent of repair and/or replacement will be determined during construction plan review and during field inspection of the proposed work within the right-of-way. Repair of existing road surfaces may include overlays of the existing road surface, full or half width, depending upon the extent of impact to the existing road surface due to the construction activities. Existing moratoriums on public roads may limit utility work to boring or pushing. DCC 12.20.060, *Specific requirements - Underground utilities*.
8. The applicant shall be responsible for preventing mud, dirt and debris from leaving the site, including stormwater runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties.
9. Erosion control measures shall be designed in accordance with the Stormwater Management Manual for Eastern Washington (SWMMEW). Best Management Practices shall be employed to prevent runoff from flowing over the site slopes. Disturbed areas shall be re-vegetated and maintained throughout construction. Final grading shall incorporate permanent erosion control measures which routes stormwater runoff away from site slopes and directs the collected water to appropriate discharge locations.
10. The following core elements requirements contained in the SWMMEW – Stormwater Management Manual for Eastern Washington, must be satisfied by the Developer prior to acceptance of the construction plans:
 - Core Element #1 Preparation of a stormwater site plan
 - Core Element #2 Construction of stormwater pollution prevention
 - Core Element #3 Source control of pollution
 - Core Element #4 Preservation of natural drainage systems
 - Core Element #5 Runoff Treatment
 - Core Element #7 Operation and Maintenance
11. Individual/common plan of development for this proposal may exceed 1 acre of disturbed ground. This would meet the threshold used by the Washington State Department of Ecology in administering their General Permit to Discharge Storm Water Associated with Construction Activity. If required, the permit shall be obtained prior to beginning ground-breaking activities. The Department of Ecology contacts for this area are Bryan Neet, (509) 575-2808, bneet461@ecy.wa.gov, and

Cory Hixon, (509) 454-4103, chix461@ecy.wa.gov. Acquisition of permits is the responsibility of the applicant.

12. Appropriate measures to prevent sediment from leaving the site shall be maintained until such time as all on-site soils are stabilized. Prior to any on-site grading taking place, a temporary erosion/sedimentation control plan (SWPPP- Stormwater Pollution Prevention Plan), showing the location and control measures intended to minimize the effects of erosion and siltation due to construction operations shall be submitted and accepted by the County. This plan shall be maintained on-site at all times and modified as necessary to address erosion issues as they arise. Additional erosion controls shall be implemented as necessary to prevent sediment from leaving the site.
13. One access point for construction activities shall be approved. A stabilized construction access for the site shall be shown on the Stormwater Pollution Prevention Plan (SWPPP). The SWPPP shall be submitted and accepted prior to on-site grading taking place.
14. An access easement to reach the leased area across adjacent property must be recorded and submitted with the building permit.
15. The building permit shall be signed by the property owner.

Dated this 25th day of January, 2010.

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.