

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**  
**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of )  
 ) **FILE NO. 05 128229**  
**CINGULAR WIRELESS** )  
 )  
Conditional use permit and landscape modification )  
for a wireless communication facility consisting of a )  
110-foot monopole and associated ground equipment. )

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DATE OF DECISION: June 14, 2006

PLAT/PROJECT NAME: *Stanwood Bryant*

DECISION (SUMMARY): The conditional use permit application and landscape modification for a 110-foot monopole and associated ground equipment for a wireless communication facility is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 26901 Old 99 North, Stanwood, Washington, on the northeast corner of Old 99 and Stanwood Bryant Road.

ACREAGE: 2.92 acres

ZONING: Rural Freeway Service (RFS)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Rural Freeway Service

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to conditions

Public Works: No objections or requirements

## **INTRODUCTION**

The applicant filed the Master Application on November 30, 2005. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 19, 20 and 21)

A SEPA determination was made on January 24, 2006. (Exhibit 18) No appeal was filed.

The Examiner held an open record hearing on May 30, 2006, the 43<sup>rd</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented and exhibits were entered at the hearing.

## **PUBLIC HEARING**

The public hearing commenced on May 30, 2006 at 1:04 p.m.

1. The Examiner announced that he has read the PDS staff report, reviewed the file and had viewed the site pre-hearing to be generally apprised of the particular request involved.
2. The applicant, Cingular Wireless, was represented by Phil Hall of Wireless Facilities, Inc. Snohomish County was represented by Erik Olson of the Department of Planning and Development Services.
3. No member of the general public participated in this matter by documentary or oral evidence.

The hearing concluded at 1:24 p.m.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Unless superseded herein, the PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That staff report is by this reference adopted by the Hearing Examiner.

3. The applicant, Cingular Wireless, proposes to place a wireless communication facility (a cell phone tower) at on the northeast corner of Old Highway 99 and the Stanwood/Bryant Road. The site is addressed 26901 Old 99 N., Stanwood. The project includes a 110-foot monopole and related ground equipment within a six-foot high wooden fence: all to be located north of and adjacent to an existing convenience store and gasoline station.
4. Section 30.42 SCC provides standards regarding conditional use permits and upon a review of this request the proposed use meets those standards. The PDS staff has correctly reviewed the application of this request to Chapter 30.42C.100 SCC.
5. Chapter 30.25.040 SCC provides the standards for landscaping. This request is for modification from these landscaping requirements under Chapter 30.25.040 SCC. Upon a review of these Sections, this request will meet those standards.
6. The proposed use would not have any adverse affects on critical areas or wildlife habitat when reviewed under Chapter 30.62 SCC nor is a Habitat Management Plan required in this location.
7. With regard to radio frequency radiation exposure limits and CFR 47 § 24.52 RF Hazards (FCC Limits), the ground level power density would have to be many times greater (a thousand times greater) to reach the maximum public exposure limits established by the Federal Telecommunications Act. The County, under the terms of this Act, is therefore precluded from considering any further health impacts.
8. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

### **CONCLUSIONS OF LAW**

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The request is in compliance with the Conditional Use Permit standards and the existing zoning classifications of R-5 and is an allowed utility use. It is therefore consistent with the Growth Management Act Comprehensive Plan (GMACP) and the land use regulations of Snohomish County.
3. The application was determined complete as of November 30, 2005 and is thus vested under regulations in effect at that time, which preceded the December 16, 2005 effective date of Snohomish County Ordinance 05-038. The Examiner questioned the applicant about the decisional factors ordered by Snohomish County Council Motion 06-172 adopted April 19, 2006.
4. The request will eliminate a “dead zone” of no cell phone service and, thus, provide additional and better service for telecommunications facilities in this area, which will therefore furnish better service to the citizens of Snohomish County.

5. SCC 30.22.110 allows “Electromagnetic Transmission and Receiving Facilities” in the underlying Rural Freeway Service (RFS) zoning as a conditional use. That Code Section allows such a facility as a conditional use in the following zones: R-9,600, R-8,400, R-7,200, T, LDMR, MR, NBFS, RD, RRT-10, R-5 (as noted above), RB, RFS, F, F&R, A-10, MC, SA-1, RC, RU, R-20,000, R-12,000 and WFB. In every other zoning district, such facility is permitted outright. In no zoning district is such facility prohibited. In view of such broad authorization for the location of “cell towers” by the County Council, there is a rebuttable presumption that the County Council intended to permit the tower height typically needed in order for such a facility to meet its intended purpose. By logical extension, the County Council is presumed to have known that such typical heights for the facilities would cause them to be visible. Thus, visibility alone is not a basis for denial of an application.
6. The request should be approved subject to compliance by the applicant with the following Conditions:

**CONDITIONS**

- A. The site plan(s) marked Exhibit 17A, E, F, G, H, AE, AF and AG, shall be the official approved development plan(s) for this project. Any discrepancy between the content of the official approved development plan(s) and the performance standards of the UDC SCC shall be resolved in favor of the standards contained within the UDC SCC. Revision of official approved development plan(s) is regulated by SCC 30.42C.110.
- B. In the event that the FAA requires the tower/structure to be lighted or marked, all lighting and marking shall be done per the FAA’s specifications. All lights shall be shielded from the ground below to the maximum allowed.
- C. The Owner of the facility that is the beneficiary of this conditional use permit shall file annually with PDS from the date the tower permit is finalized or the site is initialized, whichever is earlier, a report documenting that a safety inspection has been completed within the last 60 days.
- D. Prior to any development activity (e.g.: clearing, grading or filling) on the site and/or prior to issuance of any development permits by the county:
  - i. The applicant shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
  - ii. A Critical Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that lie within a Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees."
- E. Prior To the Final of the Building Permit and/or Activation of the Facility:
  - i. The landscaping and fence, as shown on the approved plans, shall be installed prior to the final of the tower permit and or the initialization of the facility, whichever comes first.

- ii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The applicant may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to Planning and Development Services for review and approval prior to installation.

- F. Nothing in the permit/approval shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.
- G. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

7. Any conclusion in this decision which should be deemed a finding of fact is hereby adopted as such.

## **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The requests for a conditional use permit and landscape modification for a wireless communications facility are **CONDITIONALLY APPROVED**, subject to compliance by the applicant, with the CONDITIONS set forth in Conclusion 6, above.

Decision issued this 14<sup>th</sup> day of June, 2006.

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Ed Good, Deputy Hearing Examiner

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JUNE 26, 2006**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with

the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JUNE 28, 2006** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

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Staff Distribution:

Department of Planning and Development Services: Erik Olson

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
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