

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

In the Matter of the Application of	)	
	)	<b>FILE NO. 07 101081 LU</b>
<b>CLEARWIRE / Marysville Pilchuck High School</b>	)	
	)	
Conditional use permit and landscape modification	)	
for the construction of a wireless facility including	)	
a 140' monopole, six panel antennas and one ground	)	
equipment cabinet	)	

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DATE OF DECISION: August 28, 2007

DECISION (SUMMARY): The proposed wireless communication facility is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

GENERAL LOCATION: The property is located at 5611 108<sup>th</sup> Street NE, Marysville, Washington.

ACREAGE: 63.4 acres

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Urban Low Density Residential / Public Institutional Use

**INTRODUCTION**

The applicant filed the Master Application on March 27, 2007. (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 18, 19 and 20)

A SEPA determination was made on June 8, 2007. (Exhibit 17) No appeal was filed.

The Examiner held an open record hearing on August 2, 2007, the 50<sup>th</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 August 2, 2007 at 3:02 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, Clearwire, was represented by Todd Walton. Snohomish County was represented by Elbert Esparza of the Department of Planning and Development Services. No member of the general public participated in this matter.

The hearing concluded at 3:15 p.m.

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

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.

Unless superseded herein, the PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and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 Protection Act (SEPA). That staff report is by this reference adopted by 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 applicant, Clearwire, proposes to place a wireless communication facility (a cell phone tower) at 5611 108<sup>th</sup> Street NE, Marysville. The project includes a 140-foot monopole, six panel antennas and one ground equipment cabinet. The subject site is on the grounds of the Marysville/Pilchuck High School's 63.4-acre complex and, specifically, on the eastern side of the football stadium. An existing 80-foot stadium lighting pole will be replaced by the monopole which will continue to hold a stadium light but while serving the dual purpose of a telecommunications facility. The existing concrete pad will be used.

2. No issues of concern were raised by staff, agencies or citizens.
3. The proposed use is an allowed use in the underlying R-9,600 zoning.
4. The General Policy Plan (GPP) Future Land Use Map (FLUM) designation is Rural Residential and the property is zoned R-5. The proposed utility use is an allowed conditional use in the R-5 zone.
5. Section 30.42 SCC provides standards regarding conditional use permits. The PDS staff has correctly reviewed the application of Chapter 30.42C.100 SCC to this request in the staff report, adopted by reference above herein. The staff has also reviewed the proposal's compliance with SCC 30.28A's requirements for personal wireless telecommunications services facilities and finds the proposal compliant. The Examiner concurs as to compliance with both of those Code chapters.
6. Chapter 30.25.040 SCC provides the standards for landscaping. This request is for modification from those landscaping requirements. The applicant's rationale for a modification is that the required 20 feet of Type A landscaping is not needed when, as here, the equipment cabinets are inside existing stadium perimeter landscaping and fence. Thus, the applicant proposes 10 feet of landscaping immediately around its ground equipment and tower, consistent with the existing landscaping. Staff analysis is that the proposal meets all requirements of SCC 30.25.040(2), (5) and (6) for a landscape modification. The Examiner so finds as fact.
7. There are no critical areas on or within 100 feet of the proposed facility. 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.
8. 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 that Act, is therefore precluded from considering any health impacts.
9. 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 of SCC 30.42C, the development and siting requirements for personal wireless telecommunications services facilities at SCC 30.28A, and is a use allowed in the R-9,600 zoning as 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 request will provide additional and better service for telecommunications facilities, which will therefore furnish better service to the citizens of Snohomish County.
4. The proposed location is not controversial. No opposition is in the record. Therefore, it is concluded that the proposal merits approval in view of County Council Motion No. 06-172 for the following reasons:
  - A. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
  - B. Adequate public services exist to serve the proposal.
  - C. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
5. 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 hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

### **CONDITIONS:**

- A. The site plan(s) marked Exhibit 4A-4L shall be the official approved plan(s) for this project. Any discrepancy between the content of the official approved site plan(s) and the performance standards of the SCC shall be resolved in favor of the standards contained within the SCC. Revision of official approved site plan(s) is regulated by SCC 30.42C.110.
- B. The co-location of additional carriers on this facility for whose antennas do not pose a significantly greater visual appearance than those shown on the approved plans, shall constitute a minor revision to this conditional use permit as allowed by SCC 30.42C.110.
- C. All exposed antennas, coax, and mounting hardware shall be painted a neutral color
- D. 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.
- E. The applicant shall file with the County Auditor the required Land Use Permit Binder (LUPB) on a form provided by the Department.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from 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.

Decision issued this 28<sup>th</sup> day of August, 2007.

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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 **SEPTEMBER 7, 2007**. 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 **SEPTEMBER 11, 2007** 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: Elbert Esparza

<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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