

**DECISION OF THE SNOHOMISH COUNTY  
HEARING EXAMINER PRO TEMPORE**

DATE OF DECISION: September 23, 2010  
PROJECT NAME: **ARLINGTON HEIGHTS/STANYER**  
OWNER: Donald and Elizabeth Stanyer  
APPLICANT: Odelia Pacific Corporation c/o Madeline Chaney  
FILE NO: 10-102000-000-00-LU  
TYPE OF REQUEST: Conditional Use Permit, Major Revision  
DECISION: **APPROVE** Revision

**BASIC INFORMATION**

PROJECT LOCATION: 20213 Old Burn Road, Arlington. Located in Section 13,  
Township 31 North, Range 5 East, W.M.  
ACREAGE: 2.28 acres  
CURRENT ZONING: R-5  
COMPREHENSIVE PLAN  
General Policy Plan: Rural Residential (1du/5 ac basic), Rural-Urban Transition Area  
SCHOOL DISTRICT: Arlington No. 16  
UTILITIES  
Water: Private well  
Sewer: On-site septic and drainfield  
FIRE DISTRICT: No. 21  
PDS RECOMMENDATION: Approve

**INTRODUCTION**

An application for a major revision to Conditional Use Permit 01-112442-LU was originally submitted on March 17, 2010 and was determined on April 14, 2010 to be complete as of the

date of submittal for regulatory purposes. The application seeks to replace an existing 180 foot monopole tower with a new 180 foot monopole and to add a fifth antenna array. A setback waiver is sought for the side adjacent to a 100-foot wide power easement.

The Department of Planning and Development Services gave proposed notice of the open record hearing as required by County Code.

A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued on July 16, 2010. No appeals were filed.

The Examiner held an open record hearing on September 16, 2010. Witnesses were sworn, testimony was presented and exhibits were entered. The decision here is based on the record made.

### **PUBLIC HEARING**

The public hearing commenced on September 16, 2010 at 1:07 p.m.

1. The applicant was represented by Madeline Chaney of Odelia Pacific Corporation.
2. PDS was represented by Tom Barnett, Planner.
3. There was no public testimony.

The hearing concluded at 1:29 p.m.

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

### **FINDINGS OF FACT**

1. The master list of exhibits is in the record in this file. All exhibits were considered by the Examiner and are hereby incorporated by reference, as if set forth in full herein.
2. The PDS Staff Report has correctly analyzed the nature of the application and the applicant's consistency with adopted codes, policies and land use regulations. The Staff Report is hereby adopted by the Examiner as if set forth in full herein.
3. The proposal is for the revision of a Conditional Use Permit (01-112442-LU), to replace an existing 180 foot monopole tower with a new 180 foot monopole tower.
4. Conclusion 7B of the Report and Decision of the Hearing Examiner for the original permit states:

This conditional use permit is approved for the co-location for up to four (4) wireless carriers. The co-location of additional carriers, beyond the

four, on this facility shall constitute a major revision to the conditional use permit as allowed by SCC 18,72.192(1)(b).

The instant proposal includes the addition of a fifth antenna array on the new tower, and therefore triggers the major revision process.

5. The fifth antenna array will be mounted at a height of 142 feet on the replacement tower. Within the existing fenced area, a new 24-foot (east-west) by 12-foot (north-south) equipment pad will be constructed just south of the replacement tower. Five cabinets and a diesel generator will be placed on the pad. Coaxial cables will be extended from the pad to a port in the monopole.
6. The address of the facility is 20213 Old Burn Road. Access to the facility will continue to be provided from the existing driveway from Old Burn Road. There is adequate graveled parking for maintenance vehicles.
7. No comments from the general public regarding this proposal were received.
8. The Stillaguamish Tribe submitted a letter noting that the property may be near a culturally significant site. The applicant has agreed to have an archeologist on site during ground disturbing activities.
9. The subject 2.28-acre site is triangular in shape. The terrain slopes down from the southeast to the north. There are no critical areas on or within 200 feet of the project area. The property contains a single-family residence and a barn, situated toward the northerly portion. The tower and equipment are located in the southeast corner, adjacent to power lines that run alongside the southeast boundary outside of the subject property. The power easement along this boundary is approximately 100 feet wide.
10. The new antenna array will add Verizon Wireless to the list of carriers using the tower. The others are Nextel, AT&T Wireless, T-Mobile and Clear. The site accommodates ground equipment for each of the carriers.
11. The northwestern property corner of the site abuts the city limits of Arlington and the Urban Growth Area (UGA) boundary. Properties to the south and southeast are zoned R-5 and are developed with a mixture of single-family residences and small farms. The UGA boundary wraps around the vicinity of the property. However, several hundred acres of undeveloped land within the city limits exist to the east.
12. Environmental review was conducted pursuant to the State Environmental Policy Act (SEPA). An environmental checklist was submitted. The DNS, issued July 16, 2010, determined that no significant adverse environmental impacts from the development are likely.
13. The proposal was reviewed for impacts on public services and facilities. There will be no impacts on the capacity of the county parks system or on local schools. The facility will be unmanned and the only associated traffic will be for periodic maintenance. The addition to traffic on the surrounding roads will be insignificant. The resulting impervious surface will be nearly identical to that which already exists. Drainage will not be

affected. Temporary erosion control measures will be required to be in place during construction. No specific fire code provisions apply.

14. The replacement tower will need to be built about 12 feet from the existing tower in order to allow the existing tower to continue to operate while the new tower is being constructed. The precise placement of the new tower is dictated by needs for locating ground equipment around the base in order to provide appropriate entry points for coaxial cable entering the tower. The effect of these needs is to put the new tower 38 feet and 10 inches from the southeast property line. This presents a Code compliance issue because the relevant setback is 50 feet.
15. The applicants have sought a modification of the standard setback on the southeast allowing the antenna to be placed in the new location. There is significant existing vegetation between the proposed replacement tower and the property line in question. The Staff has found that the existing vegetation to the southeast of the existing equipment compound will continue to provide adequate screening for the new tower, even though the new tower will be located slightly closer to the southeast property line. The Examiner concurs with this finding.
16. Furthermore, no residential or other occupied structures will be built in the power easement. Thus, the setback in terms of separation from occupied development will, in fact, be well over 100 feet.
17. Modification of the setback calls for the creation of a Native Vegetation Retention Area (NVRA) under the code. A condition of the original permit approval establishes requirements that are equivalent to NVRA status. The Examiner finds that this condition should be carried forward.
18. Under SCC 30.42C.100, the criteria for approval of a Conditional Use Permit are:
  - (1) The proposal is consistent with the comprehensive plan;
  - (2) The proposal complies with applicable requirements of this title;
  - (3) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
  - (4) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development and physical characteristics of the site and surrounding property
19. The proposal meets relevant Comprehensive Plan goals and policies. The tower constitutes infrastructure that is consistent with the development pattern for the area. The policy promoting co-location is being advanced.
20. With allowance of the reduced setback to the southeast, the proposal otherwise conforms with applicable zoning dimensional requirements. Private antennas are exempt from height restrictions. The new antenna will be the same height as the existing tower.
21. The tower site is on a plateau overlooking the city. The original tower was erected eight years ago, and has been a part of the viewscape since it was built. Photo simulations

show that the fifth antenna array will be visible from residences but that the alteration in visual impact will be negligible. Surrounding property uses will not be adversely affected.

22. The tower is designed, insofar as possible, to blend with its setting. Landscaping will be maintained. The development responds appropriately to the development and physical characteristics of the site and surrounding property.
23. The Federal Aviation Administration has issued a Determination of No Hazard to Air Navigation in relation to this project. No nighttime blinking light and no other high visibility markings are required.
24. Verizon has appropriately shown that the new antenna installation on the replacement tower will fill a coverage gap.
25. The PDS staff recommends that conditions of approval reflect the same operational requirements as before. With the conditions recommended, PDS staff recommends approval of the application.
26. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding.
2. The requirements of SEPA have been met.
3. The proposed replacement tower with the addition of a fifth antenna array must be processed as a major revision to the original Conditional Use Permit.
4. Major revisions are processed in the same manner as new applications. SCC 30.42C.110(b)
5. SCC 30.23.110(25)(c) states:

Setbacks may be modified by the approval authority to no less than 20 feet from a property line only if there is significant existing vegetation, topography, or some other land feature that will provide a higher level of screening of the facility. In accordance with SCC 30.25.025(2), a Native Vegetation Retention Area (NVRA) shall be established and maintained when this provision is used.
6. The Examiner concludes that the applicant has established sufficient grounds for modifying the southeast setback to 38 feet 10 inches. The Examiner further concludes that Condition E, as set forth below, satisfies the Code's intent and is equivalent to the establishment of an NVRA.
7. With the setback modification, the proposal, as conditioned, meets the decision criteria for approval of a Conditional Use Permit.

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

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### **DECISION**

The request for a major revision to Conditional Use Permit 01-112442-LU is **APPROVED**, subject to the following conditions:

### **CONDITIONS**

- A. The site plans received by PDS on March 17, 2010 (Exhibit B.1) shall be the official site plans. Revisions to the official site plans are governed by SCC 30.42.110 and SCC 30.28A.
- B. This approval supersedes all previous approvals and conditions granted on this property regarding the wireless communication facilities, specifically the Hearing Examiner Decision on file number 01-112442.
- C. The existing tower shall have been removed prior to approval of the final inspection for the proposed tower.
- D. The landscaping and 6 foot high cedar wood fence installed during construction of the existing tower shall be retained.
- E. All significant vegetation 25 feet in height or higher, within 50 horizontal feet of the outer face of the fenced area or the lease area, whichever is greater shall be retained. This condition shall not extend across property lines unless the adjoining property is included within the CUP boundaries. Prior to topping or removing any tree a report and clearing plan prepared by a certified arborist, shall have been submitted to and accepted by the Department of Planning and Development Services. The plan shall identify the tree(s) to be removed or topped and explain why they must be removed or topped. Tree(s) removed shall be replaced with evergreen trees at a minimum ratio of two replacement trees for each tree removed. All replacement trees shall be a minimum of eight (8') feet tall when planted.
- F. The tower and all proposed and future antenna/attachments, for all carriers, shall be FACTORY painted a color that is selected by the tower owner and is similar to and no lighter than, Sherwin Williams Black Forest #SW2238 or Valspar Deepest Night #802A-4 and shall be completed prior to the final of the building permit and/or activation of the facility. All antennas and attachments shall paint their antennas and attachments the same color as the other carriers on the tower.

Nothing in this permit 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.

Decision issued this 23<sup>rd</sup> day of September, 2010.

<b>EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES</b>
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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 **OCTOBER 4, 2010**. 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 **OCTOBER 7, 2010** 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: Tom Barnett

<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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