

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2012-0014
Application for)
)
American Tower / AT&T) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
Wireless, Lake Louise Road) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to install a wireless communications facility consisting of a new 200-ft lattice tower with attached antennas, microwave antenna, along with 12-ft X 20-ft equipment shelter, within a 50-ft X 50-ft fenced area.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: American Tower/AT&T Wireless

Site Location/Address: 2291 Lake Louise Road
Bellingham, WA 98229

Assessor's Parcel Number: 370301-191237 & 370301-170283 (access)

Zoning: Rural Forestry (RF)

Comprehensive Plan: Resources

Subarea: Lake Whatcom

Total Acreage: 19 Ares

Water N/A

Sewage Disposal: N/A

Fire Protection: South Whatcom Fire Authority

Law Enforcement: Whatcom County Sheriff's Office

Topography: The parcel has a variety of topography to it. The parcel has some areas of flat land as well as steep slopes. Where the WFC is proposed is described as flat.

Vegetation: The site contains a significant amount of native vegetation that includes deciduous trees, evergreens along with shrubs and grass.

Adjacent Land Uses: North: Rural Forestry - RF
 East: Rural Forestry - RF
 South: Rural Forestry - RF
 West: Rural Residential 3 Units/Acre RR3

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington Chapter 36.70
 Whatcom County Comprehensive Plan
 Whatcom County Code, Title 14, Use of Natural Resources
 Whatcom County Code Chapter 15, Building Code
 State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11,
 Whatcom County Environmental Policy Administration Chapter 16.08
 Whatcom County Code Chapter 16.16, Critical Areas
 Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance
 Whatcom County Code, Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, , 2012
 Mailed – Notice of Public Hearing, December 26, 2012
 Published – Notice of Application, October 10, 2012
 Notice of Public Hearing, January 3, 2013

Hearing Date: January 16, 2013

Parties of Record

American Tower / Sprint / AT&T Wireless
 c/o Bill North – North Group
 PO Box 2449
 Snohomish, WA 98291

Alex Cleanhous
Planning and Development Services

Exhibits:

- 1 Land Use Application with attachments
 - 1-1 Proposal
 - 1-2 Agent Authorization
 - 1-3 Fee Responsibility
 - 1-4 Quit Claim Deed
 - 1-5 Determination of Completeness, September 28, 2012
 - 1-6 PDS Tech Committee form memo, Oct 10, 2012
 - 1-7 PDS Form Comment Letter
 - 1-8 Mailing labels
 - 1-9 LDP Application
 - 1-10 Preliminary Traffic and Concurrency Information
 - 1-11 Preliminary Stormwater Proposal
 - 1-12 ESA Checklist
 - 1-13 Lease Agreement
 - 1-14 Staff Email re: scheduling, Oct 11, 2012
 - 1-15 Customer Receipt
 - 1-16 PDS Hearing Examiner Checklists: Oct 11 and Dec 11, 2012
- 2 Staff Report, December 6, 2012
- 3 Agency Comments:
 - Critical Areas Memo, October 11, 2012
 - Plans Examiner, Oct 24, 2012
 - Watersheds Office, Oct 12, 2012
 - Fire Marshal, Oct 9, 2012
 - Engineering, Oct 29, 2012
- 4 Public Comment in Support
- 5 SEPA – DNS, November 8, 2012, with attached Distribution List and Checklist
- 6 Critical Areas Investigation Report, prepared by Earth Works, May 18, 2012
- 7 Aerial Photos
- 8 Zoning Map
- 9 Site Photos

- 10 Non-Ionizing Electromagnetic Exposure Analysis and Engineering Certification, July 2012, prepared by KDC Architects, Engineers, PC
- 11 RF Coverage graphs: proposed and existing
- 12 Large Site Plans
- 13 Certificate of Mailing, Notice of Application, October 10, 2012
- 14 Legal Notice, Notice of Application and Optional SEPA DNS, Oct 10, 2012
- 15 Certificate of Mailing, Notice of Public Hearing, Dec 26, 2012
- 16 Legal Notice of Public Hearing, January 3, 2013
- 17 Posting Notice of Public Hearing, January 5, 2013

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated December 6, 2012, and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter at the public hearing. A letter of support was received by Planning during the comment period.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The proposed installation of a wireless communications facility can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 8). Subject to the Conditions of Approval included in the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Zoning Conditional Use Permit is hereby granted to American Tower/AT&T for the installation of a wireless communications facility to be located on Assessor's Parcel Nos. 370301 191237 and 370301 170283, 2291 Lake Louise Road, Bellingham, Washington, subject to the following conditions:

Planning: Current Planning Division

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. Pursuant to WCC 20.13.061(1), all wireless communications support structures and required fencing shall be equipped with appropriate anti-climbing devices.
3. Pursuant to WCC 20.13.061(2), the Applicant shall not attach any wireless communication facility or portion thereof to any tree.
4. Pursuant to WCC 20.13.061(3), the Applicant shall identify the wireless communications support structure with a non-illuminated sign not exceeding four square feet. The sign shall list the wireless service provider's name and emergency telephone number and shall be posted in a place visible to the general public. No advertising signs shall be located on support structures or antennas, however arrays may be camouflaged as otherwise permitted signs.
5. Pursuant to WCC 20.13.061(4), the Applicant shall not illuminate the wireless communication facility except where required by the FAA.
6. Pursuant to WCC 20.13.061 (5), the Applicant shall paint or finish the wireless communication facility in a manner that blends with the dominant color of the background except where otherwise required by the FAA. The Applicant and the operator of the facility shall have a continuing duty to maintain such paint or finish.
7. Pursuant to WCC 20.13.061 (6), the Applicant shall comply with state noise level standards under Chapter 173-60 WAC, as amended. Generators may only be permitted for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the Applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.
8. Pursuant to WCC 20.13.062 (1), the Applicant shall design or place all attached antennas [excluding collocated antennas on the existing Wireless Communications Facilities (WCF)

structures] to blend with the predominant background or architectural features as seen from abutting residential uses, roadways, or other public rights of way.

9. Pursuant to WCC 20.13.062 (3), the Applicant shall place all accessory equipment structures underground or wholly enclosed in an existing structure or building, or designed to blend into the architecture and landscaping of the surrounding buildings or structures. When the Applicant places equipment boxes at ground level, they shall be screened from view.
10. The Applicant shall apply the following setback standards to wireless communications facilities:
 - (a) Accessory equipment structures shall comply with the setback requirements for principle non-accessory structures in the underlying district. An antenna and its attachment device attached to a building or other permanent structures shall comply with the setback requirements for principle non-accessory structures in the underlying district. Where the setback requirement in the underlying zone is based on the height of the structure, the height used to compute the setback for the antenna array shall be the height of the structure plus the additional height that will be added by the antenna array and its attachment device.
 - (b) Nonattached wireless communications support structures located in a residential related district as set out in WCC 20.13.050 shall be set back from any property line by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.
 - (c) Nonattached wireless communications support structures located in other than residential related districts shall be set back from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater.
 - (d) Regardless of the district, nonattached wireless communications structures shall be setback from dwellings not on the same legal lot, a distance equal to the height of the wireless communications support structure or the setback of the underlying use district whichever is greater.
 - (e) Setbacks for nonattached wireless communications support structures shall be measured from the ground-level base of the structure.
 - (f) The setback requirements for wireless communication facilities under this chapter may be reduced by the approving authority subject to the satisfaction of the special exception criteria in WCC 20.13.110.
11. Pursuant to WCC 20.13.062 (8)(e); the Applicant shall preserve the existing vegetation to the maximum extent practicable. A landscaping plan shall be submitted with the building permit. The landscaping plan shall be consistent with WCC 20.13.062 (8), unless modified by the Building Official or appealed to the appropriate agency.

12. Pursuant to WCC 20.13.062 (10), the Applicant shall provide at least one adjacent parking space or more if needed to accommodate staff. All unstaffed wireless communications facilities shall have access to parking for maintenance personnel.
13. Pursuant to WCC 20.13.062 (11), the operator of the facility shall obtain and keep in force throughout the time the facility is located on the site a performance bond payable to Whatcom County in the amount of 150 percent of the estimated cost of removal as determined by the director, but not less than \$1,000. The bond is intended to cover the costs of removal of such facility at such time as the facility may be required to be removed pursuant to WCC 20.13.150.
14. Pursuant to WCC 20.13.140, the Applicant must conform to all of the standards set forth by the Federal Aviation Administration (FAA), the Federal Communication Commission (FCC) and/or any other agency of the Federal government with the authority to regulate wireless communications support structures and antennas. If such standards and regulations are changed, owners of the wireless communication support structure, antennas and electronic equipment governed by this chapter shall bring such wireless communication support structure, antennas and electronic equipment into compliance with such revised standards and regulations within the compliance schedule of the federal agency. Failure to bring wireless communication support structures and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the wireless communication support structure, antenna or electronic equipment at the owner's expense.
15. Pursuant to WCC 20.13.150, the Provider shall notify, by certified U.S. mail, the Director of Whatcom County Planning and Development Services the proposed date of abandonment or discontinuation of operation, no less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility. The owner of the facility shall then remove the antenna within 90 days of discontinuation or abandonment unless an additional period of time is authorized by Whatcom County. In any case, if the County finds that any antenna or wireless communication support structure has not operated for a continuous period of six months, the owner or lessee of the property on which the wireless communication support structure or antenna is situated or the owner of the wireless communications antenna or support structure shall remove the facility within 90 days of receipt of notice to remove from the county. If the antenna and/or wireless communication support structure is not removed within said time period, the county may remove the antenna or wireless communication support structure at the owner's expense. If there are two or more wireless communications providers on a single wireless communication support structure, this provision shall not become effective until all providers cease using the wireless communication support structure.
16. Pursuant to WCC 20.42.450, the Applicant shall not occupy or cover more than 2,500 square feet or 35 percent of the lot coverage, which ever is greater, with the structure or combination of structures, including accessory buildings.

17. The Applicant shall comply with the State Noise Level Standards under the Washington 5 Administrative Code (WAC) 173.6.
18. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during the scope of operations as approved, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

Building Services Department

The Applicant shall comply with all the conditions set forth by the Plans Examiner's memorandums dated October 24, 2012, unless modified by that Department or appealed to the appropriate agency. Specifically those conditions include:

1. The Applicant is required to obtain a commercial building permit for this proposal. It will be reviewed under the 2009 International Building Code (IBC) and comply with all other applicable codes and ordinances adopted by Whatcom County.
2. The Applicant shall schedule a pre-application *screening* prior to building permit submittal. Contact the Building Services Division to schedule and obtain submittal requirements.

Public Works – Engineering

1. All development shall comply with WC Development Standards.
2. A paved apron is required for the logging road access point at Lake Louise Road per WC Development Standards. Proposed access shall meet current sight distance criteria, as per Development Standards.
3. The Applicant shall obtain a Revocable Encroachment Permit from the Division of Engineering prior to the onset of any construction, including paved apron, in the County Right Of Way.
4. The Applicant shall provide the Division of Engineering with a copy of lease agreements and site/roads easements that establish the Applicant's right to use the site.
5. The proposed development is subject to Lake Whatcom watershed review. Detailed SWPPP and TESC Plan shall address all clearing activities associated with a fill and grade permit or building permit.

D. Natural Resources– Watersheds

1. Pursuant to WCC 20.80.735(2)(e), the Applicant shall not undertake any activity which exposes more than 500 square feet of soil between October 1 and May 31. This proposal is proposing to import 92 cubic yards of material as well as excavation associated with foundations and trenching. This would exceed the 500 sq. ft. of soil exposure and thus, any building or development permit shall not be issued until June 1.

The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning and Development Services and the Hearing Examiner. The Applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the Applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing.

Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or

2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 16th day of January 2013.



Michael Bobbink, Hearing Examiner