



COUNTY COMMISSIONERS

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District One

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District Two

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District Three


**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Creating Solutions for Our Future

Joshua Cummings, Director

MEMORANDUM

TO: Parties of Record

FROM: Cami Petersen 
Land Use Clerk

DATE: December 24, 2018

SUBJECT: **Project No. 2015103966, Sequence No. 18-115073 VE, Verizon
Wireless – Vail Road Wireless Communication Facility**

Attached is a copy of the Decision of the Board of Thurston County Commissioners relating to the above-mentioned case.

Any appeal of this land use decision must be filed in Superior Court pursuant the Land Use Petition Act, RCW Chapter 36.70C, within 24 days of the mailing of this decision.

Please contact me at (360) 867-2117 if you have questions regarding this Decision.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
THURSTON COUNTY, WASHINGTON

In Re the Matter of,

Verizon Wireless

Project No. 2015103966
Verizon Wireless–Vail Road Wireless
Communication Facility

DECISION

THIS MATTER came before the Board of County Commissioners (Board) on December 12, 2018 as a result of an appeal filed by Chris Nubbe, representing the Deschutes Neighborhood Group, of the hearing examiner's decision dated October 22, 2018. This decision approved Verizon Wireless' special use application for a wireless communication facility ("WCF"), including a 150-foot monopole and an enclosed structure for ground equipment, at 16224 Vail Road S.E. in Yelm, Washington. Mr. Nubbe did not appear at the hearing, but many members of the Deschutes Neighborhood Group were in attendance.

The members of the Board made declarations that they did not have any ex-parte communication with any of the parties since the appeal was filed on November 5, 2018. None of the parties objected to the participation of any of the Board members deciding this appeal. Two days after the hearing, Mr. Nubbe raised a concern that Mr. Edwards may have had ex parte contact with the parties *before* the current appeal was filed. While ex-parte contact with the parties is prohibited *after* an appeal is filed, such contact before an appeal is filed is not a violation. RCW 42.36.060. Nonetheless, Commissioner Edwards decided to recuse himself from participating in the ruling on this appeal.

In his pleadings to the Board, Mr. Nubbe asked the Board to correct the record by adding public comments that were introduced in a previous hearing in 2016 related to this WCF application and identified as exhibit C.1.FFF. The hearing examiner's decision issued in 2016 did not list this exhibit as one of the exhibits she admitted into the record. See Hearing Examiner's Decision issued May 18, 2016. Similarly, the hearing examiner did not list this exhibit as being admitted in her current decision. It is not the role of the Board to supplement the record. This matter needed to be brought to the attention of the hearing examiner back in 2016, or, alternatively, right after the hearing examiner issued her most recent decision.

Mr. Nubbe alleges the hearing examiner's decision is not supported by substantial evidence in the record, and the hearing examiner's decision was issued in error because she failed to make specific findings that the proposed use complied with the special use criteria contained in TCC 20.54 and TCC 20.33. Mr. Nubbe's fundamental arguments center around the appropriateness of the proposed location for the WCF which results in impacts to birds, neighborhood character and impacts on views of Mr. Rainier.

After a careful review of the hearing examiner's decision and the record, we conclude the findings made by the hearing examiner are supported by substantial evidence in the record. Further, the conclusions of law are supported by the findings, the evidence and the applicable law. In relation to Appellant's fundamental arguments, the hearing examiner concluded:

[B.3] The instant WCF has been exhaustively reviewed for its appropriateness in the location proposed. The primary location-related challenges to the proposal had to do with

impacts to birds, impact to neighborhood character, and impacts on views of Mt. Rainier. View impacts are addressed in conclusion C.2, below. With respect to impact on neighborhood character, the proposed WCF would be painted dark green and kept within a 50-foot wide tree buffer around the entire fenced enclosure. The trees within that required buffer area would be retained in perpetuity, to the extent that the Applicant would be required to replace any trees that die of natural or other causes. Although taller than the existing tree heights in the immediate vicinity, the tower site is on a slope. The WCF would be visually screened by this treed buffer and its green color and according to photosimulations would be visible from some vantage points in the area, but would be not visible from many vantage points. The undersigned is not persuaded that being able to see a cell tower from a few locations is a significant impact on the rural neighborhood character. With respect to potential impacts to birds, the record includes site-specific bird surveys and an avian risk assessment that credibly concludes that the proposed tower, due to height and design that excludes warning lights at the top of the tower and guy wires, would not pose a significant risk for bird collision despite its placement between wetland and other waterbodies used by birds.¹ There is no evidence in the record suggesting any other adverse impact to adjacent property, the natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. The associated SEPA threshold determination of MDNS was appealed and, as noted above, was affirmed on appeal, meaning the project would not result in probable significant, adverse environmental impacts. Findings 1, 2, 3, 4, 5, 8, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 37, 38, 39, 40, 44, 45, 46, 54, and 55.

[C.2] The WCF is not proposed to be placed in a residential district. As proposed and conditioned, it would be located within a densely forested parcel in a retained tree buffer, and painted dark green to blend in with the surrounding tree canopy. As is shown in the balloon photos and photosimulations of the WCF, the top of the facility may be visible against or even slightly above a backdrop of trees as seen from a particular vantage on Vail Road that also provides views of Mt. Rainier when the mountain is out; however, the line of sight to Mt. Rainier is not obstructed or impeded by the WCF which is off to the left amongst tall trees. In determining that this placement would not have a significant impact on views of Mt. Rainier, the following information in the record is specifically on point. As proposed, the WCF is on a sloped parcel not on a ridgeline among tall trees. The antenna array at the top would be visible against a backdrop of trees. A condition would ensure that at least a 50-foot buffer of trees would be retained around the fenced enclosure, and the density of the tree buffer would be maintained over time as the applicant is required to replace trees that fail within the buffer. The WCF would be painted dark green to blend in with the trees, which are presently taller than one-half of the height of the WCF. Findings 1, 2, 3, 4, 5, 8, 33, 39, 40, 41, and 42.

[C.3] As concluded above, the record contains no evidence suggesting undue impacts to neighborhood character. Impacts to property values are expected to be negligible. Findings 1, 3, 4, 5, 39, 40, 41, 42, 43, 45, 46, 51, 52, and 53.

[C.4.] The proposed WCF would be located 430 or more feet from wetlands used by priority and listed species, and as concluded above at B3, the record contains adequate information to support a conclusion that the Applicant has shown that the WCF would not

¹ In reaching this conclusion, the instant decision does not need to decide whether Smith Ranch is properly considered a wildlife refuge for the purposes of TCC 20.33.080(2)(e)(i), because the evidence shows there is no significant impact to birds.

result in significant impact to birds because as designed it is short, unlit, and unguyed. A condition would require an osprey hazing device atop the antennas. Another condition would require the Applicant to cooperate with state and federal agencies desiring to study impacts to birds from the tower after construction. Findings 1, 4, 5, 8, 12, 13, 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 44, and 49.

IT IS HEREBY ORDERED AS FOLLOWS:

The hearing examiner's decision is affirmed.

DATE:

December 21, 2018
ATTEST:

Whitney Pensell
Clerk of the Board, Acting

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington

Brad Blake
Chair

Let Hilly
Vice-Chair

RECUSED HIMSELF.
Commissioner EDWARDS

