



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	
)	
)	Project No. 2019103674
)	Sequence No. 19-109108ZM
)	
AT&T Mobility)	Willa Street NE WCF
)	
For a Special Use Permit)	FINDINGS, CONCLUSIONS,
)	AND DECISION
_____)	

SUMMARY OF DECISION

The request for approval of a special use permit to install a 30 kilowatt emergency backup diesel generator and automatic transfer switch on a proposed four-foot by ten-foot square foot concrete pad within the fenced area of an existing cell tower on leased property at 2526 Willa Street NE, Olympia, Washington is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

AT&T Mobility (Applicant) requested a special use permit to install a 30 kilowatt emergency backup diesel generator and automatic transfer switch on a proposed four-foot by ten-foot square foot concrete pad within the fenced area of an existing cell tower on leased property at 2526 Willa Street NE, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on January 14, 2020.

Testimony

At the open record public hearing, the following individuals presented testimony under oath:

Scott McCormick, Associate Planner, Community Development & Economic Planning Dept.

Findings, Conclusions, and Decision

Thurston County Hearing Examiner

AT&T, Willa Street NE WCF/ SUP No. 2019103674/19-109108ZM

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Dawn Peebles, Thurston County Environmental Health Division
Allen Koreis, General Dynamics, Applicant Representative

Exhibits

At the open record public hearing, the following exhibits were admitted in the record:

1. Thurston County Community Development and Economic Planning Department Report including the following attachments:
 - A. Notice of public hearing, dated January 3, 2020
 - B. Master application, received July 23, 2019
 - C. Special use permit application, received July 23, 2019
 - D. Zoning map
 - E. Narrative, received July 23, 2019
 - F. Applicant authorization
 - G. Notice of Application, mailed October 10, 2019
 - H. Site plans, received October 15, 2019
 - I. Generator information
 - J. Noise study by MD Acoustics, dated October 15, 2019
 - K. Structural design calculations, dated February 8, 2019 & received July 23, 2019
 - L. Grant of easement and assignment of lease, AFN 4149208, recorded May 5, 2010
 - M. Approval memo from Dawn Peebles with Thurston County Public Health and Social Services Department, Environmental Health Division, dated October 18, 2019
 - N. Comments from Washington Department of Ecology, dated October 30, 2019
 - O. Comments from Nisqually Tribe, dated October 15, 2019
 - P. Comments from Washington Department of Ecology, dated August 22, 2019
 - Q. Comments from Nisqually Tribe, dated August 8, 2019
 - R. Letter from Washington Department of Ecology, dated November 14, 2019
 - S. Lab results for lead and arsenic by Libby Environmental Inc., dated November 12, 2019
2. Photograph of Notice of Public Hearing, submitted by Planning Staff

Based upon the record developed at hearing, the Examiner enters the following findings and conclusions.

FINDINGS

1. AT&T Mobility (Applicant) requested a special use permit (SUP) to install a 30 kilowatt (kw) emergency backup diesel generator and automatic transfer switch on a proposed

four-foot by ten-foot square foot concrete within the fenced area of an existing monopole tower and equipment. The project is proposed on a portion of a 3.35-acre residential parcel developed with an existing monopole tower and equipment compound (previously approved SUP 001105) located at 2526 Willa Street NE, Olympia, Washington.¹

Exhibits 1, 1.B, 1.C, and 1.E.

2. The existing WCF monopole was approved by the Thurston County Hearing Examiner in 2000 through special use permit number 001105. Planning staff submitted that the currently proposed emergency backup generator and automatic transfer switch were not proposed or approved in the 2000 review process and are thus being reviewed as an amendment to the original SUP in accordance with Thurston County Code (TCC) Chapter 21.54.² Review of the instant proposal is limited to compliance with the general standards for special use (TCC 20.54.040) and design standards for ground mounted WCF equipment (TCC 24.33.100). *Exhibit 1; Scott McCormick Testimony.*
3. The subject property has a Rural Residential Resource (RRR) 1/5 zoning designation. Pursuant to TCC 20.09A.010, the purpose of the RRR 1/5 zone is to: encourage residential development that maintains the County's rural character; provides opportunities for compatible agricultural, forestry and other rural land uses; is sensitive to the site's physical characteristics; provides greater opportunities for protecting sensitive environmental areas and creating open space corridors; enables efficient road and utility systems; and does not create demands for urban level services. Wireless communications facilities are allowed in the RRR 1/5 zone pursuant to TCC 20.54 Table 1, subject to compliance with the County Code's wireless communications facilities regulations at TCC Chapter 20.33. *Exhibit 1.*
4. Although it is primarily densely forested with mature conifer trees, the subject property is developed with a residence and the existing WCF, which is located on the southwest portion of the parcel. Land uses adjacent to the subject property consist of low density rural residential development. The state-owned right-of-way of Interstate 5 is immediately adjacent to the WCF location. Zoning for surrounding parcels includes RRR 1/5, Open Space Institutional, Parks and Preserves, Light Industrial, and some higher density residential zoning. *Exhibits 1 (see page 3) and 1.D.*
5. The proposal seeks approval to add a backup generator for emergency power to operate the WCF during power outages. The generator is proposed to be placed on a new 40 square foot concrete pad within the existing lease area on a currently graveled surface. No part of the proposed improvements would be taller than ten feet. No changes to the tower height, leased area, or site access are proposed. As proposed, all required setbacks, screening, and other standards of the underlying zoning district would continue to be satisfied by the facility. The improvements are not anticipated to be visible from off-site

¹ The legal description of the subject property is a portion of Section 7, Township 18 North, Range 1 East; also known as Tax Parcel No. 21807220100. *Exhibits 1 and 1.B.*

² Mr. McCormick testified that the reference to the SUP standards in TCC 21.87.035 at the top of page 6 of Exhibit 1 was an error and confirmed that the instant permit was reviewed for compliance with the standards of TCC 20.54.040. *Scott McCormick Testimony.*

due to location, topography, and tree cover. The current facility is unstaffed, without public water or sewer service, and is generally visited once a month for routine maintenance. No change is proposed to site utilities, staffing, or maintenance scheduling. Maintenance staff would test the generator approximately once a month by running it for about 10 minutes while there on a maintenance visit; no additional traffic to the site would occur from this approval. Noise from the operation of the generator in the case of a power outage is exempt from compliance with State and County noise regulations. *TCC 10.36.040.B*. In exchange for these minor increases in impacts from the existing WCF, the project would result in public benefit by providing continuous cell service during power outages. *Exhibits 1, 1.C, and 1.E; Allen Koreis Testimony*.

6. The Applicant submitted a professionally prepared noise review letter by a qualified acoustic consultant. This letter reviewed existing background noise, the distances from the proposed improvements to existing receivers at property boundaries, and the sound volumes anticipated to be generated by the proposed equipment. The consultant concluded that the project as proposed would comply with the maximum sound volume levels allowed at all receiving properties and that no noise mitigation was required to ensure compliance with County and State noise regulations. *Exhibit 1.J*.
7. The application materials included structural design calculations for the proposed concrete pad and ground mounted equipment. *Exhibit 1.K*.
8. The proposal would not impact any known or planned pedestrian, bicycle, or vehicular circulation routes. *Exhibit 1*.
9. The Environmental Health Division (EHD) of the Thurston County Public Health and Social Services Department reviewed the proposal for compliance with applicable health codes and recommended approval with conditions. *Exhibit 1.M; Dawn Peebles Testimony*.
10. After reviewing the project for access and storm water control requirements, Public Works Department Development Review Services recommended approval without additional conditions. *Exhibit 1*.
11. Washington Department of Ecology reviewed with a recommendation soil erosion measures and soil sampling noting the area is in a potential heavy metal contamination site from emissions from the former Asarco smelter. *Exhibit 1.P*. Following this recommendation, an Applicant representative collected and submitted three soil samples from the area of the proposed concrete pad to Libby Environmental, Inc. *Exhibits 1.S; Allen Koreis Testimony*. The results were provided to Washington State Department of Ecology, which agency determined that no cleanup was needed. *Exhibits 1.R*.
12. The Nisqually Indian Tribe submitted comments indicating that the tribe had particular concerns regarding the proposal and requesting to be notified of inadvertent discoveries of artifacts or human burials. *Exhibits 1.O and 1.Q*.

13. The project is considered minor new construction/ground disturbance and is therefore exempt from review for compliance with the provisions of the State Environmental Policy Act (SEPA). *Exhibit 1; Washington Administrative Code (WAC) 197-11-800 categorical exemptions.*
14. The instant special use permit application was received on July 23, 2019 and deemed complete on August 21, 2019. Notice of the application was mailed to all owners of property within 2,600 feet of the project location and to applicable review agencies on October 10, 2019. No public comment was submitted to the County. Written notice of public hearing was mailed to parties of record, published in The Olympian, and posted on site on January 3, 2020. *Exhibits 1, 1.A, 1.B, 1.G, and 2.* No members of the public attended to offer comment at the open record public hearing.
15. Planning Staff recommended approval subject to the conditions identified in the staff report. *Exhibit 1; Scott McCormick Testimony.* The Applicant representative waived objection to the recommended conditions. *Allen Koreis Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide the special use permit applications pursuant to TCC 2.06.010, TCC 20.54.015(2), and Revised Code of Washington (RCW) 36.70.970.

Special Use Permit Criteria for Review

The Hearing Examiner may approve an application for a special use permit in the Lacey Urban Growth Area only if the following general standards set forth in TCC 21.87.035 are satisfied:

1. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans.
2. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
3. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 - a. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed

to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though the adverse effects may occur.

- b. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

Wireless Communications Facilities Standards

Pursuant to TCC 20.33.100, Design standards for ground mounted equipment structures, the following standards apply to ground mounted equipment associated with freestanding WCFs and remote freestanding WCFs/antenna support structures.

1. Maximum Height. Ground mounted equipment structures shall not exceed ten feet in height.
2. Location, Design, and Color.
 - a. Ground mounted equipment cabinets/structures that would be visible from adjacent residential properties or public rights-of-way shall be partially buried, to the extent the seasonal high ground water level permits, of the smallest size possible and of a color, nonreflective material, texture, and architectural design so as to camouflage, conceal, or otherwise make the structure compatible with the setting and any immediately adjacent structure, as determined by the approval authority.
 - b. Equipment cabinets/shelters associated with WCFs/antenna support structures in rights-of-way or camouflaged WCFs/antenna support structures shall be buried or located, to the extent possible, to take advantage of the screening afforded by existing structures and vegetation. Ground mounted equipment cabinets/shelters shall be located outside of rights-of-way unless the approval authority determines that the proposed facilities, including associated screening, will not impede existing and planned road, bicycle, pedestrian, and utility facilities nor obstruct motorists' view of the travel lanes (also see TCC Section 20.07.070, Use Limitations on Corner Lots). The portion of the equipment structure/fencing that would be visible from adjacent rights-of-way or parcels occupied or zoned and developable for residential or commercial use shall be screened with evergreen shrubs and/or trees, and/or berms (also see Section 20.33.080(7)). This vegetation shall be of a type, size, and spacing so that within three years of planting (along with any berm or other landscaping feature) it forms a continuous screen as tall as the equipment structure and any associated fencing.
 - c. Equipment cabinets/structures must meet all building setbacks, screening and other standards of the underlying zoning district, except where they conflict with specific requirements of this chapter.

Conclusions Based on Findings

1. SUP: Wireless communication facilities are a permitted special use in the RRR 1/5 zoning district, and the existing WCF operates under a valid SUP. As proposed, the addition of a concrete pad and generator would be placed wholly within the existing equipment compound and would not be visible from off-site. No change to WCF tower height, staffing, or site access are proposed. EHD review of the project raised no concerns about the proposal's ability to comply with applicable noise standards. The facility would continue to generate approximately one monthly vehicle trip for maintenance. Neighboring property owners and affected Tribes were notified of the proposal and no concerns were raised. As conditioned, the facility would not result in additional demand on or for public infrastructure or services. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, and 15.*
2. Wireless Communications Facilities Use-Specific Standards: The proposal would add ground equipment only to an existing WCF on a 3.35-acre parcel. The proposed ground equipment would be enclosed within the fenced lease area, be under ten feet in height, and remain in compliance with applicable zoning setbacks. As proposed and conditioned, the facility would be consistent with the use-specific standards established for WCFs as well as with the intent of the County's WCF regulations.³ The acoustic report and structural design calculations included in the application materials, together with review and recommended approval from the appropriate County departments, demonstrate that the proposal was reviewed for compliance with all regulations intended to protect public health and safety on and off the site. Site soil sampling indicate that the project location is not contaminated from former industrial activity in the region, and thus that development could not disturb contaminated soil to the public detriment. *Findings 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, and 15.*

DECISION

Based on the preceding findings and conclusions, the requested special use permit to install a 30 kilowatt emergency backup diesel generator and automatic transfer switch on a proposed four-foot by ten-foot square foot concrete pad within the fenced area of an existing cell tower on leased property at 2526 Willa Street NE, Olympia, Washington is **GRANTED** subject to the following conditions:

³ Pursuant to TCC 20.33.010, the purposes of the County's Wireless Communications Facilities chapter are to:

1. Manage the location of WCFs, radio, television and automated meter reading antenna support structures, antennas, and equipment structures in the county by providing standards for their placement, design, construction, modification, and removal; 2. Accommodate WCFs, and radio, television and automated meter reading facilities operating consistent with Federal Communication Commission (FCC) guidance and meeting the standards of this chapter to serve the routine and emergency communications needs of county residents; 3. Protect residential, historic and other land uses, neighborhood character, aesthetic quality, property values, and the quality of life from potential adverse impacts of WCFs and other antenna support structures through careful siting, design, screening and camouflaging techniques, and by encouraging clustering of WCFs and other antenna support structures in remote and industrial areas; 4. Minimize the total number of antenna support structures by requiring, to the extent feasible, co-location of new facilities on freestanding and remote freestanding WCFs and other antenna support structures; 5. Protect public health and safety consistent with federal, state, and local regulations; and 6. Avoid potential damage to adjacent properties through sound engineering practices and the proper siting of WCFs and other antenna support structures.

1. The proposed project must comply with the noise standards of Thurston County Code, Chapter 10.36 and Washington Administrative Code, Chapter 173-60.
2. The proposed diesel generator must meet all storage and secondary containment requirements of Article VI of the Thurston County Sanitary Code and Chapter 24.10, Sections 24.10.50 and 24.10.120 of the Thurston County Critical Areas Ordinance.
3. The wireless communications facility shall remain in compliance with the Thurston County Wireless Communication Facilities and Antenna Support Structure Chapter (TCC 20.33).
4. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that approved by the Hearing Examiner will require approval of a new or amended special use permit. The Community Planning & Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECIDED January 27, 2020.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$750.00** for a Request for Reconsideration or **\$1,051.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. _____
Appeal Sequence No.: _____

☐ Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____ 20____, as an APPELLANT in the matter of a Hearing Examiner's decision
rendered on _____, 20____, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$750.00 for Reconsideration or \$1,020.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____ 20____.