

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SNOHOMISH**



In the Matter of the Application of) No. 06-15-CUP
)
Frank Mandt, Vinculums Services, Inc.,) Verizon Wireless Facility
on behalf of Verizon Wireless)
)
For Approval of a Conditional Use Permit) **POST-HEARING ORDER**

SUMMARY OF ORDER

On July 31, 2015, the City of Snohomish Hearing Examiner held an open record hearing on a conditional use permit (CUP) request from Verizon Wireless. Verizon Wireless (Applicant) is seeking the CUP to construct a 750 square foot, unmanned wireless communications facility housing seven equipment cabinets and one natural gas generator, and a 100-foot monopole with 12 attached panel antennas, at 402 Second Street. After collecting exhibits and hearing testimony from the City’s Associate Planner, numerous citizens, and the Applicant Representative, the Hearing Examiner ruled, under Snohomish Municipal Code (SMC) 14.95.070, that the hearing should be continued to allow the Applicant to provide additional information, and for the City and public to comment on that information.

SUMMARY OF RECORD

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Brooke Eidem, City Associate Planner
- Frank Mandt, Applicant Representative
- Rolf Rautenberg
- Karen DeYoung
- Colleen Dunlap
- John Dunlap
- Earl Brown
- Mitch Cornelison
- Michael Tyrell

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 23, 2015
2. Applications:
 - a. Conditional Use Application, received February 27, 2015
 - b. Land Use Application, received February 27, 2015
 - c. Land Use Application, received April 22, 2015
3. Affidavit of Adjacent Property Owners, received February 27, 2015

*Post-Hearing Order
City of Snohomish Hearing Examiner
Verizon Wireless CUP, No. 06-15-CUP*

4. Project Narrative, Conditional Use Permit, dated February 27, 2015
5. Radiofrequency Analysis, received February 27, 2015
6. Photo Simulations, received February 27, 2015
7. Site Plans (6 sheets), received March 9, 2015:
 - a. Vicinity Map and Project Information (Sheet T-1), dated October 3, 2014
 - b. General Notes and Symbols (Sheet T-2), dated October 3, 2014
 - c. Topographic Survey, dated August 19, 2014
 - d. Proposed Site Plan (Sheet C-1), dated October 3, 2014
 - e. Proposed Compound and Equipment Plans (Sheet A-1), dated October 3, 2014
 - f. Proposed Elevation (Sheet A-2), dated October 3, 2014
8. Notice of Incomplete Application, dated March 26, 2015
9. Notice of Complete Application, dated April 22, 2015
10. Notice of Application and SEPA Determination of Nonsignificance, issued May 6, 2015, with attached notice materials
11. SEPA Determination of Nonsignificance, issued May 6, 2015, with attached SEPA checklist
12. Email from Frank Mandt to Brooke Eidem, dated May 4, 2015, with email string
13. Letter from Elisabeth A. Tobin, Snohomish County Public Utility District No. 1, to Owen Dennison, dated May 11, 2015
14. Email from Owen Dennison to Elaine Somers, dated May 15, 2015, with email string
15. Determination of Concurrency, dated June 11, 2015
16. Design Review Analysis, dated June 24, 2015
17. Determination of Applicable Public Park Standards, dated July 20, 2015
18. Email from Owen Dennison to Brooke Eidem, dated May 21, 2015, with email string
19. Email from Frank Mandt to Brooke Eidem, dated May 27, 2015, with email string
20. Letter from Beth Jarvis, dated July 13, 2015
21. Email from Karen DeYoung to Owen Dennison, dated July 15, 2015, with email string
22. Email from Colleen Dunlap to Karen Guzak, dated July 15, 2015, with email string
23. Email from Owen Dennison, dated July 17, 2015, with email string
24. Email from Eric Fournier to Owen Dennison, dated July 22, 2015
25. Site photos, undated
26. Notice of Public Hearing, issued July 15, 2015 (with attached notice documents)
27. Map, undated
28. Property Information, undated
29. Letter from Colleen and John Dunlap, dated July 23, 2015
30. Letter from Karen DeYoung, dated July 31, 2015
31. Letter with attached information from Rolf Rautenberg, dated July 31, 2015
32. Letters from Colleen and John Dunlap, dated July 31, 2015

Rolf Rautenberg also prepared an illustrative exhibit for the hearing: A 1/12th scale model of the proposed wireless facility and monopole. Photographs of this exhibit were taken for the hearing file.

BACKGROUND

Application and Notice

1. Frank Mandt, Vinculums Services, Inc., requests a conditional use permit (CUP) on behalf of Verizon Wireless (Applicant) to construct a 750 square foot unmanned wireless communications facility housing seven equipment cabinets and one natural gas generator, and a 100-foot monopole with twelve attached panel antennas, at 402 Second Street.¹ *Exhibit 1, Staff Report, page 2; Exhibit 4; Exhibit 7.*
2. The City of Snohomish (City) determined that the CUP application was complete on April 22, 2015. The City provided notice of the application by posting notice in City Hall and on the City's website; mailing notice to the Applicant and property owners within 300 feet of the property; and publishing notice in *The Herald* on May 6, 2015. The City provided notice of the open record hearing by posting notice in City Hall and on the City website; mailing notice to the Applicant and all property owners within 300 feet of the property; and publishing notice in *The Herald* on July 15, 2015. *Exhibit 26.*
3. The City received comments from the public in response to the notice materials. Some expressed concern with the visual impacts of the proposed 100-foot monopole. Some noted that the monopole would be out of character for the City and thought alternatives, such as use of a Distributed Antenna System (DAS), would be more appropriate. *Exhibits 18 through 24.*

State Environmental Policy Act Review

4. The City acted as lead agency to determine the environmental impacts of the CUP proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City reviewed the environmental checklist and other information on file and determined that, through compliance with City ordinances and state law, the proposal would not have a probable significant adverse impact on the environment. The City issued a Determination of Nonsignificance (DNS) on May 6, 2015. The City provided notice of the DNS by posting notice in City Hall and on the site; mailing notice to the Applicant and all property owners within 300 feet of the property, and to the parties of record; and publishing notice in *The Herald* on May 6, 2015. *Exhibit 10; Exhibit 11.*

Comprehensive Plan and Zoning

5. The property is designated Public Park (PP) by the City Comprehensive Plan. There are no specific goals or policies associated with the PP designation in the Comprehensive Plan. The property is publicly owned, however, and the City specifically identified the following Comprehensive Plan policies as relevant to the proposal: Economic Development Policy 10.1 (maintaining the practice of working with property owners, neighborhood residents, and other interested public parties to determine requirements,

¹ The property is identified by tax parcel number 28061800402200. A legal description of the property is included with the project application. *Exhibit 2.*

create plans, and finance construction projects for public infrastructure and telecommunications facilities); Community Facilities and Services Policy 4.6 (maintaining the practice that public facility development will promote public safety through the use of modern design and construction practices); Parks, Recreation, & Open Space Policy 4.7 (prohibiting aerial utilities and telecommunication transmission infrastructure that results in unmitigated adverse impacts); and Utilities Policy 4.5 (maintaining a practice that the City encourages system design practices intended to minimize the number and disruption of interruptions to customer service).² *Exhibit 1, Staff Report, pages 7 and 8.*

6. The site is also designated Public Park (PP) by the City’s zoning ordinances. The PP designation is intended primarily for public recreational development. *SMC 14.25.090. Table 14.207 SMC.* However, under *SMC 14.207.125(5)*, major communications facilities must not interfere with the use of the property for recreational purposes. City staff determined that, because the proposed facility would be located “in the rear of the Boys and Girls Club building in an un-programmed area of the site adjacent to the skate park,” the facility would not interfere with the existing recreational use of the site. *Exhibit 1, Staff Report, page 4.*
7. *SMC 14.210.330* provides dimensional standards for most land use designations in the City. The PP designation, however, is unique among zoning designations in that some dimensional standards are intended to be prepared on a site-specific basis. *SMC 14.210.235B* directs the City Planner to make a site-specific determination of appropriate dimensional standards based on existing and proposed land uses and facilities, nearby development regulations, and “limitations or controls upon construction, land use, environmental protection, transportation systems, etc. warranted to minimize the potential for unmitigated adverse impacts.” Owen Dennison, the City’s Director of Planning and Development Services, analyzed the proposal and determined that the “proposed building addition will have greater setbacks from the site and lot boundaries than the existing building” and, accordingly, the setbacks would be “adequate to minimize the potential for adverse impacts.” Mr. Dennison specifically noted that *SMC 14.210.330* does not include building height as a variable standard and that *SMC 14.210.180* excludes utility poles from the normal 35-foot height limitation in the PP zone. *Exhibit 17.*

Conditional Use Permit

8. The Snohomish Municipal Code does not have separate criteria related specifically to wireless communication facilities. Instead, such facilities must meet the following criteria common to all conditional use permit applications:

² The City identified the following additional goals and policies as relevant in an attachment to its staff report: Environmental Development Policies 10.2 and 10.3; Community Facilities and Services Policy 3.2; Parks, Recreation, and Open Space Goal 4; Land Use Goal 8; Land Use Policies 1.1, 8.1, and 8.4; Transportation Policies 1.5 and 4.5; Utilities Goals 4, 5, and 6; Utilities Policies 2.7, 2.8, and 4.3; Capital Facilities Goal 1; and Capital Facilities Policy 2.7; Policy Plan Implementation Policies 1.6 and 1.7. *Exhibit 1, Staff Report, Attachment A.*

1. Adequate streets, sidewalks, transit stops, open spaces, parks, schools, water, sewer, and stormwater facilities shall be available to the proposed development.
2. The design and appearance of the structure shall be compatible with surrounding developments that are in conformance with the land use designation.
3. The development shall be consistent with the Comprehensive Plan.
4. The development shall mitigate any significant adverse environmental impacts.
5. Concurrency requirements (SMC 14.55.030) shall be complied with.
6. The development shall be consistent with the health, safety, and general welfare.

SMC 14.65.020.B.

9. City staff determined that, generally, the application meets the CUP criteria. Staff noted, however, that a “100-foot monopole is unlikely to be consistent with surrounding development in any land use context.” The City’s staff report also states:

The perceived adverse impacts of the facility on the character of the community are more challenging to address. It is clear that the pole will be visible for an extended distance around the project site. The proposed building addition and recommended conditions of approval will reduce visual impacts on and near the site to some extent. Proposed and recommended measures will not, however, reduce the prominence of the monopole from many viewpoints in the community. The applicant has stated that a minimum height of 80 feet is necessary to meet the functional requirements of the facility due to the height of vegetation in the vicinity. By implication, an 80-foot monopole would minimize or preclude opportunities for collocation of other carriers on the facility. It is staff’s assessment that a 20-foot reduction in height would have little effect on the prominence of the tower relative to the height of structures in the vicinity of the site and that precluding collocation of other carriers may have the result of requiring other carriers to propose additional monopoles. Federal preemptions in 47 U.S. Code § 332(c)(7) also precludes local regulatory authorities from implementing regulations that “have the effect of prohibiting the provision of personal wireless services”. According to staff’s analysis, grounds for denial of the application at the proposed location based on the prominence of the monopole and resulting visual impacts would be similarly applicable to other locations in the vicinity of the site and therefore may be construed as having the effect of prohibiting the provision of wireless services.

Exhibit 1, Staff Report, pages 7 and 8.

SUMMARY OF TESTIMONY

10. Brooke Eidem, City Associate Planner, presented the application at the open record hearing. She testified that, because the City owns the property on which the facility would be constructed, the City Council would be responsible for entering into a lease

*Post-Hearing Order
City of Snohomish Hearing Examiner
Verizon Wireless CUP, No. 06-15-CUP*

with the Applicant. Ms. Eidem stressed, however, that the Planning Department has no involvement in the leasing process and the application was processed without consideration of the potential lease.

Ms. Eidem testified that the property is zoned Public Park and that there is usually a 35-foot height limit for structures in the PP zone. She also noted that the area of town where the facility would be located is subject to design standards. However, utility poles are exempt from the 35-foot height limitation and there are no design standards specific to utility poles. Because of this, the City determined that the 100-foot monopole would meet the CUP criteria and be allowed in the proposed location. Ms. Eidem noted that, from the street, you would see a building rather than the base of the monopole and that this would provide some mitigation for visual impacts. Additionally, the Applicant would plant three trees nearby that, after maturation, would provide some screening of the monopole.

Ms. Eidem explained that the City understands there is strong public opposition to the proposal and that most concerns relate to the visual impacts the monopole. She testified that, while such a large structure would certainly have visual impacts on the community, it would be difficult to mitigate for these impacts. Staff is concerned that if the application denied based on visual impacts, it would effectively prohibit installation of any additional wireless communication facilities within the City, which may be contrary to federal law.

Ms. Eidem noted that there probably are ways to make the proposal more consistent with surrounding development. For instance, there is an existing communications facility attached to an 80-foot electrical pole at the nearby police station that has less visual impact because it is part of the City's existing grid of electrical poles. She noted, however, that the Applicant chose the proposed location and that the City does not suggest alternative locations as part of the permitting process. Ms. Eidem also noted that the City is concerned that if the height of the monopole were reduced, it would eliminate the potential for collocation of other wireless facilities. This could lead to additional monopoles in the area. *Testimony of Ms. Eidem.*

11. Rolf Rautenberg testified in opposition to the proposal and stressed that the visual impacts of the pole would be dramatic. To emphasize this point, Mr. Rautenberg prepared an illustrative exhibit for the hearing: a 1/12th scale model of the proposed facility showing the monopole's relative height to the Boys and Girls Club facility, a person, and an automobile on the street. Mr. Rautenberg believes that alternatives, such as DAS, should be considered especially because the wireless communications industry is moving toward DAS and micro-technology. He believes monopoles are a blight and other tourist-dependent communities similar to Snohomish, such as Monterey and Martha's Vineyard, would never allow such a facility to be built. Mr. Rautenberg would like to have seen more public involvement in considering the application and believes that the Applicant failed to include appropriate information in its SEPA checklist and application addressing the potential impacts of the proposal. For instance, he noted that

the monopole could cast a 1,000 foot shadow at certain times of the day and that this would impact the City's Historic District. He believes that, with potential impacts on the Historic District, other state and federal agencies should be involved in analyzing the proposal. Mr. Rautenberg noted that he is not opposed to technology but thinks alternatives to the 100-foot monopole exist that would make more sense for the City. *Testimony of Mr. Rautenberg.*

12. Karen DeYoung testified that she is disappointed that the City would consider leasing space for a 100-foot tall monopole because such a structure would be out of character with an historic town. She believes the City should have made greater efforts to notify the public about the proposal, especially because the FCC's own guidelines stress the importance of public involvement. She emphasized that, because parts of the City are eligible for consideration as an historic site, a State Historic Preservation Officer (SHPO) should have been consulted and the proposal should be reviewed for compliance with the National Historic Preservation Act (NHPA) of 1966. Ms. Eidem responded that the City followed its normal notice procedures for the proposal, as required by the municipal code, and also set up a special page on the City's website discussing the proposal. She also noted that the proposed location is approximately 1,000 feet from the National Historic District. *Testimony of Ms. DeYoung; Testimony of Ms. Eidem.*
13. Colleen Dunlap expressed similar concerns to Ms. DeYoung. She testified that, given the historic nature of the town, a 100-foot monopole would look anachronistic. She noted that Old Snohomish is not on the historic registry but it is eligible and should be considered under the NHPA. Ms. Dunlap testified that she believes alternative sites and technologies should have been considered and that the City should have engaged an independent expert to analyze the proposal because staff has admitted that they lack the expertise to analyze the technical requirements for wireless facilities. She also stressed that the Applicant's proposed mitigation is woefully inadequate as evergreen trees grow at a rate of approximately 1 to 3 feet a year and, by the time the trees planted as mitigation fully matured, the monopole would likely no longer be in use. *Testimony of Ms. Dunlap.*
14. Ms. Dunlap's husband, John Dunlap, also testified in opposition to the proposal. He noted that, while driving around, he has only noticed about 3 percent of the area that suffers from "deadspots." He believes other options exist for siting the facility but understands why a carrier would prefer to own their own monopole because then the carrier could derive revenue from leasing space on the monopole to other carriers. Mr. Dunlap is concerned that no analysis was done on alternative locations, alternative monopole heights, or on ways to camouflage the facility to better suit the neighborhood. *Testimony of Mr. Dunlap.*
15. Earl Brown testified that he agrees that alternatives should be looked at, including ways to camouflage the monopole. *Testimony of Mr. Brown.*

16. Mitch Cornelison testified that he agrees with the concerns expressed by other area residents and would like to see the CUP denied. He noted that putting a facility comparable to the size of a small house on public land is a mistake and would interfere with the potential to increase the size of the Boys and Girls Club. Mr. Cornelison stressed that most other towers are located in industrial areas of the City and this tower would be significantly taller than any other communications facilities in the older part of town. He is concerned that the design of the tower, with significant massing of antenna panels at the top of the monopole, creates significant visual impacts. Mr. Cornelison believes the structure should be subject to review by the Design Review Board, that the Applicant should be required to provide proof that insufficient coverage exists in the area, and that additional information on project impacts and potential revenue impacts should be analyzed. He also noted that public turnout for controversial hearings like this one would likely be better if such hearings were scheduled in the evening. *Testimony of Mr. Cornelison.*
17. Michael Tyrell testified that, after seeing the illustrative exhibit prepared by Mr. Rautenberg, he felt compelled to speak. He explained that he appreciates that the City goes to great lengths to protect the Historic District but worries that the City's failure to similarly protect other neighborhoods, like the one proposed for the monopole, will create "second class neighborhoods." He stressed that he does not want this monopole to be the new face of Snohomish. *Testimony of Mr. Tyrell.*
18. Applicant Representative Frank Mandt testified in response to the concerns raised by the public. Mr. Mandt has worked on siting wireless communication facilities for 30 years and has been involved in hundreds of wireless facility applications. He explained that the Applicant recognizes that the proposal would have a visual impact but that there are very few things that can be done to mitigate such an impact. He noted that, during the pre-application process, the Applicant proposed using an 80-foot stealth monopole designed as a flagpole. Such a monopole, however, would preclude the possibility for collocation so City staff requested an alternative design. When questioned by the Hearing Examiner, Mr. Mandt recognized that collocation usually only occurs between 25 and 40 percent of the time. He noted, however, that he works on leasing and permitting and is not an expert on radiofrequency (RF) or other technical issues. Although the Applicant's materials (Exhibit 5) do not explain what tower height was used to calculate RF coverage needs, Mr. Mandt stated that the RF analysis was done using an 80-foot monopole height.

Mr. Mandt explained that he looked at alternative sites when putting together the application but could not find an existing site in the area that would allow for collocation. When asked about the potential to site the facility on top of an existing utility pole, he responded that Snohomish Public Utilities District (SnoPud) has been wary of allowing this in the past. He also stated that SnoPud would probably object to placement of a monopole near existing utility poles within the City right-of-way. Ms. Eidem responded that she is unaware of any issues with siting additional poles within the City's right-of-way.

Mr. Mandt also discussed the need for adequate ground space for equipment. He stated that a 750 square foot building is normal and that the Applicant's construction team requested that much space. He also noted that DAS and microcells would probably not work in the area because a tower is still needed as part of that technology. He further opined that, if DAS would have worked here, the Applicant's RF engineers would have proposed it. Finally, Mr. Mandt noted that the Applicant is aware that Old Town is considered a historic place and that the Applicant prepared a National Environmental Policy Act (NEPA) analysis analyzing impacts on Old Town. *Testimony of Mr. Mandt; Testimony of Ms. Eidem.*

ORDER

Based on the exhibits and testimony received at the open record hearing, as summarized above, the Hearing Examiner determined that the hearing should be continued, under SMC 14.95.070, to allow for the gathering and submission of additional information. Specifically, the Applicant shall provide the following additional information for the record:

1. More detailed RF analysis. This analysis should show coverage at various heights – at least 60, 80, and 100 feet – to better determine the minimum height necessary for the monopole.
2. An analysis of design alternatives. This analysis should provide information on alternative designs, including the Applicant's original proposal for a stealth flagpole.
3. Information on the size of the equipment shed. The Applicant should explain why it considers 750 square feet the necessary size for the shed and why a natural gas generator is required for the proposal as opposed to a battery-only system which could be located on the pole.
4. Information on the feasibility of DAS. The Applicant should explain the technical reasons why DAS is not a viable alternative for this location or, if it is viable, why it is not proposed.
5. Information on impacts to a National Historic District. The Applicant should determine whether the proposal should be reviewed for compliance with the National Historic Preservation Act of 1966 and whether a State Historic Preservation Officer should be consulted and, if not, why not. The Applicant should also determine whether other federal agencies tasked with preserving historic areas should be involved in reviewing the proposal and, if not, why not.
6. More information on visual impacts. The Applicant should perform a balloon test as this would allow the visual impacts of the proposal to better be assessed from areas throughout the city.

7. Information from SnoPud. The Applicant should provide information from SnoPud explaining why SnoPud would object to locating wireless facilities on existing electric utility poles or within existing rights-of-way near electric utility poles. This information should include any lease or franchise agreements and letters from SnoPud stating reasons why an existing pole could not be used.

The Applicant should endeavor to provide this information within 30 days of the signing of this order. If the additional information is not provided, the application may be dismissed. After the Applicant provides this information to the City, the City shall make the information available to the public, and the City and the Applicant shall propose a date to reopen the continued hearing not sooner than 14 days after receiving the information. Due to heightened public interest in the proposal, an evening hearing should be considered.

Decided this 7th day of August 2015.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center