

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2008-0023
Application for)
)
AT&T Mobility) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct an unmanned radio telecommunications facility consisting of a new 120' steel flagpole with three radomes which will accommodate two sets of three panel antennas for a total of six for AT&T Mobility, and one radome will accommodate existing "Startouch" equipment that will be relocated from an existing flagpole that will be removed as part of this project. A leased area adjacent to the pole with outdoor radio equipment is proposed within an enclosed chain link fence with vinyl privacy slats.

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: AT&T-Mobility

Property Address: 7056 Portal Way
Ferndale, WA

Legal Description: Located within the NE¹/₄ of the SE¹/₄ of Sec6, T39N, R2E, W.M.
Assessor's Parcel No: 390206215185

Zoning: Light Impact Industrial (LII)

Comprehensive Plan: Urban Growth Area

Subarea: Cherry Point / Ferndale

SEPA Review: Determination of Nonsignificance, issued April 9, 2009

AUTHORIZING ORDINANCES:

Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter 12, Development Standards
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

Legal Notices: Posted – May 6, 2009
Mailed – April 30, 2009
Published – December 12, 2008, and May 7, 2009

Hearing Date: May 20, 2009

Parties of Record:

AT&T Mobility
19801 SW 72nd Avenue, #200
Tualatin, OR 97062

Sunny Yim /PTS
568 1st Avenue South, #650
Seattle, WA 98104

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Email from Wilson dated May 5, 2005 to Magner re: change in agent
 - 1-2 Supplemental Application
 - 1-3 Letter of Completeness, dated December 10, 2008
 - 1-4 Property Owners
 - 1-5 Form Memo to Technical Review Committee, dated December 12, 2008
 - 1-6 Form letter to property owners, dated December 12, 2008

- 1-7 Preliminary Traffic Info
- 1-8 Preliminary Stormwater Proposal
- 1-9 Receipt
- 1-10 Cover letter dated December 8, 2008 from Applicant

- 2 Site Plans

- 3 BE0157 Current Legend and Proposed

- 4 Map showing Current and Planned Service

- 5 Whatcom County Utilities Planning and Advisory Committee, Vacancies and District Representatives, dated July 28, 2008

- 6 Universal Licensing system – FCC, dated December 8, 2008

- 7 Federal Airways & Airspace Summary Report, dated September 3, 2008

- 8 Non-Ionizing Electromagnetic Exposure Analysis & Engineering Certification, dated October 19, 2008

- 9 Quit Claim Deed

- 10 Option and Lease Agreement

- 11 Existing and Proposed East Elevation Photo

- 12 Aerial Photo – Drayton Harbor

- 13 Vicinity Map

- 14 Zoning Map

- 15 Legal dated December 12, 2008

- 16 SEPA, DNS, dated April 9, 2009

- 17 Legal, dated May 7, 2009

- 18 Certificate of Mailing, dated April 30, 2009

- 19 Certificate of Posting, dated May 6, 2009

- 20 Staff Report, dated May 8, 2009

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 #20, dated May 8, 2009, a copy of which is attached hereto and incorporated herein by this reference.

With one correction, the Applicant indicated that the Staff Report was factually accurate. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter.

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 construct of an unmanned radio telecommunications 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 attached to 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 AT&T Mobility for the proposed construction of an unmanned telecommunications facility consisting of a 120-foot steel monopole, with a total of six radomes to be used by AT&T Mobility and one radome to be relocated from an existing flagpole that will be removed as part of this proposal. The subject property is located on Assessor's Parcel No.390206 215185, 7056 Portal Way, Ferndale, Washington, subject to the following conditions:

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. The Applicant shall obtain all necessary permits prior to construction.
3. All equipment shall comply with the State Noise Level Standards under the Washington

Administrative Code (WAC) 173.6.

4. 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 of Planning and Development Service, 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. This bond shall be submitted to Planning and Development Services prior to issuance of a building permit for the facility.
5. Upon completion of all conditions, the Applicant shall request and obtain a Certificate of Occupancy from Planning and Development Services for the proposed use, to finalize this permit.

Prior to issuance of a Certificate of Occupancy for the facility:

- a) A maintenance bond in the amount of 50% of the cost of labor and materials shall be submitted prior to release of any landscape security or issuance of a Certificate of Occupancy. This guarantee shall be in effect for two years from the date of planting in order to insure that the landscaping is maintained in a healthy growing condition and any dead or dying plants have been replaced.
 - b) The Applicant shall post required FCC signage on the site pursuant to WCC 20.13.061.
 - c) The Applicant shall demonstrate compliance with all the listed conditions.
6. If archaeological materials (e.g., bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), Lummi Nation Tribal Historic Preservation Office (LNTHPO) (384-2298) and Washington State Office of Archaeology and Historic Preservation (OAHP) (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911), LNTHPO and OAHP shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
 7. The Applicant shall comply with the conditions of the Critical Areas Administrator set forth in the memo dated December 12, 2008, unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
 8. The Applicant shall comply with the conditions of the Watershed Administrator set forth in the memo dated December 12, 2008, unless modified by the Watershed Administrator or appealed to the appropriate Agency.
 9. The Applicant shall comply with the conditions of the Whatcom County Chief Plans Examiner in the memorandum dated December 22, 2008, unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

10. The Applicant shall comply with all of the conditions set forth in the Whatcom County Division of Engineering memorandum, dated December 17, 2008, unless modified by the Division of Engineering or appealed to the appropriate agency.
11. 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 and 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 2nd day of June 2009.

Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive,
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360-676-6907, TTY 800-833-6384
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David Stalheim
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WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

May 8, 2009

The application of AT&T Mobility for a <u>Zoning Conditional Use Permit</u>		CUP2008-000023 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Summary: The applicant is requesting a Zoning Conditional Use Permit for the construction of an unmanned radio telecommunications facility consisting of a new 120' steel flagpole with 3 radomes which will accommodate two sets of 3 panel antennas for a total of 5 for AT&T Mobility, and one radome will accommodate existing "Startouch" equipment that will be relocated from an existing flagpole that will be removed as part of this project. A lease area adjacent to the pole with outdoor radio equipment is proposed within a chain link fence enclosure with vinyl privacy slats.

Recommendation: Staff recommends approval of the request, subject to the attached conditions.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: AT&T-Mobility

Property Address: 7056 Portal Way
Ferndale, WA

Legal Description: Located within the NE¼ of the SE¼ of Section 6,

Township 39N, Range 2E, W.M.
Assessor's Parcel No: 390206215185

Zoning: Light Impact Industrial (LII)

Comp. Plan: Urban Growth Area

Subarea: Cherry Pt./Ferndale

SEPA Review: Determination of Nonsignificance issued April 9, 2009

B. AUTHORIZING ORDINANCES:

1. Whatcom County Comprehensive Land Use Plan.
2. Whatcom County Code Chapter 12, Development Standards
3. Whatcom County Code Chapter 15, Building Code
4. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
5. Whatcom County Code Chapter 16.16, Critical Areas
6. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance

III. SITE DESCRIPTION

The subject property is an approximately 17 acre site and is located at 7056 Portal Way, Ferndale, Washington; approximately ¼ mile northwest of the intersection of Grandview Rd. and Portal Way. The site consists of light industrial development and the property surrounding the site is zoned Light Impact Industrial.

IV. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on December 12, 2008. Notice was also mailed to property owners within 300 feet of the site.

Public Input: During the public comment period for the Notice of Application, the County received no written comments.

Notice of SEPA Threshold Determination: The Notice of Decision for the Determination of Non-Significance (DNS) for this project was issued on April 9, 2009. The notice was also sent to state and local agencies, and Parties of Record

for the project. During the public comment period for the DNS, the County received one written comment.

- The Lummi Nation Tribal Historic Preservation Office (LNTHPO) has coordinated an internal review in response to the Notice of Application. The LNTHPO utilized records on file with the Lummi Nation's Cultural Resource Management Program. Based on the review, an archaeological assessment is not recommended at this time. While the presence of cultural resources is not anticipated, the LNTHPO requested that the standard inadvertent discovery language be included within the approval conditions.

The standard inadvertent discovery language has been added to the conditions of approval.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and the notice was included in a one-time newspaper publication.

V. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. Whatcom County codes and regulations adequately mitigate for these anticipated environmental impacts. Therefore, a Determination of Non-Significance (DNS) is the appropriate threshold determination for this project. The DNS was issued on April 9, 2009 and no appeals were filed.

VI. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS

A. Building Code (WCC Title 15)

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Whatcom County Chief Plans Examiner submitted a memo dated December 22, 2009 with conditions of approval for this proposal. The applicant shall comply with all of the conditions unless modified by the Chief Plans Examiner or appealed to the appropriate agency.

These conditions are set forth in the Conditions section of this report.

Staff has determined that, as conditioned, the project meets the requirements of WCC Title 15.

B. Critical Areas (Title 16)

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

The planner for Critical Areas Review provided a memo dated December 12, 2008 which recommended approval for this application due to the fact that the proposed development will not impact regulated critical areas because the area is substantially developed.

A copy of the memo dated December 12, 2008 is incorporated as an exhibit into this report.

Staff has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.16.

C. Development Standards (Chapter 12)

Sanja Barasic of the Whatcom County Public Works Department, Engineering Services provided a memo dated December 17, 2008 with conditions of approval for this proposal. The applicant shall comply with the conditions of the Public Works Engineering Services Section unless modified or appealed to the appropriate agency.

These conditions are set forth in the Conditions section of this report.

D. Zoning Code (Title 20)

In order for a conditional use to be approved, the use must comply with the Conditional Use Criteria of WCC 20.84.220 (1 through 8). In summary, these criteria state that the proposal must: will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations, be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area, will not be hazardous or disturbing to existing or future neighboring uses, be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that

the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community, not involve uses, activities, processes, materials, equipment and property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors, have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets, and not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

The subject site is classified as an industrial zone, and thus a high priority site per WCC 20.13.050 (3) (d).

No maximum height is established for the LII zone. However, when building height exceeds 35-feet, the setback requirements of WCC 20.80.200 (30-feet to the front property line and 10-feet to the side and rear property lines) shall be increased by one foot for each foot of building height in excess of 35-feet.

Therefore, the front yard setback will be 115 feet from the front property line along Portal Way and 115 feet from the property line along I-5 and 95 feet to all other property lines. A review of the applicant's site plan indicates compliance with these setback requirements.

There is an existing parking/ turnaround area on the site that complies with the parking size requirements of WCC 20.80.5010.

WCC 20.13.062 (8)(a-c) outlines screening requirements for wireless communications facilities, including perimeter fencing. However, WCC20.13.062 (d) allows the administrator or the Hearing Examiner to waive the requirements for the installation of screening for those sides of the facility that are naturally screened so as not to be visible from public streets or surrounding properties.

In addition, a maintenance bond in the amount of 50% of the cost of labor and materials shall be submitted prior to release of any landscape security or issuance of a Certificate of Occupancy. This guarantee shall be in effect for two years from the date of planting in order to insure that the landscaping is maintained in a healthy growing condition and any dead or dying plants have been replaced.

VII. RECOMMENDATION

Staff has determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and Washington State regulations.

As stated above staff recommends approval of the Conditional Use Application subject to the following conditions:

VIII. CONDITIONS OF APPROVAL

1. The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. The applicant shall obtain all necessary permits prior to construction.
3. All equipment shall comply with the State noise level standards under the Washington Administrative Code (WAC) 173.6.
4. 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. This bond shall be submitted to Planning and Development Services prior to issuance of a building permit for the facility.
5. Upon completion of all conditions, the applicant shall request and obtain a Certificate of Occupancy from Planning and Development Services for the proposed use, to finalize this permit.

Prior to issuance of a Certificate of Occupancy for the facility:

- a) A maintenance bond in the amount of 50% of the cost of labor and materials shall be submitted prior to release of any landscape security or issuance of a Certificate of Occupancy. This guarantee shall be in effect for two years from the date of planting in order to insure that the landscaping is maintained in a healthy growing condition and any dead or dying plants have been replaced.
- b) The applicant shall post required FCC signage on the site pursuant to WCC 20.13.061.

- c) The applicant shall demonstrate compliance with all the listed conditions.
6. If archaeological materials (e.g., bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907), Lummi Nation Tribal Historic Preservation Office (LNTHPO) (384-2298) and Washington State Office of Archaeology and Historic Preservation (OAHP) (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911), LNTHPO and OAHP shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
7. The applicant shall comply with the conditions of the Critical Areas Administrator set forth in the memo dated December 12, 2008, unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
8. The applicant shall comply with the conditions of the Watershed Administrator set forth in the memo dated December 12, 2008, unless modified by the Watershed Administrator or appealed to the appropriate Agency.
9. The applicant shall comply with the following conditions of the Whatcom County Chief Plans Examiner in the memo dated December 22, 2008 unless modified by the Chief Plans examiner or appealed to the appropriate agency:

COMMUNICATION TOWERS & UNMANNED EQUIPMENT BUILDINGS

CUP2008-00023; 12/22/08

Communications towers, supporting foundations and other structural components shall be engineered by a Washington State licensed professional Structural engineer. Calculations and each sheet of plans containing an engineered drawing shall be wet stamped by the design engineer. (a waiver from the engineering board may be accepted instead of structural engineer)

The design shall meet the 2006 International Building Code (IBC), Chapter 16 or recognized standard ANSI EIA/TIA 222-F, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, per IBC Section 3108. The Building Official has determined Whatcom County to be a special wind region, per ANSI EIA/TIA 222-F, Section 16, Note 1. The minimum design criteria shall be a basic wind speed of 85 mph; Seismic Category D-1; soil bearing per licensed geotechnical engineer soils investigation report. Analysis shall include a review of wind load in

combination with ½ inch radial ice (ANSI EIA/TIA 222-F, Loading, Section 2.3, Standards).

Engineer analysis shall include, but not necessarily be limited to foundations, tower, tower-mounted arrays, all connections, ground equipment anchorage, equipment shelter loads, etc.

Complete plans for the tower construction are required. Plans shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the IBC and all relevant laws, ordinances, rules and regulations, per IBC Section 106. Plans must include details, which indicate *how* the tower is to be erected on site.

Provide a complete analysis of the proposed site, including recommendations to achieve soil bearing capacity, stamped and signed by a Washington State licensed geotechnical engineer.

The design engineer shall specify required special inspections, per IBC Section 1704, or structural observations, per IBC Section 1709. Special inspectors shall be WABO certified. The special inspection program shall list the names of the individual firms who are to perform the inspections and indicate the special inspector's scope of responsibility, per IBC Section 109.

Special inspections may not be required where the work is done on the premises of a fabricator, registered and approved by the Building Official to perform such work without special inspection. The approved fabricator's qualification shall be contingent on compliance with submittal of information, as specified in IBC Section 1704.

The owner shall designate the engineer of record in writing. The engineer of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the structural design. A note or cover letter from the engineer of record should accompany submittal documents, which indicates that all documents have been reviewed and conform to design requirements.

Prefabricated tower and/or equipment construction shall comply with IBC Chapter 16 and Sections 1703 & 1704

10. The applicant shall comply with all of the conditions set forth by the Whatcom County Division of Engineering in the memo dated December 17, 2008 unless modified by the Division of Engineering or appealed to the appropriate agency.

Report prepared in coordination with the Technical Review Committee by:

Brenda Wilson

Senior Planner