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BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE

In the Matter of the Application of)
)
VERIZON WIRELESS)
)
For a Conditional Use Permit for)
Removing an Existing Cellular Pole)
And Transferring the Installation to)
A Light Standard at the Southwest)
Corner of Bellevue High School's)
Football Stadium)

FILE NO: 10-110093 LB

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

SUMMARY

1. Decision. The application is **APPROVED**, subject to conditions.

2. Proposal. Verizon Wireless seeks approval for the installation of a wireless communications facility (WCF) atop an extended light standard at the southwest corner of Bellevue High School's football stadium. The new pole is needed to replace an existing 82-foot pole that interferes with development for the approved new high school facility. The new school building will cantilever out into the parking lot where this existing pole is located. The extended light standard which will serve as the replacement pole will be 120 feet tall, with two flush-mounted 3-panel antenna arrays at the top.

The replacement pole will be located approximately 210 feet away from the site of the existing pole, necessitating its treatment as a new WCF support structure. A Conditional Use Permit is required because the new WCF support structure is within a residential zoning district.

The height of the pole will be sufficient to accommodate co-location. An agreement has been reached for AT&T to install two 3-panel arrays between Verizon's antennas, at the top, and the stadium lights, which will be maintained at their current elevation.

September 2, 2010

**CITY OF BELLEVUE
450 – 110th Avenue NE
P. O. Box 90012
Bellevue, WA 98009 9012**

1 The mechanical equipment associated with Verizon's facility will be placed inside an
2 existing Bellevue School District storage building near the light pole. Verizon will bear the
3 expense of enlarging the building.

4 The relocated antennas will maintain Verizon's wireless service to residents within the
5 service area. AT&T's installation will be handled through a separate process.

6
7 **3. Procedure.** The application was filed on April 22, 2010 and deemed complete on
8 May 10, 2010. Notice of Application was published on May 20, 2010.

9 A public meeting was held on June 3, 2010. No one from the public attended. Only one
10 item of correspondence was received, asking for clarification regarding the height of the pole and
11 the review process to be followed.

12 A Determination on Non-Significance (DNS) was issued by the City on July 29, 2010.
13 No comments on the DNS were received. The DNS was not appealed.

14 The Hearing Examiner's hearing was held on August 19, 2010 upon due notice. The
15 City's Staff Report was presented by Antoinette Pratt, Senior Planner. Jessica Pierce of Ryka
16 Communications, testified for Verizon. Jack McLeod, Facilities Director, testified for the
17 Bellevue School District. There was no public testimony.

18 **FINDINGS OF FACT**

19 1. The factual matters set forth in the foregoing **SUMMARY** are adopted by the
20 Examiner as findings.

21 2. Bellevue High School is located at 10416 Wolverine Way on a 40.2 acre campus
22 situated atop a ridge above Bellevue Way on the west and 108th Avenue SE on the east. The
23 football stadium occupies the southwest portion of the site and is at an elevation about 40 feet
24 lower than the academic campus to the north. The playing field is surrounded by a track. The
25 stadium is bordered by SE 10th Street and 107th Avenue SE.

26 3. The school campus is zoned Single Family Residential (R-4) and is surrounded by
27 single-family uses to the north, south and east. There is multifamily zoning along most of the
28 western boundary, with a small pocket of Office zoning at the northwest corner. The campus is
29 bordered by vegetative buffers on its east and west boundaries.
30

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1 4. The new WCF will replace an existing light standard at the southwest corner of the
2 football stadium. Stadium lighting will be remounted on the new pole at its present height of
3 about 82 feet.

4 5. The existing shed that will be used for the WCF's mechanical equipment is located
5 adjacent to the track, a few feet southeast of the new pole. Verizon will make it 14 feet longer to
6 accommodate WCF equipment in the center. The space for equipment storage by the school will
7 not be reduced. The football, track and grandstands will be unaffected by the new installation.

8 6. The 120-foot height of the replacement antennas will serve Verizon's coverage needs
9 while making co-location possible by AT&T. For these functions, the height is the minimum
10 necessary for effective function of the provider's network

11 7. Replacement of the existing WCF is needed because, as the School District's
12 Facilities Director testified, the present pole (installed in 1984) if left in place would be located
13 in the middle of the art room at the renovated school.

14 8. Construction on the new high school building is underway. While the instant
15 application is being reviewed, Verizon has been granted a Temporary Use Permit for a Cell on
16 Wheels so that it can maintain its signal during the transition to the replacement WCF. The Cell
17 on Wheels is located in the shot put area on the campus, southwest of the planned new building.
18 Verizon may maintain this temporary facility until the permanent replacement is approved and
19 operational.

20 9. The Staff Report thoroughly reviews the consistency of proposed facility with the
21 Comprehensive Plan and finds that the proposal is supported by the Plan. The Hearing Examiner
22 concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated
23 herein as though fully set forth.

24 10. Particular note is taken of Policy UT-43 which encourages consolidation of cellular
25 facilities. The City's policy is mirrored by a School District's policy that favors co-location of
26 cellular facilities at the high school in order to limit the number of poles. In this case, the
27 District specifically asked Verizon to modify its application to allow AT&T to co-locate on the
28 extended light standard

29 11. The design of the proposed facility is compatible with and responds to the character,
30 appearance, quality of development, and physical characteristics of the subject property and

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1 immediate vicinity. The taller pole will be visible from the stadium and from nearby residences.
2 However, in a setting that already includes a number of tall light poles, this taller pole will not
3 introduce a significant visual intrusion. The new pole will be same color as the other light
4 standards around the field. The present WCF pole is of pressure treated wood. The new
5 extended light standard will be of steel, matching other stadium light poles.

6 12. The proposed facility will be served by adequate public facilities, including streets,
7 fire protection and utilities. The public facilities needed are already in place.

8 13. The proposed use will not be materially detrimental to uses or property in the
9 immediate vicinity. No public opposition was registered. No interference with neighboring uses
10 will occur.

11 14. The applicant provided a letter from the radio frequency engineer which states that
12 the facility will comply with Radio Frequency Emission Guidelines established by the Federal
13 Communications Commission. A condition of approval has been included that addresses
14 interference with existing radio systems.

15 15. As conditioned, the proposed facility will comply with the intent of the WCF
16 provisions of the Land Use Code. While located in a residential zone, it will not be situated on
17 residential property, but rather on a large open campus some distance from nearby homes. It will
18 be set back approximately 230 feet from SE 10th Street. Aesthetically, it will not introduce a
19 significantly jarring note into its setting. It will be incorporated into an existing light array and
20 will be backed by trees on one side. The site is the best available that will continue to meet the
21 service coverage provided by the pole that it replaces.

22 16. There are three other cellular installations nearby: 1212 104th Avenue SE (Bellevue
23 Church of Christ), 537 Bellevue Way (apartments) and 4110 Bellevue Way (office). Each of
24 these locations is more than 520 feet from the subject WCF site.

25 17. The Bellevue School District supports this proposal. The project is similar to
26 installations already made at Interlake and Newport High Schools. In the view of the District's
27 Facilities Director, the new pole will be an improvement aesthetically. Moreover, arrangements
28 for co-location will condense the footprint of WCF facilities on site. The facility will provide a
29 revenue source for the District.

30 18. Any conclusion herein which may be deemed a finding is hereby adopted as such.

September 2, 2010

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CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. Under the Land Use Code this is a Process I decision. LUC 20.35.015.B.1

2. The requirements of the State Environmental Policy Act (SEPA) have been met.

3. The proposal, as conditioned, meets the general criteria for Conditional Use Permit approval. LUC 20.30B.140.

4. Under all the circumstances, the proposal is consistent with the Code provisions for the siting of wireless communication facilities. LUC 20.20.195.

5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. **Disturbance.** The applicant shall fully restore, to the satisfaction of the City of Bellevue, any areas disturbed or damaged during construction or future maintenance of the proposed facility. LUC 20.20.195D.4c.

2. **Land Use Exemption.** Prior to the approval of any ancillary permit for AT&T to co-locate on this antenna, a LUX application reviewing the proposed design shall be submitted for staff review and approval. LUC 20.30B.175.

3. **Right of Way Use Permit.** The applicant will be required to obtain a right-of-way use permit from the City of Bellevue Transportation Department, Right of Way Division, before the issuance of any clearing and grading, building, foundation, or demolition permit. In some cases, more than one right-of-way use permit may be required, such as one for hauling and one for construction work within the right-of-way, including but not limited to the following:

- a) Designated truck hauling routes.
- b) Truck loading and unloading activities.
- c) Hours of construction and hauling.
- d) Continuity of pedestrian facilities.
- e) Temporary traffic control and pedestrian detour for construction activities.
- f) Street sweeping and maintenance during excavation and construction.
- g) Location of construction fences.
- h) Parking for construction workers.
- i) Construction vehicles, equipment, and materials in the right-of-way.

1 j) All other construction activities as they affect the public street system.
2 Additionally, the clearing and grading permit requires a calculation of the amount of material to
3 be imported/exported. BCC 14.30 and BCC 14.60.250.

4 **4. Radio Frequency Interference.** If this telecommunication system causes
5 interference problems with any of the existing radio systems for the City of Bellevue, this system
6 will be required immediately to shut down and shall remain shut down until the interference can
7 be removed or corrected. FCC Order 04-168.

8 **5. Removal of Abandoned Sites.** The owner of this facility shall provide the Director
9 of the Development Services Department with copies of any notice of intent to cease operations
10 that is provided to the Federal Communications Commission. The entire facility shall be
11 removed by the facility owner within 90 days of the date it ceases to be operational, or if the
12 facility falls into disrepair and is not maintained. Disrepair includes deterioration of structural
13 features, paint, or general lack of maintenance, which could result in safety or visual impacts.
14 LUC 20.20.195D.8.

15
16 **DECISION**

17 The requested Conditional Use Permit is approved, subject to the conditions set forth
18 above.

19
20 DONE this 2nd, day of September, 2010

21
22 Wick Dufford
23 Wick Dufford, Hearing Examiner *SD*

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September 2, 2010

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**NOTICE OF RIGHT TO APPEAL
(Pursuant to Resolution No. 5097)**

RIGHT TO APPEAL – TIME LIMIT

A person who submitted written comments to the Director prior to the hearing or submitted written comments or made oral comments during the hearing on this matter may appeal the decision of the Hearing Examiner to the Bellevue City Council by filing a written appeal statement of the Findings of Fact or Conclusions being appealed and paying the appeal fee no later than 14 calendar days following the date that the decision was mailed. The appeal must be received by the City Clerk by **5:00 p.m. September 16, 2010.**

TRANSCRIPT OF HEARING – PAYMENT OF COST

An appeal of the Hearing Examiner’s decision requires the preparation of a transcript of the hearing before the Hearing Examiner. Therefore, the request for appeal must be accompanied by an initial deposit of \$100 per audio recording hour. Should the actual cost be less than the amount of the deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript preparation be more than the deposit. The appellant will be additionally charged.

WAIVER OF TRANSCRIPTION FEE

Upon request, the City Clerk will waive the transcription fee upon submission by an appellant of the following documentation: a) an affidavit stating that the appellant’s net financial worth does not exceed \$20,000; b) an affidavit stating that the appellant’s annual income does not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of those parts of the record the party thinks are necessary for review; and e) a statement that review is sought in good faith.

The transcription fee waiver is available to individuals over eighteen (18) years of age and is not available for corporations, companies, partnerships, or any business enterprises, community club or any social or recreational organization.

