



COUNTY COMMISSIONERS

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District One
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District Two
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District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Appeal of)	Project No. 2008100915
)	
Deone Mackenzie.)	
)	FINDINGS, CONCLUSIONS
of an Administrative Decision approving)	AND DECISION
a Special Use Permit)	
_____)	

DECISION

The appeal of the Administrative Special Use Permit allowing removal of two existing OMNI antennas and relocation of two OMNI antennas, and the addition of 12 additional panels on an existing WCF at 10547 Lundeen Rd. SW Rochester, WA. is DENIED. The Permit remains as issued. Attention is made to the Conclusions of this document for the basis of the denial and especially numbers 9-12.

BACKGROUND

On March 11, 2008, Verizon Wireless (Applicant) applied for an Administrative Special Use Permit (Administrative Permit) to remove two existing OMNI antennas and to relocate two OMNI antennas and add 12 additional panels on an existing wireless communication facility at 10547 Lundeen Rd. SW Rochester, WA.¹ As part of the application the Applicant proposed installation of a new low profile platform with antennas (twelve total, four per sector) attached to an existing 100 foot high monopole. No additional ground equipment was proposed. On August 12, 2008, the County Department of Development Services approved the Administrative Permit; On August 26, 2008, Ms. Deone MacKenzie (Ms. MacKenzie) filed a timely appeal of the Administrative Permit with the Thurston County Hearing Examiner.

On November 3, 2008, a hearing on the appeal of the Administrative Permit was held before the Hearing Examiner of Thurston County, and, on November 14, 2008, a decision denying the appeal was issued. On December 1, 2009, Ms. MacKenzie filed an appeal of the Hearing Examiner's decision to the Thurston County Board of Commissioners. On January 15, 2009, the Board held its appeal hearing, and on January 27, 2009, issued a remand to the Hearing

¹ Tract A of BLA951714TC, a portion of Section 7, Township 15 North, Range 3 West; also known as Tax Parcel Number 13507240200

Examiner because the record did not contain sufficient evidence, findings or conclusions for the Board to decide the appeal.

On February 16, 2010, the remand hearing was held.

Testimony

The following presented testimony at the February 16, 2010 hearing:
Tammy Trager, Assistant Planner, Resource Stewardship Department
Arthur Saint, P.E., Public Works Department
John Ward, Environmental Health Department
Les Cooley, Applicant Representative
Deone Mackenzie, Appellant
Mary Beth Dahl

Chuck Maduell, Davis Wright Tremaine, LLP represented the Applicant at the February 16, 2010 hearing.

Exhibits

At the open record public hearing on November 3, 2008, the following exhibits were admitted into the record:

EXHIBIT 1 Development Services Planning and Environmental Section Report with the following Attachments:

Attachment a	Notice of Public Hearing
Attachment b	Appeal received August 26, 2008
Attachment c	Letter of Administrative Special Use Permit approval dated August 12, 2008
Attachment d	Approved plans (five pages)
Attachment e	Hearing Examiner decision SUP-96-021
Attachment f	Health Department approval memorandum dated March 31, 2008
Attachment g	Third-party reviewer, Andre' Consulting, Inc., report dated July 10, 2008
Attachment h	Public comment letter from Ken & Deone Mackenzie received July 14, 2008
Attachment i	T.C. Geodata 2006 aerial identifying subject site and appellants parcel
Attachment j	Tree retention buffer easement, recorded April 29, 1997
Attachment k	T.C. Geodata 2006 "close-up" aerial of subject site
Attachment l	Photos from site visit, June 12, 2008
Attachment m	Photos from site visit, October 15, 2008

EXHIBIT 2a Photo of cell tower from Mackenzie property

EXHIBIT 2b Photo of cell tower from Mackenzie kitchen window

EXHIBIT 2c Photo looking west of Mackenzie house

EXHIBIT 2d Photo looking west of Mackenzie house

- EXHIBIT 2e Photo of cell tower from Marble Street
- EXHIBIT 2f Photo of cell tower from 88th Street
- EXHIBIT 2g Photo of cell tower from James Road
- EXHIBIT 2h Photo of cell tower from Lundeen Road looking northwest
- EXHIBIT 3 Photos of the area
- EXHIBIT 4 Photos of cell tower located in Centralia, Washington
- EXHIBIT 5 Photo Shop™ photo of cell tower with the Centralia cell tower imposed onto site
- EXHIBIT 6 March 3, 2008 Staff report of project SUPT 020800
- EXHIBIT 7 Board of Commissioners Decision of AAPL 020800, Hearing Examiner Decision on AAPL/SUPT 020800 American Tower Corporation
- EXHIBIT 8 Seven photos of area submitted by Ms. Dahl

At the open record public hearing on February 16, 2010, the following exhibits were admitted into the record:

- EXHIBIT 9 January 27, 2009 Board of Commissioners Decision on Appeal, mailed on January 30, 2009
- EXHIBIT 10 Resource Stewardship Land Use and Environmental Division Report with the following attachments:
 - Attachment a Notice of Public Hearing
 - Attachment b Hearing Examiner's Findings, Conclusions and Decision dated November 14, 2008
 - Attachment c Appeal of Hearing Examiner Decision received December 1, 2008
 - Attachment d Notice of Appeal dated December 9, 2008
 - Attachment e Revised Notice of Appeal dated December 11, 2008
 - Attachment f Order Setting Remand Hearing Procedure dated March 4, 2009
 - Attachment g Letter dated April 3, 2009 to Verizon Wireless requesting remand response. (included order setting remand hearing procedure as provided in Attachment f)
 - Attachment h Verizon Wireless Remand Order Response dated September 17, 2009, including the following exhibits:
 1. Original Application and Drawings
 2. Statement Concerning Wireless Facility
 3. Acoustical Report/Noise Study
 4. Copy of FCC Cellular License
 5. Copy of Non-Ionizing Electromagnetic Exposure Analysis (NEIR Report), 2 originals submitted with initial application
 6. Copy of Structural Report, 2 complete originals with calculations submitted with initial application
 7. Original site modification justification
 8. Updated site modification justification
 9. Photo simulations
 10. Third party review by Andre' Consulting recommending approval

11. Thurston County Health and Social Services Department recommendation of approval

- Attachment i Letter dated November 20, 2009 to Appellant (included response to remand order as provided in Attachment h)
- Attachment j Thurston County Geodata 2000 aerial photo
- Attachment k Thurston County Geodata 2009 aerial in representation of 360-degree view impact
- Attachment l Email dated January 13, 2010 from Lisa Winiecki, Thurston County Assessor's Office
- EXHIBIT 11 Color Copy of Exhibit 10, attachment h, exhibit 7, Original Site Modification Justification
- EXHIBIT 12 Color Copy of Exhibit 10, attachment h, exhibit 7, Updated Site Modification Justification
- EXHIBIT 13 Mackenzie Photos
- EXHIBIT 14 Dahl Written Statement
- EXHIBIT 15 Dahl Photos
- EXHIBIT 16 Mackenzie Written Statement
- EXHIBIT 17 Barrington Courier-Review, February 11, 1999, Information on Texas Case on Property Devaluation

Upon consideration of the testimony and exhibits submitted, the Hearing Examiner enters the following Findings, Conclusions, and Decision

FINDINGS²

Background

1. The original cellular monopole tower, which was approved by Thurston County with Special Use Permit 96-021 (SUP 96-021), permitted a freestanding wireless communication facility (WCF) with a monopole of a height of 100 feet with antennas to be located on property at 10547 Lundeen Rd. SW Rochester, WA. *Exhibit 1, attachment e*. SUP 96-021 allowed a 100-foot monopole tower, five 20-foot tall whip antennas, eight 8-foot panel antennas, one 6-foot tall dish antenna and a 12' x 20' equipment cabinet. *Testimony of Mr. Cooley (November 3, 2008): Exhibit 10, Staff Report (Feb. 16, 2010), pg. 3.* The modification is consistent with federal, state and local regulations for public health and location and design standards for freestanding wireless communication facilities and remote freestanding wireless communication facilities/antenna support structures safety. *Testimony of Mr. Cooley (February 16, 2010).*
2. The existing WCF has one sector that provides services with omni antennas. *Exhibit 10, Attachment h, #8, map 2.* With the proposed improvements, the Applicant would replace the existing omni antennas with panel antennas that would provide service in the direction of panel antennas. *Exhibit 10, Attachment h, #8, map 3.* This design allows the

² The findings are based on the record from the November 3, 2008 the February 16, 2010 hearings before the Thurston County Hearing Examiner.

Applicant to increase coverage service for the city of Rochester area. *Exhibit 10, Attachment h, #8, pg 1; Testimony of Mr. Cooley.*

3. With increased cell phone usage capacity limits are eventually reached for the equipment at cell towers. When this occurs, the options available to the carrier are to add more sectors or channels to the site, or to build new towers at nearby sites so there can offload cell traffic. *Exhibit 10, attachment h, #7 and #8.* According to the Applicant, all of the available channels of its licensed spectrum in the Rochester area of Thurston County have been used and the Applicant has opted to add additional sectors to the existing WCF on the subject property in order to increase the capacity. Without the additional capacity on the existing WCF it is likely that calls would be dropped or may not be placed in the Rochester area. *Testimony of Mr. Cooley, Exhibit 10, attachment h, #7 and #8.*
4. Upon approval of SUP 96-021, and pursuant to the permit, the Applicant in 1997 constructed the WCF that included a freestanding antenna support structure. *Testimony of Mr. Cooley (November 3, 2008.* The WCF supported wireless telephone communication Included in the construction was the monopole on which the current proposal for the removal of two existing OMNI antennas and installation of twelve panel antennas would occur. *Testimony of Ms. Trager (Feb. 16, 2010); Exhibit 1, Staff Report, pg. 2; Exhibit 10, attachment h #1.*
5. In 2003, an amendment to SUP 96-021 was approved by a Hearing Examiner of Thurston County that allowed the existing tower to be extended to 150 feet with unlimited antennas. The decision of the Hearing Examiner was appealed to the Thurston County Board of Commissioners, who, on June 2, 2003, reversed the decision and denied the application for increased tower height and unlimited antennas. *Exhibit 1, Staff report, pg. 3; Testimony of Mr. Cooley.*
6. On March 11, 2008, the Applicant applied for the Administrative Permit to remove two existing OMNI antennas and to relocate two OMNI antennas on the cellular telephone tower and to add twelve panel antennas to the WCF.. The Applicant would install a new low profile platform with the twelve new panel antennas and fourteen new coax cables that would connect to existing equipment. No additional ground equipment was proposed. *Exhibit 1, Staff Report; Exhibit 1, attachments c, d and f; Exhibit 10, attachment h site perspective (T-1).* Ms. MacKenzie submitted that the application was not informative enough to provide other property owners adequate information of the exact project. *Exhibit 16, pg. 1.*
7. On August 12, 2008, the County approved and issued the Administrative Permit the co-location of the new WCF equipment on the existing freestanding WCF. *Exhibit 1, attachment c.* The Administrative Permit was issued after the County had a third party (Andre Consulting, Inc) review of the application done. The findings of the staff based on the third party reviewer included:
 - a) The location of the tower is excellent for coverage of the surrounding city and highway. Replacement of existing antenna arrays with higher

- gain and grater directionality allows support for greater number of telephones.
- b) Replacement of the antenna will minimally influence the existing electromagnetic environment.
 - c) There is a minimal impact to the structure due to the change of the antenna elements.
 - d) There is no impact on acoustical signature of the site.
 - e) Changing the antenna to a series of high gain and directional antennas should reduce the overall exposure to the local area, which was already much less than 1% of the radio frequency radiation exposure limits.
 - f) New elements placed on each sector are designed to direct the energy into a limited area. This will result in better coverage over a smaller area, without increasing the exposure level to the immediate area.
 - g) The likelihood of any excessive exposure from this site is close to zero.
 - h) The existing fields from the transmitter already located at the site are well below the allowed FCC limit for RF exposure at cellular frequencies.

Exhibit 1, attachment c.

8. On August 26, 2008, Ms. MacKenzie filed a timely appeal of the approved Administrative Permit. *Exhibit 1, attachment b.* Her appeal included a written narrative attachment in which the following issues were identified:
- a) The proposed changes would have a negative impact on the aesthetics on the area.
 - b) The new antennas would be more noticeable “an eye sore for the adjunction neighbors and many visible vantage points affecting surround area”.
 - c) “There is no existing tree buffer that would aid in making the addition of antennas less noticeable.”

Exhibit 1, attachment b³

9. Her residence is approximately 1150 feet east of the existing pole. *Exhibit 1, Staff report, pg. 3.* The property on which the tower is located in zoned Rural Residential Resource one unit per five acres (RRR1/5). *Exhibit 1, attachment c.* The County submitted that existing WCF meets the requirements of RRR1/5 zoning and that the proposed co-location would be consistent with current requirements. *Exhibit 12, Staff Report (February 16, 2010), pg. 4.* No testimony or evidence was submitted contesting the consistency with the zoning requirements.
10. The gist of Ms. MacKenzie’s appeal was that the County did not fully address her concerns that a negative visual impact on her parcel, residence and the surrounding area

³ . In the appeal narrative, the Appellant referred to “RF exposure” that was addressed in the Andre report (Exhibit 1, attachment g) but did not identify or argue specific issues on the data from the report. *Exhibit 1, attachment b*

would result from the new antennas. She further submitted that because there is no existing tree buffer between her parcel/residence and the existing tower the new antennas would be less screened and more noticeable. She also questioned the third party review of on radio frequency (RF) exposure the effects to the environment. *Exhibit 10, Staff Report (February 16, 2010), pg. 2*

11. On November 3, 2008, a hearing on Ms. MacKenzie's appeal was held before the Hearing Examiner of Thurston County, and on November 14, 2008, a denial of the appeal was issued. *Exhibit 10, attachment b.* On December 1, 2009, Ms. MacKenzie filed an appeal of the Hearing Examiner's decision to the Thurston County Board of Commissioners. The Board held its appeal hearing on January 15, 2009, and on January 27, 2009, issued a remand to the Hearing Examiner ruling that the record did not contain sufficient evidence, findings or conclusions for the Board to decide the appeal. *Exhibit 9.* Specifically, the Board ordered that the following be addressed in the remand:
 - a) Applicant must supplement the record to show that it has complied with the application requirements of TCC 20.33.050, and this information must be included in the record.
 - b) Applicant must demonstrate, pursuant to TCC 20.33.080(1) and (2), that there is no other site that is available or technically feasible for the new platform and that denial of the new platform would have the effect of prohibiting the provision of personal wireless communication service before it can be located in the proposed residential district
 - c) Applicant must supplement the record in accordance with TCC 20.33.050(3). It is the applicant's responsibility to perform balloon testing and submit photographs as required by TCC 20.33.050(a)(iii). In addition, the applicant shall submit computer simulation of the proposed new platform as it would look if constructed in the proposed location. Ms. MacKenzie shall also have an opportunity to submit photographic evidence.
 - d) Applicant shall also submit evidence in the record to demonstrate that it complies with the design and location standards of TCC 20.33.080 (2)(a-e).

Exhibit 9

Findings that address Board's Remand Order

Remand order No. 1:

Applicant must supplement the record to show that it has complied with the application requirements of TCC 20.33.050, and this information must be included in the record.

12. The Applicant is not the landowner; the landowner, Tharon Kirby, signed the application on February 27, 2008. *Exhibit 10, Staff Report (February 16, 2010), attachment h, #1.*
13. On March 5, 2008 the "project Applicant" for the Administrative Permit signed a statement as required by Thurston County attesting that "...in the event the in the future the Applicant abandons the wireless equipment, or in the event that in the future the

wireless equipment is found by a hearing examiner or other adjudicative officer with jurisdiction to be in uncured violation of Chapter 20.33 Thurston County Code, the Applicant will remove the wireless equipment from the wireless facility support structure". The statement was acknowledged by the property owner, Tharon Kirby. *Exhibit 10, Staff Report (February 16, 2010), attachment h, #2.*

14. TCC 20.33.050(1)(C) states:

Except for a co-location proposal, evidence justifying the need for a WCF/antenna support structure in the proposed location, consistent with Section 20.33.080, and at the proposed height. This shall include, at minimum, a detailed description of the methodology used to reach the height and locational decisions. The applicant shall submit for each WCF/antenna support structure that they own or operate within two miles of the proposed site the exact location, ground elevation, and height of the antenna support structure and antennas. The applicant shall also submit a radiated signal propagation coverage plot for each of these existing facilities. The county may require additional information as necessary for a third party reviewer to verify the need for the proposed facilities, as provided for in Section 20.33.060.

Also applicable for the instant finding is TCC 20.33.050(1)(i), which reads:

Documentation that the antennas and support structure are safe and the surrounding areas will not be negatively affected by antenna/support structure failure, falling ice, or other debris.

The Administrative Permit is for a co-location proposal and TCC 20.33.050(1)(C) is not applicable. *Exhibit 10, Staff Report (February 16) pg. 5.* Notwithstanding the exception, the Applicant submitted a detailed structural analysis report of the monopole that was drafted by a Washington State licensed professional engineer. The engineer, Jason M. Seaverson, concluded that the structure meets the International Building Code 2006 standards and other industry standards. Mr. Seaverson stated that "[T]he tower and foundation can support the existing and proposed antennas with TX line distribution as described in this report". Mr. Seaverson's report very technical data and was submitted for the record. *Exhibit 10, attachment h, #6.*⁴ No evidence was presented by the County nor Ms. MacKenzie disputing the Seaverson report, and specifically that the surrounding areas would be negatively affected by antenna support, structure support, structure failure, falling ice or other debris. The County determined that the proposed co-location would not have an undue adverse impact on the surrounding area. The existing WCF is located on a large parcel of 34+ acres. *Exhibit 19, Staff Report (February 16, 2010), pg. 4.*

15. TCC 20.33.050(1)(D) requires:

Documentation that the WCF/facility, including any back-up power generators, will not cause noise or pollution exceeding the limits established by state law.

⁴ Mr. Seaverson's conclusion is stated on pg. 2 of report.

SSA Acoustics, LLP of Seattle drafted an acoustical report for the site. It included a noise survey performed in the immediate vicinity of the existing facility. The survey extended from the location of the tower to the nearest property. *Exhibit 10, attachment h, #3, pg. 2* The existing ambient noise levels were measured for 24 hours from July 18, 2009 to July 19, 2009 and were between 33-49 dB(A) during the day and 32-40 dB(A) at night. SSA then considered the noise that would result from the proposal. In doing so, the proposed new equipment of support cabinets and an emergency generator were considered. It was assumed that the support cabinets would run 24 hours per day and the emergency generator would only operate during a 15-minute maintenance period once a week. The cabinets were predicted to have daytime decibel readings less than the maximum hourly average of 55dB(A) and less than the maximum allowed nighttime reading of 45 dB(A). *Exhibit 10, attachment h, #3, pg. 2*. The emergency generator was predicted to have a decibel reading at the nearest receiving property of 54 dB(A), which is less than the maximum allowed 69 dB(A) readings for 15-minute noise code. *Exhibit 10, attachment h, #3, pg. 3*. Ms. MacKenzie submitted that the noise study was done from existing equipment and she could not understand why there was no noise information from the proposed equipment. *Exhibit 16, pg.1*.

16. TCC 20.33.050(1)(E) requires :
- If the applicant is also the WCF provider, proof that the applicant is licensed by the FCC, or not required to be licensed.

The Applicant submitted a copy of its FCC Cellular License for the site. *Exhibit 10, attachment h, #4*.

17. TCC 20.33.050(1)(F) reads:
- If the applicant is not the WCF provider, proof of lease agreements with a FCC licensed WCF provider if such provider is required to be licensed by the FCC

The Applicant is a WCF provider. *Exhibit 10, attachment h, #4*.

18. TCC 20.33.050(1)(G) reads:
- Except for a co-location proposal, documentation, certified by a qualified engineer licensed in the state of Washington, indicating that there are no co-location possibilities as an alternative to installation of the proposed WCF/antenna support structure, consistent with Section 20.33.070.

19. The Administrative Permit involves a co-location proposal and TCC 20.33.050(1)(C) is not applicable.): *Exhibit 10, Staff Report (Feb. 16, 2010), pg.5*.

20. TCC 20.33.050(1)(H) reads:
- The Applicant shall submit for the proposed facility a radiated signal propagation coverage plot, power density calculations expressed as micro-watts per square centimeter and other technical documentation, signed by a radio frequency engineer licensed in the state of Washington, as necessary to demonstrate the

proposed facility's compliance with FCC guidelines/standards for radiofrequency electromagnetic field strength. The county may require additional information as necessary for a third party reviewer to determine compliance with the provisions of this chapter, as provided for in Section 20.33.060.

The Applicant provided a Non-ionizing Electromagnetic Exposure Analysis report that documents the requirement of the Ordinance. *Exhibit 10, attachment h, #5*. Andre Consulting, Inc, the third party reviewer, determined that the likelihood of any excessive exposure from this site is close to zero. *Exhibit 1, attachment c*. Ms. MacKenzie questioned whether the WCF would be a lattice tower facility as identified in the Analysis report. *Exhibit 16, pg. 2*. The design as depicted on the site perspective is not a lattice tower. *Exhibit 10, attachment h, map T-1*.

21. TCC 20.33.050(1)(j) reads:
[The Applicant shall submit] The proposed color(s) of the facility including antennas and exposed conduit.

The Applicant submitted that the antennas would be white off white. The coax cable is black and would be inside the support structure and not visible. The Applicant also submitted that is open to color suggestions. *Exhibit 10, attachment h pg. 2 of submitted September 17, 2009 letter*.

22. TCC 20.33.050(1)(K) reads:
In addition to the information requested on the application, the applicant shall submit the legal name, address or principal place of business, and phone number of the following:
- i. The person to be contacted in the event an emergency involves the WCF/antenna support structure. (This person should be available on a twenty-four-hour basis and authorized to act on behalf of the applicant regarding an emergency situation. The applicant shall be responsible for keeping such information current); and
 - ii. The contact person for each WCF/communication provider that proposes installation of facilities at the site.

The Applicant submitted that in the event of an emergency American Tower Corp (877-518-6937) and Verizon Wireless (800-264-6620) should be contacted. The contact person for Verizon is Shirley Vangen, (4425-603-2824), 15900 Eastgate Way, MS 231, Bellevue, WA. 98008. Call 1-800-6620 24hrs/7 days per week for any emergency. The number is posted on the equipment shelter on site. *Exhibit 10, attachment h of submitted September 17, 2009 letter. Pg. 3*.

23. TCC 20.33.050 (2).reads:
Additional Requirements for Freestanding WCFs, Remote Freestanding WCFs, and Other Freestanding Antenna Support Structures. The following additional

information shall be submitted for freestanding WCFs, remote freestanding WCFs, and other freestanding antenna support structures.

a. The measured distance between the proposed WCF/antenna support structure and the nearest residentially zoned property and the nearest property with an existing residence or, in the case of WCFs or other antenna support structures proposed to be located in rights-of-way, the location of structures occupied at least three days a week and building sites for such structures (measured to the minimum setback line specified in the applicable zoning district) within the distance equal to one hundred and ten percent of the proposed WCF/antenna support structure's height, including antennas

b. A statement signed by the applicant stating that the WCF/antenna support structure will comply with all Federal Aviation Administration (FAA) regulations and documentation indicating whether the FAA will require attachment of a light/signal to the proposed antenna support structure.

c. A statement signed by the applicant documenting that the WCF/antenna support structure will accommodate the co-location of at least two additional antennas/antenna arrays for future users, or an explanation of why such design is not feasible for technical or physical reasons (e.g., additional antennas may be inappropriate on a camouflaged WFC). This requirement does not apply to utility poles.

d. A copy of a certified letter sent to all other licensed wireless communication providers serving the county indicating opportunities to co-locate and all responses to the letter.

e. Documentation that adequate public safety measures will be provided, including anti-climbing devices.

f. A statement indicating compliance with or exemption from the National Environmental Policy Act (NEPA) and all documents filed under NEPA.

g. If the site proposed to accommodate the proposed WCF/antenna support structure is not forested, documentation showing that forested sites within one mile of the proposed site, that would afford screening of the antenna support structure from rights-of-way and adjacent properties, are not available or technically feasible.

In response to these requirements, the Applicant and the County staff submitted that the proposal is not for a freestanding WCF/antenna support structure but for a collocation on an existing structure. The information requested would only apply to new support structures. *Testimony of Mr. Cooley (November 3, 2008); Testimony of Ms. Trager (February 16, 2010).*

24. The Applicant provided two colored maps of the coverage in the general area of the subject property. *Exhibit 11*. On the first map the existing Rochester coverage area is depicted in red. It represents a large area for which phone calls are handled. On the second map of the exhibit, a stimulation of the coverage details is presented if the

requested Administrative Permit is granted. On this map the Rochester coverage area is also in red, but the area is significantly smaller than that shown on map 1. The smaller area would allow for less strain on capacity limits. According to the Applicant, the new WCF equipment would allow the cellular traffic to be split among the new sectors and be downloaded to other cells. This design would allow for more room for capacity at the site, which in turn would reduce dropped calls. *Exhibit 11; Testimony of Mr. Cooley (February 16, 2010).*

25. The Applicant provided two aerial photographs showing the property. The photographs show the existing towers and the tree vegetation to the west. The nearest residence to the tower is the property of Ms. Dahl. The MacKenzie property is approximately 1150 feet east of the existing pole. *Exhibit 1, Staff report, pg. 3.* The photos were taken in 2000 prior to a residence being placed on the MacKenzie property. *Exhibit 10, attachment h, # 8 (j)-two photos.*
26. The residence on Ms. MacKenzie's property is located in an area on which there are expansive skyline views in all directions. *Exhibit 10, attachment k; Exhibit 10, Staff Report (February 15, 2010) pg. 5* The upper 30% of the existing tower is a small fraction of her overall view. The proposed modification of the tower will result in a height decrease of four feet *Exhibit 10, Staff Report (February 15, 2010) pg. 5.* However, there will be an impression of greater mass at the top. Simulated drawings are found in maps of Exhibit 10, attachment h, #1 (Map T-1).

Remand Order No. 2:

Applicant must demonstrate, pursuant to TCC 20.33.080(1) and (2), that there is no other site that is available or technically feasible for the new platform and that denial of the new platform would have the effect of prohibiting the provision of personal wireless communication service before it can be located in the proposed residential district.

Remand order No. 4

Applicant shall also submit evidence in the record to demonstrate that it complies with the design and location standards of TCC 20.33.080 (2)(a-e).

The facts and responses relating to No. 2 and No. 4 are either the same or similar. The following findings address both remand orders.

27. TCC 20.33.080 (1 and 2) read:
 1. Evaluation of Alternative Sites. Prior to submission of an application for a WCF/antenna support structure, the applicant is encouraged to meet with residents of the search area for the proposed WCF/antenna support structure for the purpose of evaluating alternative sites and exploring the possibility that other technically feasible sites may be available that would be more acceptable to the community.
 - 2.Siting.

- a. Freestanding WCFs and other antenna support structures regulated by this chapter shall not be permitted in residential districts unless the applicant demonstrates that: a site is not available or technically feasible in a nonresidential district; and the restriction on siting antenna support structures in residential districts would have the effect of prohibiting the provision of personal wireless communication service. Residential districts include, but are not limited to, the following: ... Rural Residential/Resource-One Dwelling Unit per Five Acres (RRR 1/5...
- i. The approval authority may waive the requirement in subsection (2)(a) of this section, consistent with subsection (2)(a)(ii) of this section, if the applicant demonstrates that the proposed site would result in fewer or less detrimental aesthetic and environmental impacts than any other feasible alternative site.
 - ii. In no case shall lattice or guyed towers be permitted in or within five hundred feet of a residential district.
 - iii. If a WCF/antenna support structure is necessary in a residential district, preference among available sites shall be given to forested parcels.
 - iv. Radio and television towers in residential districts may be modified as necessary to comply with FCC licensing requirements.
- b. WCFs and other antenna support structures shall be located, designed and screened, to the extent feasible, to blend with the immediate surroundings so as to reduce visual impacts.
- i. Proposed WCFs/antenna support structures shall be located where their visual impact is least detrimental to views of recognized landmarks, such as, but not limited to, Puget Sound, Nisqually Valley, Mount Rainer, the Black Hills, and the Olympic Mountains. If the approval authority determines that the proposed location for the facility would have a significant detrimental impact on a view of a recognized landmark, she/he shall deny the proposal unless the applicant demonstrates that a less impacting site is not available.
 - ii. In order to demonstrate that a less impacting site is not available, applicants for WCF/antenna support structures impacting the views listed in subsection (2)(b)(i) of this section shall identify all viable alternative sites available for accommodating the WCF/antenna support structure. The applicant shall perform balloon tests for the proposed and alternative sites, in a manner consistent with Section 20.33.050(3), and submit them for approval authority review.
 - iii. WCFs/antenna support structures shall be sited off ridgelines unless they are designed to blend in with the surrounding environment in such a manner that they would not have a significant visual impact, as determined by the approval authority, or the applicant demonstrates that no alternative location is available.
 - iv. In determining whether or not a WCF/antenna support structure will have a significant adverse visual impact on a view/location listed

in subsections (2)(b)(i) and (2)(b)(iii) of this section, the approval authority shall at least consider the following:

(a)The degree to which the antenna support structure is screened by topographic features from the views listed in subsection (2)(b)(i) of this section;

(b)Whether trees and vegetation can be preserved in a manner that would substantially limit the visibility of the proposed WCF/antenna support structure from the views listed in subsection (2)(b)(i) of this section;

(c)Whether background features in the line of sight to the proposed WCF/antenna support structure would obscure it or make it more conspicuous;

(d)Whether the proposed design would reduce the silhouette of the portion of the WCF/antenna support structure extending above surrounding trees, landforms, or structures; and

(e)Whether the facility has a camouflage design.

v. Applicants proposing uncamouflaged WCFs/antenna support structures in locations that cannot be at least partially screened by existing trees, topography, or structures must submit documentation as to why sites which would provide screening potential are not available or technically feasible to provide adequate service. The approval authority shall deny applications for WCFs/antenna support structures in open areas (including, but not limited to, fields, prairies, or lawns without trees at least one-half of the height of the proposed antenna support structure) where they would be visible from abutting public roads, public recreational areas, or residences unless the applicant demonstrates that a less visually impacting site is not available to provide service.

vi. Unless effectively camouflaged, as determined by the approval authority, WCFs/antenna support structures shall be located on a site to take maximum advantage of the screening afforded by any existing trees, topography, and structures in order to minimize their visibility from the surrounding area, consistent with other applicable regulations. Priority shall be given (in descending order) to minimizing visibility from existing dwellings, public rights-of-way, and public parks and open spaces.

vii. In residential and commercial districts, flush mounted antennas shall be used unless the applicant demonstrates that another mount is necessary.

c. WCFs and other antenna support structures shall be located so they do not narrow the sidewalk width below the county's minimum standard, create a hazardous situation for pedestrians, bicyclists or motorists, or interfere with utilities, as determined by the approval authority. (See TCC Title 13, Roads and Bridges).

- d. WCFs and other antenna support structures shall be located, designed, and screened to maintain property values and neighborhood character.
- e. WCFs and other antenna support structures shall be sited consistent with the provisions of Chapter 17.15 TCC, Critical Areas and as follows:
 - i. To minimize the potential for birds to collide with towers, WCFs/antenna support structures shall not be located within one thousand feet of wetlands, staging areas, or rookeries supporting birds listed as priority species by the Washington Department of Fish and Wildlife, listed as endangered or threatened species under the federal Endangered Species Act (64 FR 14307), listed in Chapter 17.15 TCC as species of local importance, and as amended, or within one thousand feet of publicly owned wildlife refuges, unless the applicant demonstrates that the proposed location will not have a significant impact on such birds. Where possible, WCFs/antenna support structures shall not be located where they would interfere with migratory flyways documented by state or federal agencies.
 - f. Replacement utility poles in rights-of-way subject to this chapter shall comply with the clear zone safety guidelines in the Roadside Design Guide (2002, American Association of State Highway Transportation Officials, and as hereafter amended). Replacement utility poles shall not be located within thirty feet of an intersection, consistent with Section 20.07.070, or on the outside of a curve (in the direction of travel) with a radius of less than three thousand five hundred feet or, in the case of roads with a speed limit of fifty MPH or more, within three hundred feet of such curves.

In response to these requirements, the Applicant and the County staff submitted that the proposal is not for a freestanding WCF/antenna support structure but for a collocation on an existing structure. The information requested would only apply to new support structures. *Testimony of Mr. Cooley (November 3, 2008); Testimony of Ms. Trager (February 16, 2010; Exhibit 10, Staff Report (February 16, 2010, attachment h, submitted September 17, 2009 letter. Pg. 3.*

- 28. The proposal is for a replacement of an existing antenna mount with a new mount for the panel antennas. The height of the existing antennas would be slightly lower than the existing height. The existing freestanding WCF is not sited on a ridgeline, and has been located on the property since 1997. There is existing vegetation around it and that vegetation would remain. While most of the WCF has been screened with natural vegetation and trees, the top portion has never been screened. There would be no changes in screening with the addition and no vegetation would be removed. The new attachments would not exacerbate any impact. The silhouette of the WCF support structure would not be changed. It does not have a camouflage design. The site is not near any sidewalk, significantly travelled road, or other utilities. It would not create a hazardous condition. *Testimony of Mr. Cooley (February 16, 2010 and November 3, 1998); Exhibit 10, attachment h, Letter dated September 17, 2009 pgs 5, 6 and 7.* Finally,

the Applicant has proven that other sites for the improvements would not be practical. It would involve developing a new WCF when the existing structure that has been in place since 2007 can be upgraded to provide the increased capacity. *Testimony of Mr. Cooley (November 3, 2008 and February 16, 2010).*

Remand Order No. 3.

Applicant must supplement the record in accordance with TCC 20.33.050(3). It is the applicant's responsibility to perform balloon testing and submit photographs as required by TCC 20.33.050(a)(iii). In addition, the applicant shall submit computer simulation of the proposed new platform as it would look if constructed in the proposed location.

29. TCC 20.33.050(3) reads:

3. Additional Requirements for Freestanding WCF/Antenna Support Structures. For freestanding WCFs/antenna support structures, the following additional studies/information shall be submitted:

a. Balloon testing shall be performed and photographs shall be submitted as follows:

i. A three-foot diameter, brightly colored balloon shall be flown by the applicant at the proposed antenna support structure's maximum height and proposed location. The balloon shall be flown for at least eight consecutive daylight hours between seven a.m. and seven p.m.

ii. Fourteen days in advance of the balloon test, the applicant shall provide notice of the test to property owners within the notice radius required for the permit and the public as specified in Section 20.60.020(3) and inform the development service department of the test in writing. The notice shall include the test date, an alternate date in case of poor visibility or strong winds on the initial date, the time period when the test will be conducted, and the location.

iii. The applicant shall submit photographs of the balloon and site taken from the following perspectives: at the property line, at approximately one-half mile from the proposed antenna support structure site, and approximately one mile from the site; all beginning at approximately true north and continuing clock-wise at approximately forty-five degree intervals. The development services department may waive this requirement where access is not possible, where there are no residences or public roads at the specified vantage points, and for sites approved for clusters of antenna support structures, provided that the proposed antenna support structure does not exceed the height of existing antenna support structures by more than fifteen feet.

iv. Computer simulations may be submitted to supplement, but not replace, the photographs required above

In response to these requirements, the Applicant and the County staff submitted that the proposal is not for a freestanding WCF/antenna support structure but for a collocation on an existing structure. The information requested would only apply to new support

structures. *Testimony of Mr. Cooley (November 3, 2008); Testimony of Ms. Trager (February 16, 2010).* The Applicant did not provide a balloon test but did provide photographs of the site.

30. There is a 70 foot tree canopy directly east of the existing tower and another 70 foot canopy between that tree canopy and the MacKenzie residence over 1000 feet away. The height of these trees is approximately 65-70% of the height of the tower. In addition to these canopies, there is a 50-foot tree retention buffer around the existing tower. The tree buffer was a condition of the original permit issued in 1997. *Exhibit 1, Staff Report (November 3, 2008) pg. 3; Exhibit 1, attachment j; Exhibit 1, attachment e.*⁵ According to Thurston County staff the buffer is functioning as intended as a screen. *Exhibit 1, Staff report (November 3, 2008, pg. 3.*
31. The Applicant submitted a series of photographs simulations of the existing WCF that were taken at varying differences from all directions. *Exhibit 12, #9.* In the photographs the top of the existing WCF is barely visible to the naked eye from one mile north of the site (188th Ave. SW and Marble St. SW). The simulated photo at the same site does not change the view (*marked on the reference map as 1*). At approximately ½ mile north (Independence Rd. SW) the very top of the existing WCF is visible. This view does not change in the simulated photo of the proposed WCF (*marked on the reference map as 2*). At ½ mile west of the site (Lundeen Road) the existing WCF is screened by trees and is not visible. This would not change according to the simulated photograph (*marked on the reference map as 3*). At 1/5 mile west of the site (Lundeen Road) the photo of the existing WCF depicts the top of the structure. The view based on the simulation would be the same except the top of the WCF would show an expansion of the antennas at the top. There are trees and significant screening the site and the WCF is not overwhelming (*marked on the reference map as 4*). At the site access road and Lundeen Road intersection the top of the existing structure is visible. This would be the situation as depicted in the simulation. (*marked on the reference map as 5*). At 1/10 of a mile east of the site on Lundeen Road approximately ½ of the existing WCF is visible. This would be the same visibility as depicted in the simulation. (*marked on the reference map as 6*).). At 3/10 of a mile east of the site on Lundeen Road approximately the existing WCF is screen and is not visible. This would be the same as depicted in the simulation. (*marked on the reference map as 7*).
32. Ms. MacKenzie stated that the photos were taken on a cloudy dark day and do not accurately depict the views. *Testimony of Ms. MacKenzie (February 16, 2010).* Ms. Dahl presented photographs that were taken in similar locations than those of the Applicant. *Exhibit 15.* Ms. Dahl testified that her photos more accurately depict the views of the WCF from the neighboring properties and provide impressions of the impact of the structure. She further submitted that much of the screening of WCF is alder trees that have short growing seasons and for much of the year are barren and do not provide effective screening. She also contended that the property values are impacted by the structure. *Exhibit 14; Testimony of Ms. Dahl.* A copy of a newspaper article, Barrington

⁵ Condition H

Courier-Review, February 11, 1999, was submitted to support the contention that there would be a decrease in property values. The article was based on a Texas Case. Valuation of property is not a criterion of review in Thurston County for reviewing SUPTs. *Exhibit 17*.

33. The application is for a co-location proposal, and the Applicant is exempt from being required to provide evidence justifying the need for a WCF/antenna support structure in the proposed location, consistent with Section 20.33.080, and at the proposed height. *TCC 20.33.050 (1)c. However the Applicant provided two exhibits, Exhibit 10 Staff Report.*

Findings based on TCC 20. 54.040

34. The applicable requirements of TCC 20.54.040 are:
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.
35. The County reviewed the application and determined that the proposed co-location on the existing WCF would not have an impact on the 34-acre site or the surrounding properties. It would provide additional capacity necessary for adequate cellular coverage and service in the Rochester area of the County and along Highway 12. Screening of most of the WCF is provided with a buffer of trees that screens at least 70% the WCF and all of its fenced equipment area. The WCF poses little public safety risk. It is visible from some points of Lundeen Road but it is not imposing. The Thurston County Assessor's Office has indicated none of the surrounding parcels in close proximity to the WCF have had any adjustment to their property value because of the WCF's presence. *Refer to Exhibit 10, Attachment 1*. The facility is not staffed and would not generate additional traffic, other than an occasional visit from a maintenance vehicle. *Exhibit 10, Staff Report (February 16, 2010) pgs. 4 and 5; Testimony of Ms. Trager (February 16, 2010); Testimony of Mr. Cooley (November 3, 2008).*
36. The proposed use is appropriate in the location for which it is proposed *Exhibit 1, Staff Report, Exhibit 10, Staff Report; Testimony of Ms. Trager (February 16, 2010)*. The co-location would not impose a burden on any existing public facilities or services in the

area. The facility does not require public water or sewer service. *Exhibit 10, Staff Report (February 16, 2010) pg. 4.*

Other Findings based on Ms. Mackenzie's presentation and exhibits

37. The Appellant testified that her she can see the existing cellular pole and that the modification would increase its visibility. She contended that the increase visibility would cause an aesthetic impact and that the property values could be impacted. *Testimony of Ms. MacKenzie (November 3, 2008 and February 16, 2010).*
38. Ms. MacKenzie claimed that the third party reviewer determined that the Applicant has excellent coverage. She further contended that the Applicant's argument that there are dropped calls and capacity problems "contradicts" the excellent coverage. She questioned why the Applicant had to improve the quality of the coverage at the expense of the rural area. She further submitted that "I believe this proposed special use is not appropriate in our rural location it will have a substantial undue adverse effect on adjacent properties and the surrounding rural neighborhood character." *Exhibit 16. pg. 4.*

CONCLUSIONS

Jurisdiction

Pursuant to *TCC, 20.33.040* freestanding wireless communication facilities and other antenna support structures require approval of an SUPT by the Thurston County Hearing Examiner, in accordance with the procedures in TCC Chapters 20.54 and 20.60. Notwithstanding this jurisdictional authority, *TCC20.33.040 (3)* provides that attached wireless communication facilities and other commercial or public antennas attached to *existing* structures and related equipment cabinets can be approved with an administrative special use permit. The administrative decision can be appealed and decided by the Thurston County Hearing Examiner. *TCC 1.06.010 (H).*

Criteria for Review

The applicable requirements of TCC 20.54.040 are the general standards of review of SUPTs. (Ordinance is set forth in Finding No. 29.)

TCC 20.33.010 sets forth the purposes for the regulations of wireless communication facilities. The purposes include:

1. Manage the location of wireless communication facilities, 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 wireless communication facilities, 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 wireless communication facilities and other antenna support structures through careful siting, design, screening and camouflaging techniques, and by encouraging clustering of wireless communication facilities 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 wireless communication facilities 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 Wireless communication facilities and other antenna support structures. (Ord. 13058 § 2 (part), 2003)

TCC 20.33.060 requires third party review to confirm compliance with FCC guidelines/standards to verify the applicant's analysis regarding co-location,

TCC20.33.070 requires collocation. The ordinance states that to minimize adverse visual impacts associated with the proliferation of wireless communication facilities and other antenna support structures, co-location is required, except as provided for in this chapter.

TCC 20.33.080 (1 and 2) which requires evaluation of alternative sites (section 1) and siting standards (section 2) (Ordinance is set forth in Finding No. 23)

TCC 20.33.050(3) which requires compliance with additional standards. (Ordinance is set forth in Finding No. 28)

TCC 20.33.050(2) (Ordinance is set forth in Finding No. 22)

TCC 20.33.050(1)(A-K)-which are the applications requirements. (Ordinance is set forth in Findings 14-21)

Conclusions Based on Facts

1. Three definitions found in the Thurston County Code are key to this case. With the use of the definitions, the activity proposed by the Applicant is defined and the request to collocate additional equipment on the WCF is allowed. The three definitions that must be considered are:

“TCC 20.03.040 (3.8)” defines "Antenna support structure as

“... a tower, other structure used to support radio, television, wireless communication (including pagers), or automated meter reading antennas and/or repeaters. It includes new or replacement utility poles that would exceed the height of adjacent poles for the purpose of providing sufficient elevation to accommodate antennas.” (*emphasis added*)

According to the definition “replacement utility poles” are an Antenna support structure, but replacement cabinets or panels are not classified as such. The proposed additions to the existing WCF on the subject property are not an antenna support structure and are not subject to the requirements of standards of placement of an antenna support structures

If the proposed additions are not subject to the standards for antenna support structures as defined by the code, it must be determined if they are subject to/ the standards for development of Wireless Communication Facilities. TCC 20.03.040 (146.3) defines “Wireless Communication Facility (WCF), Freestanding” as:

a freestanding antenna support structure erected to support wireless communication facilities, associated equipment cabinets, and connecting appurtenances. This includes guyed towers, self-supporting lattice towers, monopoles, camouflage structures, replacement utility poles, and other self-supporting poles and towers accommodating wireless communication antennas.

The structure on the subject property is a WCF Freestanding. It is a monopole that accommodates wireless communication antennas. It was a WCF Freestanding when it was constructed and remains one. However, the definition does not provide direction as to what standards and requirements the additions to the WCF would be subject to.

The Thurston County Code, however, does provide direction on the classification and requirements of the additions that are proposed. TCC 20.03.040 (21.5) defines “Co-location” as;

“WCF equipment affixed to or erected upon existing freestanding or remote freestanding WCFs or other communication towers”.

As noted above the existing monopole is an existing freestanding WCF and the new equipment as proposed is WCF equipment. *Finding of Fact No. 4.* Co-location on an existing WCF or other antenna support structure, including structural modifications to the existing antenna support structure to accommodate co-location, shall require approval of an administrative special use permit in accordance with the procedures in Chapters 20.54 and 20.60. TCC.33.040(4) --Co-location. TCC chapter 20.54 contains the ordinances regulating SUPT and TCC chapter 20.60 establishes appeal procedures.

2. The County administrative approval of the SUP was consistent with the purposes of regulation of wireless communication facilities as set forth in TCC 20.33.010. The location was determined based on the existing facility. The modification is consistent with federal, state and local regulations for public health and location and design standards for freestanding wireless communication facilities and remote freestanding wireless communication facilities/antenna support structures safety. *Finding of Fact No. 1.* There would be no damage to adjoining properties because of the modification. *Finding of Fact 14.*

3. The proposal satisfies the general SUPT requirements and criteria of TCC 20. 54.040. The proposed use is appropriate in the location for which it is proposed. *Findings of Fact Nos. 32, 33 and 34.*
4. The Applicant has supplemented the record in a manner that is in compliance with application requirements of TCC 20.33.050. Many of these requirements are for new WCFs and not for co-location, but the Applicant supplied information. *Findings of Fact Nos. 12-25.*
5. The Administrative Permit cannot be denied if the Applicant did not provide materials that were not required by Ordinance.
6. The Applicant demonstrated, pursuant to TCC 20.33.080(1) and (2), that there is no other site that is available or technically feasible for the new platform and that denial of the new platform would have the effect of prohibiting the provision of personal wireless communication service before it can be located in the proposed residential district. *Findings of Fact No. 26-27.* TCC20.33.080(1) and (2) are requirements for new WCFs and not for co-location.
7. The Applicant supplemented the record consistent with TCC 20.33.050(3). Although the Board required the Applicant to perform balloon testing, none was done. The balloon testing is required for new WCFs, but not for co-location. The Applicant did submit photographs as required by TCC 20.33.050(a)(iii). The Applicant shall submit computer simulation of the proposed new platform as it would look if constructed in the proposed location in Map T-1 of Exhibit 10 attachment h. *Findings of Fact 28-32.*
8. The Applicant provided information to the County and evidence for the record to demonstrate compliance with the design and location standards of TCC 20.33.080 (2)(a-e). Much of these standards apply to new WCFs, but not to co-location. *Findings of Fact Nos. 12-25,* The Administrative Permit cannot be denied if the Applicant fails to provide materials that were not required by Ordinance.
9. As has been noted throughout the Findings and Conclusion, the Applicant's proposal was for co-location as defined in TCC 20.03.040 (21.5). The standards and requirements are not as rigid for co-location as they are for WCFs. The reason for this is that the co-location would be located on sites that have already been reviewed and approved. The co-location is adding on to an existing structure while a new WCF still must be built and the impacts are not as apparent. While Ms. MacKenzie and her neighbors want the Applicant to be required to meet the stricter standards of WCFs, the laws of Thurston County do not require it. Neither the County nor opponents to a project can require the Applicant to do something it is not legally bound to do. The Applicant provided most of the required material, but cannot be denied the Administrative Permit for failing to provide what was not required to do. The Washington Supreme Court in *Rettkowski v. Dep't of Ecology*, 122 Wn.2d 219, 226, 858 P.2d 232 (1993) stated:

[A]n agency may only do that which it is authorized to do by the Legislature.

For a review of an Administrative Permit, the Thurston County Resource Stewardship Department cannot require the Applicant to submit materials that are not required for review, and, the permit cannot be denied for such reasons. While Board's remand was understandable, much of the information it requested, was not required by law.⁶

10. While it understandable why Ms. MacKenzie and others are against the proposal, the case raises issues of public need vs. private impacts. Ms. MacKenzie moved onto her property after the WCF had been constructed. According to her, the structure is apparent, and it can only be assumed she was aware of it at the time of the move. While the co-location would not result in a significant reduction of the size of the facility, it would serve a strong public need. It improves the cell phone system in this area of Thurston County, and does so without the need for another WCF being erected. For this reason it is consistent with TCC 20.54.040(3) which states:

...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.

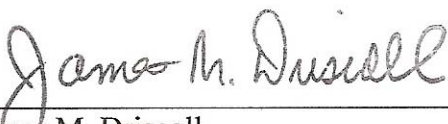
While the impacts from the expansion may increase slightly from the existing impacts, there would be a benefit to the community with the improved service.

11. Property values are not a criterion for review of the Administrative Permit.
12. By reference, the Findings of Fact and Conclusions of November 14th, 2008 are part of this decision.

DECISION

Based on the above Findings of Fact and Conclusions, it is hereby ORDERED that the appeal of Deone MacKenzie of the Administrative Special Use Permit which allowed removal of two existing OMNI antennas and relocation of two OMNI antennas, and the addition of 12 additional panels on an existing WCF at 10547 Lundeen Rd. SW Rochester, WA. is denied. The Permit remains as issued.

Dated this 8th day of March, 2010.



James M. Driscoll
Thurston County Hearing Examiner

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⁶ For future situations involving the placements of WCFs amendment to TCC 20. Chapter 33 might be considered.