

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Verizon Wireless
15900 SE Eastgate Way, MS 231
Bellevue, WA 98008

File No: HE27-08 (08CU007 and 08VAR001)

Request: Conditional Use Permit/Variance

Parcel No: 461331001 **S.J.C. COMMUNITY:**

Location: Afterglow Drive **JUN 17 2008**
San Juan Island **DEVELOPMENT & PLANNING**

Summary of Proposal: A variance from the height restrictions of SJCC 16.80 and replacement of four new wireless antennas.

Land Use Designation: Rural Farm Forest 5

Public Hearing: After reviewing the report of the Community Development and Planning Department a public hearing was held on June 4, 2008.

Applicable Policies and Regulations: SJCC 16.80 Wireless Subarea Plan
SJCC 18.80.100 Conditional Use Permits and Variances

Decision: The application is approved subject to conditions.

Findings of Fact

1. Adjacent to Roche Harbor is 138 acres often referred to as the Roche Harbor Mausoleum area. It is used for recreational walking from residents and visitors of the Roche Harbor Resort. It is slated for future development.
2. The area is wooded and relatively level. Within the site is an existing cell tower (American Tower, Nextel) within a fenced area near the mausoleum. The existing tower is not visible from any of the nearby roads or from the distant residences and hangars.
3. The existing monopole was installed prior to the adoption of SJCC 16.80. It exceeds the 60-foot monopole and 80-foot top of antenna height restrictions of the current regulations. A previous variance approval (2005) was granted to allow closer distance to the nearest property line and for the ground mounted equipment to exceed the 12-inch height maximum.
4. The applicant Verizon proposes to replace the four existing 12-foot antennas with 12 panel type antennas of five to eight feet in length. The top of the new antennas will be approximately the same height as the existing ones. The total height will remain at approximately 91 feet.
5. The primary direction of SJCC 16.80 is that the preferred location for any new wireless communications be an existing tower. Because of the adherence to that preference, a variance is necessary and complies with the variance criteria of SJCC 18.80.100.
6. The proposed use will not substantially change the appearance of the existing tower and it will continue to function the in the same manner. There will be no significant adverse impacts. Cumulative impacts are unlikely and the proposal is generally consistent with the comprehensive plan and code requirements.
7. The existing facility prevents visual impacts because of the distance from residential uses and limited visibility through the vegetated area.
8. A Determination of Non-Significance was issued on May 7, 2008. No comments were received.
9. Notice of public hearing was published May 7, 2008, mailed on May 7, 2008 and the site was posted May 8, 2008. A public hearing was held on June 4, 2008.
10. The staff report is incorporated herein by reference as though fully set forth. The analysis and factual statements contained in the staff report are adopted as a finding herein.
11. Any conclusion herein which may be deemed a finding is hereby adopted as such.

Conclusions of Law

1. The Hearing Examiner has jurisdiction over the persons and subject matter of this proceeding.
2. The proposal complies with the requirements of the State Environmental Policy Act.
3. Proper notice was given in compliance with local and state requirements.
4. Properly conditioned, the proposal satisfies the criteria for CUP's and variances. The proposal is consistent with the Comprehensive Plan and specifically with SJCC 16.80, subject to the imposition of conditions.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

Conditions

1. The permits allow the replacement of 4 antennas on the existing monopole and variance from the height standard to use the existing monopole.
2. The proposed use shall comply with other codes and regulations, including the state and local mechanical, electrical and building codes.
3. The use shall comply with the seismic and wind safety standards specified in the International Building Code.
4. On-site storage of material or equipment other than that used in the operation and maintenance of the facility is prohibited.
5. After the personal wireless facility is operational, the applicant shall submit within 90 days of beginning operations and at annual intervals from the date of issuance of the land use permit, existing measurements of radio frequency radiation from the personal wireless communication facility, documenting conformance of the testing protocol with requirements in FCC Bulletin 65, which has been determined by San Juan County to be consistent with the requirement of Figure 2, 16.80.070.
6. If another company applies for a permit to co-locate their antenna on the pole, both the new applicant and the current applicant shall calculate the maximum projected radio frequency radiation from the personal wireless facility and submit it to San Juan County.
7. The applicant shall comply with FCC guidelines and standards for radio frequency radiation. If radio frequency radiation level ever exceeds FCC guidelines and standards,

the applicant shall reduce power or take whatever mitigation measures necessary to bring radio frequency radiation levels below those of the FCC guidelines and standards. The permit will be terminated if the applicant cannot modify the project to meet standards

8. The applicant shall certify that the noise generated by the facility is consistent with the standards of SJCC 16.80.090.

9. The applicant shall be responsible for complying with all applicable requirements of SJCC 16.80.100 and .110 regarding abandonment or discontinuation of use, and maintenance of the use.

10. The applicant shall notify San Juan County of all changes in applicant and/or co-applicants of a previously permitted personal wireless facility within 90 days of change.

11. A new permit shall be required for all modifications to an approved permit for personal wireless facilities.

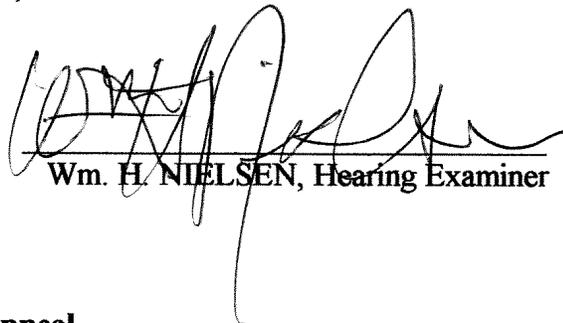
12. A land use permit for a personal wireless facility shall become null, void and non-renewable if the facility is not constructed and placed into service within one year of the date of the issuance of the permit. A new permit will be required for subsequent use of the site.

13. A land use permit for a personal wireless facility shall expire ten (10) years from the date of the issuance. Renewal may be authorized by a new permit if application is made at least three months prior to the expiration date of the original permit. A new permit shall be subject to all applicable regulations in effect at the time of the new application.

Decision

The conditional use permit and variance are approved subject to the conditions set forth above.

DONE this 17 day of June, 2008.


Wm. H. NIELSEN, Hearing Examiner

Appeal

Any appeal of this decision shall be to Superior Court pursuant to the Land Use Petition Act, Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.