

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit and Variance) FINDINGS, CONCLUSIONS,
Application by the Spokane Regional) AND DECISION
Emergency Communication System)
for property located at 5100 East)
Valley Springs Road.)
) FILE NO. Z1100024-VAR

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Spokane Regional Emergency Communication System seeks a conditional use permit in order to allow the system to replace two existing emergency communication towers with one tower and to upgrade the system. They also seek a variance to have relief on several unified code development requirements which are designed for standard wireless communication facilities.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Spokane Regional Emergency Communication System
c/o Madeline Chaney
425 Pontius Avenue North, Ste 200
Seattle, WA 98109

Property Address: 5100 East Valley Springs Road in the City of Spokane, Washington

Property Location: The site is located in the northeast part of Spokane adjacent to the City limits and south of east Valley Springs Road in the City and County of Spokane, Washington.

Legal Description: A full legal description is in the record attached to the general application which is Exhibit # 2A.

Zoning: RSF (Residential Single-family)

Comprehensive Plan Map Designation: The property is designated Residential 4-10 in the City's 2001 Comprehensive Plan.

Site Description: The site is located at the top of a hill known as Beacon Hill in the City of Spokane, Washington. It is just south of Valley Springs Road. At the top of the hill there are several wireless communication towers already and the topography at the top of the hill is relatively flat. Staff estimates it at 1 to 2% slope. The hill then slopes away in all directions but the top of the hill has an elevation of 2,604 feet. Besides the communication towers on site there are weeds and grasses.

Surrounding Conditions: To the west, the property is zoned Residential Single Family (RSF) and some is owned by Avista Corporation which also has an easement for high voltage power lines. Spokane County surrounds the site on the other three sides and the zoning is Urban Reserve. There is some development to the north and west but most of the area surrounding the site is either vacant or contains wireless communication towers and radio towers.

Project Description: The applicant seeks a conditional use permit in order to remove two existing antenna support communication structures. One structure is 70-foot tall and the other is 100-foot tall. The applicant seeks to remove them and replace them with one 120-foot tall self-supporting structure. Also a new 24-foot by 30-foot equipment shelter is proposed.

The applicant also seeks a variance to allow the tower to be taller than 60-feet as set forth in the regulations and also seeks modifications of a setback, landscaping, screening requirements and fencing standards.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 17C.110, Table 17C.110-1, SMC 17C.320.080, 17C.355, 17G.050 and 17G.060.170.

Hearing Date: August 25, 2011

Notices: Mailed: April 29, June 24 and July 29, 2011
Posted: May 6, June 30 and August 9, 2011

Site Visit: None made.

SEPA: A Determination of Nonsignificance was issued by the Spokane Airport Board, the owner of the property, on March 3, 2011.

Testimony:

Dave Compton
City of Spokane Planning Services
808 West Spokane Falls Boulevard

Madeline Chaney
425 Pontius Avenue North, Ste 200
Seattle, WA 98109

Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Wireless Telecommunications Support Tower application
 - 2C Variance application
 - 2D Conditional Use Permit application
 - 2E Notification Map application
 - 2F FCC Radio Station Authorizations
 - 2G Site Plans
 - 2H CUP Counter Complete Checklist
3. Developer Services comments
4. Traffic Engineering comments
5. Federal aviation administration comments
6. Spokane Regional Clean Air Agency comments
7. Spokane Tribe of Indians comments
8. Northwest Pipeline comments
9. Notice map with parcel listing and legal description
10. Notices
11. Affidavit of mailing 04-29, 06-24, and 07-29-11
12. Affidavit of posting 05-06, 06-30 and 08-09-11
13. Affidavit of wireless communication facility 05-10-11
14. SEPA Determination of Nonsignificance
15. Non-Ionizing Electromagnetic Exposure Analysis and Engineering Certification
16. Felts Field commercial land lease agreement between the Spokane Airport Board and Spokane County, with resolution
17. Community Meeting sign in sheet
18. Community Meeting agenda
19. Hearing File Preparation Checklist
20. Letter dated 01-12-11 to Madeline Chaney from Dave Compton
re: community meeting instructions
21. Letter dated 05-23-11 to Interested Parties from Dave Compton
re: requesting comments
22. Letter dated 06-16-11 to Madeline Caney from Dave Compton
re: notice of application instructions
23. Letter dated 07-18-11 to Madeline Caney from Dave Compton
re: notice of public hearing instructions
24. Email dated 08-01-11 to Dave Compton from Kathleen Weinand
re: cell tower in a regulated air space
25. Email dated 08-08-11 to Dave Compton from Madeline Caney
re: response to cell tower in a regulated air space

FINDINGS AND CONCLUSIONS

Conditional Use Permit:

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed conditional use permit application and the evidence of record with regard to this section and makes the following findings and conclusions:

1. The proposal is allowed under the provisions of the land use code.

SMC Table 17C.110-1 lists uses that are allowed in the residential zones of the City. This site is located in a Residential Single Family zone. Wireless communication facilities are listed as permitted but needing a conditional use permit. Conditional use permit criterion are set forth in SMC 17C.320.080 and in SMC 17G.060.170. Therefore these facilities are allowed in the zone as long as they comply with certain criteria.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings set forth in the Planning Services Staff Report Exhibit #1, pages 4, 5 and 6.

3. The proposal meets the concurrency requirements of Chapter 17D.010.

The proposal was circulated amongst all City departments and agencies with jurisdiction over land development. It is not the type of facility that requires a lot of public service support. There are few transportation issues and water/sewer is not necessary for the development of this proposal. Therefore no departments or agencies objected to the proposal based on concurrency requirements.

4. If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to: size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water, and the existence of natural, historic, or cultural features.

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings set forth in the Planning Services Staff Report Exhibit #1, page 7.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary, conditions can be placed on the proposal to

avoid significant effect or interference with the use or neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The proposal was evaluated under the State Environmental Policy Act and the Airport Board, which was the lead agency, issued a Determination of Nonsignificance which demonstrates that the agency believes the proposal will not have any significant impacts on surrounding properties. It is in an area that has a number of existing towers and therefore it won't be out of place with the surrounding sites. In addition, the Federal Aviation Administration has issued a determination of no hazard to air navigation regarding the tower since it is located near Felts Field Airport. There was no evidence presented to demonstrate that the proposal would have any adverse impacts on surrounding properties.

In addition to the general conditional use permit criteria as stated above, the applicant must also comply with the additional decision criteria relating to whether this communication support tower set forth in SMC 17C.320.080 A. The Hearing Examiner finds that the first criteria has been met in that the need for the proposed support tower is demonstrated to supplement and enhance the area's emergency service radio system. While the tower is located in a residential zone, it is located in an area that is occupied by various radio and wireless communication towers and there are no residences close by. The applicant has shown in its application the need for the tower, alternative sites that have been examined and the need for additional height. There is no possibility of co-locating with other types of wireless communication towers. The applicant has shown through testimony and through its application that no practicable alternative is reasonably available and this area is suitable for this use.

The second criteria states that the proposed tower has to satisfy all the provisions and requirements of SMC 17C.355.030 and 17C.355.040. The applicant has agreed to comply with all provisions and requirements except for those for which the applicant is seeking a variance and compliance with those criteria will be covered under the variance portion of this particular decision.

Variance:

To be approved, the proposed variance must comply with all of the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed variance and the evidence of record with regard to this Section and makes the following Findings and Conclusions:

1. A variance or modification of the standard or requirement is not prohibited by the land use codes.

The Hearing Examiner finds that nothing in the code prohibits the applicant from applying for the variances requested. The purpose of a variance is to grant deviations from certain dimensional and locational criteria to prevent undue hardship. The

development regulations for which the applicant seeks a variance fall within the category of locational and dimensional standards and they don't impact the use of the property. Therefore a variance of those standards is not prohibited by the land use codes.

2. No other procedure is provided in this chapter to vary or modify the standard or requirement, or compliance with such other procedure would be unduly burdensome.

There are no procedures in the code except for the variance procedure to accomplish what the applicant seeks to accomplish. The applicant is seeking variances from four different development regulations. First is the "low visual" impact requirement. The second is a height variance to allow a tower height of a 120-foot rather than 60-foot with antennas extending to an overall height of 131-feet above ground level. A reduction of setback from the west property line from 20 feet to approximately 14 feet, is also being sought along with a waiver of the requirement for landscaping and decorative fencing to allow the site to be secured with a chain link fence topped with barbed wire to an overall height of 8 feet. In order for the City to consider those changes, the applicant needs a variance and there is not another procedure which would allow those waivers.

3. Strict application of the standard or requirement would create an unnecessary hardship due to one or more of the reasons listed below. Mere economic hardship or self-created hardships are not considered hardships for the purposes of this section.

a. The property cannot be developed to the extent similarly zoned property in the area can be developed because the physical characteristics of the land, the improvements, or uses located on the land do not allow such development.

The property is unique in that it is fully developed with several communication towers both for cell phones and radio usage. It also has power lines traversing the site, all of which make the site unsuitable for residential development. Since the site is already developed with several radio towers, this tower will not stand out.

In addition, this is a unique use. It is an emergency public safety radio tower. The antennas used for emergency communication such as those being proposed are a mix of Omni directional "whip" style antennas and microwave dishes. The whip antennas radiate radio frequencies in all directions and they are used to broadcast to many users simultaneously. To optimize the range of the Omni directional antennas, they need to be anchored to the support structure in such a way that the signal can travel in all directions with a minimum of shadowing. This is not true of commercial cell towers. The added height is necessary to insure that the tower signals can reach other emergency tower signals that are in the service area. In addition, requiring a low visual impact for the tower would restrict the ability of the tower to send its signals from this site to other sites. None of the other towers on Beacon Hill have such a requirement and therefore this tower would be the only one with that requirement. The Hearing Examiner finds that this

variance application is unique to this particular site and therefore this criterion has been met.

b. Compliance with the requirement or standard would eliminate or substantially impair a natural, historic, or cultural feature of area-wide significance.

There was no testimony presented that there are any natural, historic or cultural features of area wide significance on site. Therefore, the granting of the variance would not affect this particular criterion.

4. Notwithstanding the proposed modification of the standard or requirement, all of the following objectives shall be reasonably satisfied:

a. Surrounding properties will not suffer significant adverse effects.

There should be no adverse effects on surrounding properties. A DNS was issued by the Spokane Airport Board under the State Environmental Policy Act (SEPA) and no significant impacts were noted in any of the environmental documents. The site is designed to function better as an emergency communications system and radio site and will be up-graded in order to better maintain the regional public safety communication system as it exists on site. The two existing towers will be taken down and replaced with one. The building equipment shelter will be enlarged somewhat, but as noted, it is in an area with several other towers so that there should be little effect on surrounding uses.

b. The appearance of the property or use will not be inconsistent with development patterns of the surrounding property.

As stated, this hill has several radio and communication towers on it. The construction of the proposed tower will eliminate two other towers but it will not change the appearance of the property in any significant way. It is unlikely that residential development would occur in this area as it is unsuitable for such development. No evidence was submitted to show that the appearance of the property will be significantly adverse.

c. The ability to develop the property in compliance with other standards will not be adversely affected.

The applicant seeks four variances including the low visual impact variance, the height variance, a setback variance and a variance for fencing and landscaping. There was no evidence presented to show that the property cannot comply with other standards found in the ordinance.

5. No variance may be granted to allow or establish a use that is not allowed in the underlying districts as a permitted use or to modify or vary a standard or requirement of an overlay zone, unless specific provisions allow a variance.

The applicant is not changing the use. The use was established many years ago and there are two towers on site being used for this purpose. Those two towers will be removed and a new tower built. The use, however, will not change.

6. Floodplain variance is subject to the additional criteria of SMC 17E.030.090 and SMC 17E.030.100.

This criterion does not apply because this is not a floodplain variance.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed conditional use permit and variance applications subject to the following conditions:

1. Approval is for a conditional use permit to allow the applicant to remove two towers on site and replace them with a 120-foot tall tower structure. The structure as well as the rest of the site will be developed substantially in accordance with the site plans submitted which are in the record as Exhibit #2G. Approval is also for a variance to waive certain requirements of the code relating to towers. The applicant is allowed a waiver of the requirement for landscaping for this tower and also a waiver of the requirement for decorative fencing. This will allow a chain link fence topped with barbed wire to an overall height of 8-feet. In addition, the applicant will not be obligated to comply with the low visual standards. Also, one side yard setback may be reduced from 20 feet to 14 feet. The proposal is to be accomplished substantially in accordance with the site plans in the record and the general application, conditional use permit application and variance application. If the applicant seeks to modify this approval, the applicant shall seek approval from the Planning Services Department. If Planning Services determines the changes to be substantial then they shall be submitted the Hearing Examiner for review and approval.

2. Should the applicant discover any archaeological resources during construction, the Spokane Tribe of Indians shall be notified immediately and construction stopped.

3. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development or towers.

4. If permits from other agencies are required for this proposal, conditions placed on

those permits will become conditions of this permit.

5. Spokane Municipal Code 17G.060.240 regulates the expiration of this approval, and Table 17G.060.3 sets forth the time frame for the expiration of all approvals.

6. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office:

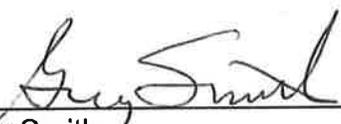
COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

7. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 1st day of September 2011.



Greg Smith
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 11.02.0730.

This decision may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE DECISION SET OUT ABOVE.** The date of the decision is the 1st day of September 2011. **THE DATE OF THE LAST DAY TO APPEAL IS THE 22nd DAY OF SEPTEMBER 2011 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.