

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
AT&T Wireless to allow the construction) AND DECISION
of a wireless communication tower at)
1402 E. Magnesium Road) FILE NO. Z1300041-CEL3

SUMMARY OF PROPOSAL AND DECISION

Proposal: AT&T Wireless seeks a conditional use permit in order to allow the construction of a 100' wireless communication support tower together with a 12' x 26' equipment shelter (a prefabricated building). The tower and building will be constructed in a 40' x 50' compound in the southwest corner of a parcel of property that is improved with an office building. The proposed facilities are within 300 feet of a residential zone.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: AT&T Wireless
19801 SW 72nd Ave., Ste. 200
Tualatin, OR 97062

Agent: Julie Cope
4111 S. Napa St.
Spokane, WA 99204

Owner: Lanzce Douglass
1402 E. Magnesium Road
Spokane, WA 99217

Property Location: 1402 E. Magnesium Road, Spokane, WA, 99217

Legal Description: The legal descriptions of the property and of the leased area within the property are provided in Exhibits 2F and 2G, included in the record.

Zoning: The property is zoned LI (Light Industrial).

Comprehensive Plan Map Designation: The property is designated as Light Industrial in the city's Comprehensive Plan.

Site Description: The site is 316' by 366', and therefore is almost square in shape. The property fronts the south side of Magnesium Road in north Spokane. The property is approximately 2.66 acres in size. The topography is relatively flat. The tax parcel number of the property is 36213.0022.

Surrounding Conditions and Uses: The land to the west of the site is zoned Residential Multi Family (RMF) and is currently used for such purposes. The land to the east, south, and north of the site is zoned Light or Heavy Industrial. These properties are unimproved, open land. The property to the north is in the county of Spokane, as Magnesium Road marks the boundary between the City of Spokane and the County of Spokane.

Project Description: The applicant has submitted a Conditional Use Permit – Type III application seeking approval to construct a new 100-foot wireless communication tower, with supporting ground equipment in a prefabricated building, on property that is zoned and designated for light industrial, but is located within 300 feet of a residential zone.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (“SMC”) 17C.130, Industrial Zones; SMC 17C.355, Wireless Communication Facilities; SMC 17C.320.080, Conditional Use Criteria; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: June 12, 2013
Posted: June 12, 2013

Notice of Application/Public Hearing: Mailed: August 16, 2013
Posted: August 19, 2013

Community Meeting: June 26, 2013

Public Hearing Date: September 19, 2013

Site Visit: September 18, 2013

SEPA: A Determination of Nonsignificance (“DNS”) was issued by the City of Spokane on September 4, 2013.

Testimony:

Dave Compton, City Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Julie Cope
4111 S. Napa St.
Spokane, WA 99204

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Conditional Use Permit application
 - 2C Notification Map application
 - 2D Narrative of the request
 - 2E Letter providing information for the site location
 - 2F Title Sheet Plan
 - 2G Civil Survey Plan
 - 2H Site Plan
 - 2I Enlarged Site Plan
 - 2J Elevation Plan
 - 2K Conceptual images
 - 2L TOWAIR Determination Results
 - 2M Universal Licensing System
 - 2Ma Cellular License – KNKA755
 - 2Mb PCS Broadband License – KNL283
 - 2Mc PCS Broadband License – WQQQ2136
 - 2Md 700 MHz Lower Band (Blocks C,D) – WPWU989
 - 2Me 700 MHz Lower Band (Blocks C,D) – WPYU553
 - 2Mf 700 MHz Lower Band (Blocks A,B &E) – WQJU518
3. Conditional Use Permit Counter Complete checklist
4. Pre-Development notes
5. Engineering Services comments
6. Building Department comments
7. Avista comments
8. Spokane Tribe of Indians comments
9. Williams Pipeline comments
10. Notice map
11. Parcel listing
12. Notice of community meeting
13. Combined notice of application and public hearing
14. Affidavit of mailings
 - 14A community meeting dated 06-27-13
 - 14B combined application/public hearing dated 08-16-13
 - 14C corrected community meeting affidavit dated 06-12-13
15. Affidavit of public notice
 - 15A community meeting dated 06-12 -13
 - 15B combined application/ public hearing dated 08-19-13
16. Copy of legal notice requesting public comments dated 06-14-13
17. SEPA Determination of Nonsignificance
18. Environmental Checklist
19. Community Meeting sign in sheet
20. Community Meeting notes, no members of the public attended
21. Hearing File Preparation Checklists
22. Letter dated 06-07-13 to Julie Cope from Dave Compton
re: Community Meeting Instructions

23. Letter dated 06-26-13 to Planning Department from Julie Cope
re: submittal of application and related documents
 24. Letter dated 03-26-13 to Interested Parties from Dave Compton
re: requesting comments
 25. Letter dated 08-02-13 to Julie Cope from Dave Compton
re: notice of application/public hearing instructions
 26. Letter dated 08-07-13 to Julie Cope from Dave Compton
re: notice of application/public hearing instructions
- A Exhibits received at hearing
A-1 Planning Services' PowerPoint presentation

FINDINGS AND CONCLUSIONS

A. Conditional Use Permit

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170 and 17C.320.080. The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The project site is zoned Light Industrial ("LI"). The uses allowed in the Light Industrial zone are shown on Table 17C.130-1. According to the table, Wireless Communication Facilities are a limited/conditional use ("L/CU"), subject to additional terms referenced by the bracketed number "[11]". The relevant footnote to the table provides: "Standards that correspond to the bracketed numbers [] are stated in SMC 17C.130.110." See Table 17C.130-1. The relevant provision of SMC 17C.130.110, entitled "Wireless Communication Facilities," provides rather cryptic guidance on the matter, stating in its entirety:

This standard applies to all parts of Table 17C.130-1 that have a [11]. Some wireless communication facilities are allowed by right. See chapter 17C.355 SMC.

See SMC 17C.130.110(11). Thus, the only substantive guidance provided in the limited use standards is the reference to SMC 17C.355. That chapter, as pertinent here, states that wireless communication support towers, proposed in an industrial zone and within three hundred feet of a residential zone, require a conditional use permit. See SMC 17C.355.030(B)(2). In such cases, the Hearing Examiner is directed to apply the criteria contained in SMC 17G.060.170. See SMC 17C.355.030(B)(3). In addition, the Hearing Examiner must consider the supplemental conditional use criteria that apply specifically when a wireless communication support tower is proposed. See SMC 17.320.080(A).

In order to obtain an approval of the conditional use permit, the applicant must satisfy the applicable criteria listed in SMC 17G.060.170 and SMC 17C.320.080. Those criteria are discussed in some detail below. However, assuming those criteria are satisfied, the proposed use

is allowed under the applicable land use codes. As a result, the Hearing Examiner concludes that this criterion is satisfied.

- 2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The comprehensive plan (the "CP") provides very little guidance on the development of wireless communication facilities. However, there are some goals and policies that should be considered.

The comprehensive plan notes that traditional telephone lines and wireless communication support towers are among the utilities that have the greatest impact on the visual environment. See CP § 5.14 p. 59. It is no doubt because of this that state regulations call for construction on optimal sites and careful design for such facilities. See CP § 5.2, p.7. The limited goals and policies of the comprehensive plan are also directed at such concerns.

Goal CFU 5, Environmental Concerns, seeks to minimize impacts upon the environment through cautious site-selection and use of utilities. See CP § 5.4, CFU 5, p. 18. Policy CFU 5.7, Telecommunication Structures, states the preference to use existing structures to support telecommunications facilities before new towers or stand-alone facilities are constructed. See CP § 5.4, CFU 5.7, p. 20. The policy should be pursued through a number of methods, including encouraging the co-location of multiple carriers on a single support tower, promoting co-location agreement amongst wireless carriers, and the encouraging the use of existing structures (buildings, water towers, etc.) as support sites for telecommunication facilities before new towers are built. See id.

Goal DP 3, Function and Appearance, states the following goal: "Use design to improve how development relates to and functions within its surrounding environment." See CP § 8.4, DP 3, p. 12. Policy DP 3.17, Telecommunication Facilities, carries out the goal by seeking to control the visual impact of telecommunications facilities. See CP § 8.4, DP 3.17, p. 16. Therefore, efforts should be made to place support towers as efficiently and effectively as possible, in order to minimize the total number of such sites. See id. Again, this policy expresses a desire to co-locate such facilities as much as possible, before any new towers are constructed. See id. In addition, the policy encourages the city to require telecommunications sites to utilize visually unobtrusive technology, landscaping and screening techniques whenever possible. See id.

The proposed project fulfills the objectives described above. As is discussed in greater detail in Section 6 below, there are no other communication towers within the geographical area of need. The Applicant investigated other properties in the area and found, for various reasons, no suitable alternatives. The Applicant also did its due diligence regarding the possibilities for co-location. The nearest sites are already in use by AT&T and do fill the need in the geographical area in question. The proposed new tower will not only address the quality and capacity issues identified by AT&T Wireless, but will also provide a tower that can serve at least two additional carriers as the need arises. City Planning estimated that a cell tower has not been approved in the city in the last 5-10 years. The project serves a documented need, on property that is suitable for the proposal, and in a location that will enable the efficient and

effective delivery of communication services. For these reasons, the Hearing Examiner concludes that the proposal is consistent with the goals and policies of the comprehensive plan.

- 3. The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions, such as the conditional use permit under review, require that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). All development permit applications are subject to a concurrency test, unless expressly exempted. See SMC 17D.010.020(A). A Type III application for a conditional use permit, such as the proposed project, is not exempt from the concurrency requirements. See SMC 17D.010.030(E) (listing the exempt permits).

On July 3, 2013, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 24. The comments received in response to this notice were minimal and raised no concerns about the project. See Exhibits 6-9. A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing or evidence in the record suggesting that the concurrency standards would not be satisfied. The proposal, by its nature, does not place any substantive demands on public infrastructure.

To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. The concurrency provisions of the municipal code state that a lack of response by a notified facility or service provider shall be construed as a finding that concurrently is met. See SMC 17D.010.020(B)(1). In addition, the Request for Comments advises that a lack of comment by any referral agency will be considered acceptance of the application as technically complete and meeting concurrency requirements. See Exhibit 24.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the conditional use permit is met.

- 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. See SMC 17G.060.170(C)(4).*

The "site plan" for the project consists of a packet of plans included in the record as Exhibits 2F-2J. These documents show the location, size, shape, and topography of the property. See *id.* They also include information about the physical characteristics of the site and details about the proposed project. See *id.*

The property owned by Mr. Douglass is approximately 2.66 acres in size, and is roughly square in shape. The property is already developed with an office building. The proposal is to place the communication facility in the southwest corner of the property, within a fenced storage area. Additional fencing will be constructed around the facility. The area in which the facility will

be placed is roughly 40 feet by 50 feet. See Exhibit 2G.

The facility will be located in an industrial area. The properties surrounding the property are zoned for Industrial, with the exception of the property to the west, which is zoned for Residential Multifamily. The property to the west is improved with an apartment complex. The adjacent properties to the immediate east, north and south are undeveloped. Properties in the near vicinity are being used for industrial purposes, such as the properties of Hanson and Central Premix. Given this zoning and nearby uses, the property would appear to be a good choice for a communications tower. There was no testimony at the public hearing or evidence in the record that the placement of the tower at that location would be detrimental or even less than optimal.

The property is flat. There is no evidence of wetlands, streams, or other sensitive or critical areas. There is no evidence that drainage is a concern or that the soils have problematic characteristics. There are no known historic or cultural resources on the property. A DNS was issued for the project, and that determination was not appealed. There are no apparent or significant environmental impacts from the project, with the minor exception of some visual effect from the placement of the 100' tower. However, the visual effect will be mitigated, as is discussed elsewhere. There are no substantive environmental impacts from this proposal. Some additional comments on this issue are provided in Section 5 below.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

- 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 of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The record before the Hearing Examiner confirms that the proposed project will not have a significant adverse impact on the environment. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

The environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts.

On or about June 27, 2013, the Applicant prepared an environmental checklist, pursuant to the State Environmental Policy Act, for this project. See Exhibit 18 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, there are no wetlands or streams on or near the site, which could be affected by the proposed construction. See Exhibit 18 (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 18 (Environmental Checklist ¶ B(3)(a)(5)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 18 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No threatened or endangered species were identified on the site. See Exhibit 18 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). There are no indications of significant noise, odor, light or glare. See Exhibit 18 (Environmental Checklist ¶¶ B(7)(b), B(11) & B(2)(b)).

On September 4, 2013, the Department of Planning & Development of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 17. The city did not attach any mitigating measures to the DNS. Any appeal of the DNS was due on September 18, 2013. See id. No appeal of the DNS was filed.

The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

The Hearing Examiner concludes that the project will not have significant impacts on the environment, that cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. *The need for the proposed wireless communication support tower shall be demonstrated if it is within three hundred feet of an existing residential lot. See SMC 17C.320.080(A)(1).*

In order to demonstrate need, the applicant must submit a range of evidence. The municipal code describes the types of things that must be shown to justify a conditional use permit for a wireless tower. Specifically, the pertinent code provisions call for the following:

An evaluation of the operational needs of the wireless communications provider, alternative sites, alternative existing facilities upon which the proposed antenna array might be located, and co-location opportunities on existing support towers within one mile of the proposed site shall be provided. Evidence shall demonstrate that no practical alternative is reasonably available to the applicant.

See SMC 17C.320.080(A)(1).

The Applicant has stated that there is a need for the proposed cell site both to ensure quality cellular service and to increase call capacity. See Exhibit 2E. A new cell tower is required because quality limits are being reached for the existing facilities. See id. The Applicant explained the need, given the existing infrastructure, as follows:

The current cell sites serving AT&T Wireless for this area are: Hill Yard (1.9 miles away), Country Homes (1 mile away), Beacon Hill (3.5 miles away) and North Pointe (1.7 miles away). These sites do not provide quality coverage/capacity for the areas between Lincoln and Market Streets, and Magnesium and Francis Roads. For these reasons (poor quality and capacity of network) AT&T Wireless is proposing a new cell be constructed to resolve the issues and improve the wireless network (wireless data speeds and voice quality) in the area.

See Exhibit 2E.

The Applicant has studied the matter and concluded that the new cell site will prove ideal to serve the area within a 1-mile radius of the proposed location. See id. The location and height of the proposed tower are “critical due to the requirement that it: “fit in” with the existing cell sites;

relieve capacity congestion at the surrounding cell sites, provide excellent in-building coverage and give reliable service in the area.” See id. Many locations will not meet the criteria for a new cell site because of overlapping coverage or inability to provide adequate cell coverage. See id. The Applicant provided “before” and “after” plots showing the improvements in cell coverage as a result of the proposed facility. See id. These plots show that the proposed location fits relatively with neighboring cell sites, addresses coverage needs, and bolsters current and future cell capacity. See id.

The Applicant made an effort to co-locate its communication facilities, but was unable to make suitable arrangements. See Exhibit 2D. There were no towers within the geographical area of need. See id. AT&T already has facilities at the two closest towers. See id. “As there were no available towers in, or near, the proposed area, a new tower is being proposed.” See id. In addition, the tower is being constructed in order to accommodate at least two additional carriers in order to promote future co-location. See id.

Alternative sites for the project were also examined. See id. However, the alternative properties were ruled out for various reasons, such as incompatible uses, site contamination, easements, and zoning restrictions. See id. The Applicant concluded, after considering the options, that the proposed site was the only viable option. See id.

The Hearing Examiner concludes that there is ample justification, in terms of the need for quality service and capacity, to install a new communication facility as proposed. The Hearing Examiner also concludes that that applicant considered and justifiably ruled out the alternative properties and co-location sites within one mile of the proposed facility, and that there is no practical alternative to the proposed facility. Therefore, this criterion for approval is met.

7. *The proposed tower satisfies all the provisions and requirements of SMC 17C.355.030 and SMC 17C.355.040. See SMC 17C.320.080(A)(2).*

The proposal is consistent with the pertinent provisions of 17C.355.030. As a general proposition, as discussed above, the proposal is allowed as a conditional use in the Industrial zone, given its proximity to residential property. See 17C.355.030(B)(2).

The proposal also satisfies the criteria applicable to all wireless facilities, found in 17C.355.030(C). Specifically, the Applicant has provided a copy of the required FCC documentation. See Exhibits 2Ma-2Mf. The Applicant has supplied documentation to show a visual simulation of how the project will appear from adjacent properties and areas. See Exhibit 2K. The Applicant has confirmed that there will be no signage displayed on the antenna array or support structure, other than non-lighted signage required by the FCC. See Exhibit 2D. Although fencing is not required, the facility is being placed within an existing storage area that is already fenced and well screened from public view. See Exhibit 2D. The proposed compound will be fenced as well. See Exhibit 2D. There is landscaping along the west boundary that also provides screening. See Exhibit 2D. The facility is being located in the southwest corner of the property, which also moves the facility away from direct view. The antenna pole will be painted a neutral color such as tan or green to lessen the visual effect. See Exhibit 2D. These conditions will assist with hiding a part of the facility and will help make it better blend in with the surrounding area. Given the foregoing, the relevant criteria are thoroughly addressed by the Applicant. See SMC 17C.355.030(C)(1), (3)-(6).

The proposal is also consistent with the applicable portions of SMC 17C.355.040. The pertinent requirements are discussed below.

First, the Applicant must provide appropriate screening and landscaping. See SMC 17C.355.040(A). The proposed site for the communications tower is a fenced storage area. The facility compound will also be fenced, providing additional screening. *Testimony of J. Cope*. The proposal either meets, or with conditions will meet, the landscaping and screening requirements. See SMC 17C.355.040(A). The property is already heavily treed on the western border. *Testimony of D. Compton*. The existing landscaping on the property may be sufficient to satisfy the landscaping requirements for the proposal. *Testimony of D. Compton*. The Planning Department will verify that the existing landscaping meets the requirements, or will require additional landscaping as necessary to satisfy code standards. *Testimony of D. Compton*. The Applicant raised no concern about the imposition of a general condition that it must meet the applicable landscaping standards. *Testimony of J. Cope*.

Second, the project must be compatible in terms of design and lighting. See SMC 17C.355.040(B). Here, the project adequately considers design considerations. The tower will be screened, as much as possible, by the fencing and trees. The Applicant intends to paint the tower a neutral color, which will also help lessen the visual impact. It is not realistic to completely screen a communications tower, and the code does not demand such a result. There is no lighting proposed for this facility. Thus, there is no need for shielding or other features to guard against fugitive light.

Third, the project must honor the applicable setbacks. See SMC 17C.355.040(C). However, it is doubtful that there are any setback requirements for this project. This code provision refers the reader to Table A.1 for setback requirements. However, Table A.1 specifically applies to new wireless facilities that are "allowed by ministerial (administrative) permit." See Table A.1. In other words, the requirements in the table apply to Type II decisions, not to the decision of the Hearing Examiner. Table A.2 specifically applies to wireless communication facilities "allowed by discretionary Hearing Examiner conditional use permit." See Table A.2. However, Table A.2 contains no standards or guidance for the placement of such facilities in the industrial zone. See Table A.2. There is a requirement that support towers be at least 30 feet from any residential structure. There are no residential structures within 30 feet of the proposed tower. The Planning Department confirmed that there are apparently no setback requirement applicable to this proposal. *Testimony of D. Compton*.

Fourth, the Applicant must employ proper visual screening and pursue the co-location of facilities whenever possible. See SMC 17C.355.040(D). The screening, landscaping, and design of the proposed tower have been discussed above. The Hearing Examiner has already determined that the Applicant's proposal adequately addresses such concerns. In addition, the efforts of the Applicant to find alternative sites, co-locate on existing facilities, and the like, has also been properly addressed by the Applicant. The Hearing Examiner concludes that these requirements have been properly addressed.

Fifth, at the time of the building permit application, the Applicant must supply the city with the approved FCC application, a visual impact analysis, other visual representation, and all supporting documents. See SMC 17C.355.040(F). Although these materials are not required until a building permit is applied for, the Applicant has already largely if not entirely satisfied these

requirements. For example, the FCC permits have been made a part of the record. See Exhibits 2Ma-2Mf. A simulation of the visual impacts has been produced for the record. See Exhibit 2K. Satisfaction of such requirements at the time of permitting is required in any case, and compliance with applicable codes will be a condition of CUP approval.

Finally, the Applicant must show that co-location is not a realistic option. See SMC 17C.355.040(G)(2). Specifically, the municipal code states, that in "all other zones," which includes the Industrial Zone, the following rule applies:

No new wireless communication support towers over sixty feet in height may be constructed within one-half mile of an existing support tower unless it can be demonstrated to the satisfaction of the hearing examiner that the existing support tower is not available for co-location of an additional wireless communication facility, or that its specific location does not satisfy the operational requirements of the applicant.

See SMC 17C.355.040(G)(2). The sixty foot limit does not apply to this case because there are no other towers within a half-mile of the site. The efforts to utilize other sites and to co-locate a facility have been discussed thoroughly above. The Hearing Examiner concludes that this requirement has been satisfied by the Applicant.

The Hearing Examiner finds that the proposed tower satisfies all the provisions and requirements of SMC 17C.355.030 and SMC 17C.355.040. Therefore, this criterion for approval of the conditional use permit is satisfied.

DECISION

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

1. Approval is for a conditional use permit to allow AT&T Wireless to construct a wireless communications monopole built to a maximum height of 100 feet. The proposal includes the antenna array for the tower, along with the necessary equipment shelters. The tower is to be constructed so as to allow the co-location of as many other providers as possible. Any changes to the application must be submitted to Planning Services for its review and approval. If Planning Services finds the proposed changes to be substantial, then the changes shall be forwarded to the Hearing Examiner for review and approval.
2. The project will be developed in substantial conformance with the plans that were submitted at the time of application for this Conditional Use Permit. The plans are included in the record as Exhibits 2F-2J.
3. The applicant shall comply with all other requirements of the Spokane Municipal Code which relate to wireless communication support structures and related facilities, including but not necessarily limited to the provisions of SMC 17C.355, Wireless Communications Facilities.
4. Any wireless communication facility that is no longer needed and its use is discontinued shall be immediately reported by the service provider to the planning director. Discontinued facilities shall be completely removed within six months and the site restored to its pre-existing condition.

5. The Applicant and owner shall ensure that there is adequate area for maneuvering for vehicles around the existing building and this proposed cell tower site, in accordance with City Standards.
6. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the Uniform Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
7. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.
8. Spokane Municipal Code section 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.
9. 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.

10. 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 23rd day of September 2013.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding conditional use permits are final. They 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 23rd day of September, 2013. **THE DATE OF THE LAST DAY TO APPEAL IS THE 14th DAY OF OCTOBER 2013 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.