

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by Verizon Wireless to allow the construction of a wireless communication tower at 1620 W. Wellesley Avenue)))))	FINDINGS, CONCLUSIONS, AND DECISION FILE NO. Z19-550CEL3
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SUMMARY OF PROPOSAL AND DECISION

Proposal: Verizon Wireless seeks a conditional use permit (CUP) in order to allow the construction of a 70-foot wireless communication tower. The tower will be constructed using stealth technology, with supporting ground equipment, in a 60 square foot leased area in the side yard of a professional office building. The property is situated in a commercial office zone and is located at 1620 W. Wellesley, Spokane, Washington.

Decision: Approved, with *revised* conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Verizon Wireless
c/o Rick Cardoza
1851 Central Place South, #101
Kent, WA 98030

Agent: Rick Cardoza
LDC, Inc.
1851 Central Place South, #101
Kent, WA 98030

Property Owner: Schneider Enterprises, LLC
6304 S. Pittsburg Street
Spokane, WA 99223

Property Location: The property is located at the intersection of Ash Street and Wellesley Avenue. The property is commonly known as 1620 W. Wellesley Avenue, Spokane, Washington 99205. The site of the office use consists of four tax parcels. The proposal is to install a cellular tower on one of those parcels, specifically Tax Parcel No. 26364.1411.

Zoning: The property is zoned O-35 (Office w/35 foot building height).

Comprehensive Plan Map Designation: The property is designated as Office in the City of Spokane Comprehensive Plan (CP).

Site Description: The site is a developed commercial property with an existing commercial building, an asphalt parking area, and landscaping. The topography of the site is relatively flat.

The property is located at the intersection of Ash Street and Wellesley Avenue. The property fronts on Ash Street, which is a major arterial as noted in the Proposed Arterial Network Map dated September 2016. There is also an alley adjacent to the property. Thus, the property has access from both Ash and the alley. The proposed location for the wireless communication tower is one of four platted lots under common ownership. The applicant will be required to complete a Boundary Line Adjustment (BLA) to aggregate the parcel and the one immediately to the south with the building, if not all four parcels together.

Surrounding Zoning and Uses: The land to the north is zoned RSF (Residential Single-Family). The land to the immediate east and south is zoned O-35, like the project site. The land to north, east, and directly south of the Office zone is zoned RSF. The land to the immediate west is zoned NR-35 (Neighborhood Retail – 35). Beyond that property, farther to the west, is RSF zoned land.

A church is located immediately to the north of the site. There are commercial uses in the other three directions adjacent to the site, primarily consisting of office and retail uses. Farther to the north, south, and east are established residential neighborhoods. To the southeast is Shadle Park High School. West of the high school is the Shadle Park shopping center.

Project Description: The applicant has submitted a Type III application to construct a new 70-foot wireless communication tower and install accessory, ground support equipment on a developed commercial site. The accessory, ground support equipment will be installed within a fenced and landscaped area behind the office building. The tower will be a “mono-pine” design, a form a stealth technology intended to make the tower blend in better with its surroundings.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.120, Commercial Zones; SMC 17C.355A, Wireless Communication Facilities; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: November 4, 2019
Posted: November 8, 2019

Notice of Application/Public Hearing: Mailed: May 26, 2020
Posted: May 15, 26, & 27, 2020

Community Meeting: November 23, 2019

Public Hearing Date: June 11, 2020

Site Visit: June 6, 2020

SEPA: A Determination of Nonsignificance (DNS) was issued by the City of Spokane on March 17, 2020. The DNS was not appealed.

Testimony:

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

Rick Cardoza
LDC, Inc.
1851 Central Place South, #101
Kent, WA 98030

Mark Tuttle, RF Engineer
Verizon Wireless

Exhibits:

1. Planning Services Staff Report
2. Application Materials
3. State Environmental Policy Act (SEPA) Checklist dated 01/14/20
4. Determination of Nonsignificance “DNS” dated 02/20/20
5. Notice of Application & Public Hearing Materials, including:
 - A Notice of Application & Public Hearing for 06/11/20
 - B Affidavit of Mailing on 05/26/20
 - C Affidavit of Posting on 05/27/20
 - D Notice of Application & Public Hearing for 04/02/20
6. Agency Comments
7. Public Comments
8. Miscellaneous Correspondence
9. Community Meeting Materials, including:
 - A Notice of Community Meeting for 11/23/19
 - B Affidavit of Mailing on 11/04/19
 - C Affidavit of Posting on 11/08/19
 - D Community Meeting Sign-in Sheet
 - E Community Meeting Summary
10. Notification Map Application and Receipt
11. Staff Presentation

FINDINGS AND CONCLUSIONS

To be approved, the proposed CUP must comply with the criteria set forth in SMC 17G.060.170 and SMC 17C.355A. The Hearing Examiner has reviewed the proposed CUP 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 Office, with a 35-foot height limit (“O-35”). The uses allowed in the Commercial zones are shown on Table 17C.120-1. That table does not reference Wireless Communication Facilities. However, there is a separate chapter in the municipal code that specifically governs Wireless Communications Facilities. See SMC 17C.355A.010 *et seq.*

According to SMC 17C.355A.030, wireless communication towers are allowed in various zones as described in Tables 17C.355A-1 and 17C.355A-2. According to Table 17C.355A-2, a 61-foot to 70-foot wireless communication tower is allowed in the Office zone, so long as a Type III CUP is obtained. See Exhibit 1, p. 6. Because the proposed tower is within 50 feet of a residential zone, a stealth design is required. See Table 17C.355A-2, n. 1.

The Hearing Examiner concludes that the proposed use is allowed under the land use codes, so long as the conditional use and other development standards are satisfied. Therefore, this criterion for CUP approval 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 CP contains a limited number of goals and policies that focus on wireless communication facilities. The goals and policies that are present tend to focus on the need to minimize the impacts of such facilities. However, the CP also recognizes the importance of strong communication networks, particularly during natural and man-made disasters.

The building at 1620 W. Wellesley Avenue has been used to support cellular antennas and equipment for many years. Verizon will be removing 12 antennas and other equipment mounted on the office building. See Exhibit 1, p. 9. The antennas and equipment will be moved onto the proposed tower, which will be installed immediately adjacent to and behind the office building. See *id.* This will have several benefits.

The removal of the antennas and equipment will decrease the visual impacts of the cellular facilities at this site. See Exhibit 1, p. 9. Although the equipment will be moving to an adjacent tower, the somewhat unsightly equipment will no longer be mounted on top of the building and in plain view. Although the tower will be installed on the site, the tower will employ a mono-pine design in order to better blend into the neighborhood. This is demonstrated well by the simulation photos submitted by Verizon. See Exhibit 2 (Simulation Photos). In this way, the proposal is consistent with the objectives of Policy DP 2.20, Telecommunications Facilities. As most relevant here, this policy seeks to control the visual impact of telecommunications facilities. See CP, DP 2.20, p. 8-12. In addition, this policy encourages the city to require telecommunications sites to utilize visually unobtrusive technology, landscaping, and screening techniques whenever possible. See *id.*

Placement of the tower in this location is a natural extension and upgrade to the existing use. The site has already been used for cellular equipment for many years, and the property is located at the intersection of two busy roads, Ash Street and Wellesley Avenue. The project is also located in the right location to serve the growing needs of the Alberta-Wellesley District. See Exhibit 1, p. 8. Locating the tower on this property will minimize impacts to the environment by using a site already dedicated to that use, consistent with Goal CFU 5, Environmental Concerns. See CP, CFU 5, p. 5-16. Consistent with that idea, 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, CFU 5.7, p. 5-18. While it is true that a new tower is proposed, this proposal is more akin to an expansion and improvement upon an existing use. In that sense, the proposal promotes the above-referenced capital facility goals and policies.

Policy ED 6.3 of the CP encourages the expansion and development of sophisticated communications facilities and networks. See CP, ED 6, p. 7.14. The Staff pointed out that the

new tower will aid in bringing the latest communication technology to local residents, educational facilities, and businesses. See Exhibit 1, p. 9. This promotes the economic development plans embodied in the CP.

The proposed tower is also consistent with CP policies encouraging emergency preparedness. Policy CFU 3.4, Natural and Man-Made Disasters, requires participation in a coordinated regional plan for the provision of public services in the event of natural or man-made disasters. See CP, CFU 3.4, p. 5-12. Wireless services are typically able to keep operating during power outages and actual emergencies, due to back up power and the independence of the network from legacy power/telco grids that can be affected during storm and other weather events. See Exhibit 1, p. 8. The wireless services are also used by First Responders, and Verizon is a central partner in providing essential 911 services. See *id.*

The proposal satisfies the goals and policies of the CP in other ways. The Hearing Examiner agrees with the Staff's analysis of this issue. See Exhibit 1, pp. 8-9.

The Hearing Examiner concludes that the proposal is consistent with the goals and policies of the CP. Therefore, this criterion is satisfied.

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 a CUP, state that every project must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on January 2, 2020, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 6. None of the commenting agencies or departments reported that concurrency could not be achieved. See Exhibit 1, p. 9. In addition, 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. See Exhibit 1, pp. 10-11. In fact, other than the effect on a private driveway, the demand on public infrastructure does not change from the existing use on the roof of the adjacent building. See *id.* The project will, however, impede on an existing private driveway that connects to Ash Street or access to the rear of the property from Ash Street. The driveway would be utilized for access to the tower and parking for Verizon technicians when performing work or maintenance at the site. See *id.*

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the CUP 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 has already been used for wireless communication antennas and equipment. This suggests that the site is an appropriate location for this type of facility. That said, the Applicant is proposing to construct a new wireless communication tower on the site. This requires further consideration of the site conditions.

The Hearing Examiner concludes that the property is suitable for a wireless communication facility, based on its physical characteristics. The property has sufficient area to accommodate the proposed wireless communication facility, which will take up a 10-foot by 60-foot space within the property. See Exhibit 1, p. 10. The shape of the parcel is rectangular and poses no apparent development challenges. The property is flat, with the steepest slope being only 0–3% in grade. See Exhibit 3 (Environmental Checklist ¶ B(1)(b)). There are no wetlands or surface waters on the site. See Exhibit 3 (Environmental Checklist ¶ B(3)(a)(1)).

The site is already developed with a building, asphalt parking areas, and landscaping. The project will result in limited ground disturbance. The area that will be disturbed is already covered with impervious surface, i.e. asphalt. Under the circumstances, no significant impacts are anticipated to soils, drainage patterns, ground or surface water. See Exhibit 1, p. 12; see also Exhibit 3 (Environmental Checklist ¶ B(3)). If any impact did occur, they would be temporary, occurring only during the construction activities. See Exhibit 1, p. 12.

There are no known historic or cultural resources on the property. See Exhibit 3 (Environmental Checklist ¶ B(13)). The Spokane Tribe of Indians did not comment on the project, suggesting that it had no concerns about the proposal. No other comments raised specific concerns about historic, archaeological, or cultural resources on the site. See Exhibit 1, p. 12. If any cultural or historic resources are discovered during any ground disturbing actions, the usual protocols required by state law would apply.

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.

On or about December 27, 2019, the Applicant prepared an environmental checklist, pursuant to the State Environmental Policy Act, for this project. See Exhibit 3 (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 3 (Environmental Checklist ¶ B(3)(a)(1)). No threatened or endangered species were identified as being present on or near the site. See Exhibit 3 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

No waste materials will be discharged into the ground or into surface waters. See Exhibit 3 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No environmental hazards (e.g. exposure to toxic chemicals, risk of fire or explosion, hazardous wastes, etc.) are anticipated to arise due to this project. See Exhibit 3 (Environmental Checklist ¶ B(7)(a)). There are no indications of significant noise, odor, light or glare, although there will be some temporary impacts during the construction phase. See Exhibit 3 (Environmental Checklist ¶¶ B(7)(b), B(11) & B(2)(a)).

The tower will be constructed with stealth technology and will be in the form of a “mono-pine.” See Exhibit 2 (Sheets A3.0 & A3.1). The tower will be disguised as a pine tree, better blending in with the neighborhood and reducing the visual and aesthetic impacts of the facility. See *id.* The tower will be placed next to a mature pine tree and near the church steeple situated on the adjacent property. See Exhibit 1, p. 12. The stealth design and the placement of the tower next to other tall structures will materially reduce the visual impacts of the project. See *id.* The Hearing Examiner concludes that the aesthetic impacts of the facility are adequately addressed.

On March 17, 2020, the Department of Planning & Development of the City of Spokane, as lead agency, issued a DNS for the project. See Exhibit 4. The city did not attach any mitigating measures to the DNS. Any appeal of the DNS was due on March 31, 2020. See *id.* No appeal of the DNS was filed.

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 CUP is satisfied.

6. *The proposed cell tower satisfies the decision criteria listed in SMC 17C.355A, governing Wireless Communication Facilities.*

In addition to the conditional use standards set forth in SMC 17G.060.170, the applicant must also satisfy the development standards that are specific to wireless communications facilities. Those standards are found in SMC 17C.355A.

a) *The proposal satisfies the code requirements related to the location of cell towers. See SMC 17C.355A.050.*

The provisions of SMC 17C.355A.050(A) contemplate a proposal to install a new cell tower in a new location. In other words, the standards are designed to discourage a proliferation of cellular towers across the community. For this reason, there is an emphasis on limiting the number of towers that are constructed, as well as ensuring that multiple carriers can use those towers, as well as existing sites and facilities.

In this case, these policies have less application. The site for the proposed tower is already a major or “macro” facility. *Testimony of R. Cardoza.* The site is an integral part of the Verizon network, and is one of the first macro facilities developed in Spokane. See *id.* The office building on the site already has 12 Verizon antennas, as well as 12 antennas from another carrier. See *id.* Adding a tower to this site, in particular one using stealth technology, does not have an impact analogous to the installation of the tower on a site not previously used for such facilities, in the Hearing Examiner’s opinion. Staff agreed with this assessment. *Testimony of D. Compton.*

The building structure is not adequate to support upgraded equipment on the roof or to add emerging technologies to the site, such as 5G. *Testimony of R. Cardoza; see also Exhibit 2 (Project Narrative, 12/29/19).* The equipment on the roof of the office is not able to satisfy the demand of wireless users in the area. *Testimony of R. Cardoza.* The current facilities do not have the capacity to maintain adequate signal strength in the Shadle Park area. See *id.* The proposed tower would address deficiencies in both coverage (as shown on the radio frequency [RF] maps) and capacity, and would satisfy both current and anticipated needs. See *id.*

In addition, “...colocation would not be feasible on any existing nearby towers, as Verizon has a need to fill the coverage space in the approximate location it currently occupies in the Shadle Park

Neighborhood.” See *id.* This site is the only feasible choice in order to provide adequate wireless services to the patrons, businesses, operators, vendors, and pedestrians and motorists in the area and around the core of the Shadle Park Neighborhood. See *id.* City Staff agreed with the Applicant, concluding that the proposal satisfied the requirements of SMC 17C.355A.050(A). See Exhibit 1, p. 13; *Testimony of D. Compton.*

The municipal code also ranks the preferred tower locations in a specific order of priority. For proposals within 150 feet of a residential zone, towers shall be installed on the following sites, ranked from most preferred to least-preferred: (1) city-owned or operated property and facilities that are not in or near residential zones; (2) industrial zones and downtown zones; (3) city-owned or operated property and facilities in any zone, so long as the proposed tower will be inconspicuous from public areas or residential properties; (4) Community Business and General Commercial zones; (5) office and other commercial zones; (6) other City-owned or operated property and facilities; (7) parcels of land in residential zones; and (8) sites in residential zones on or within 150 feet of a designated historic structure or district. See SMC 17C.355A.050(B). The proposed location for this tower is a commercial property used for an office. Thus, there are four (4) types of properties which would be preferred before the proposed site should be considered.

No city-owned property was found in the relevant area that satisfied preference nos. 1 or 3. See Exhibit 2B, p. 6. The Shadle Center water tower is nearby, but the water department will not allow additional cellular service in that location. *Testimony of D. Compton.* The search area does not contain any industrial or downtown zoned property. See *id.* Similarly, there are no suitable Community Business or General Commercial property in the vicinity. See Exhibit 2 (Project Narrative, 12/29/19). Thus, there are no viable options which satisfy preference nos. 2 or 4.

The Applicant has demonstrated the location requirements of the municipal code have been satisfied. This criterion is met.

b) The applicant has satisfied the application submittal requirements. See SMC 17C.355A.060.

With the potential exceptions discussed below, Verizon has submitted the required materials¹ as part of its application for a wireless communication facility, consistent with SMC 17C.355A.060(A)-(K).

The applicant enlisted a Washington engineer to prepare complete and accurate site plans for the project. See Exhibit 2 (Site Plan, Sheets A1.0-A3.1). The site plans satisfy the requirements of SMC 17C.355A.060(B).

A visual analysis was prepared and submitted. See Exhibit 2 (Photo Simulation). The Applicant provided photo simulations of the visual effect of the wireless communication facility (WCF), both before and after construction. See *id.* The submitted materials are consistent with the requirements of SMC 17C.355A.060(C).

The applicant submitted a clear and detailed written analysis to justify the location and design of the proposed facility, in light of the provisions of the municipal code. See Exhibit 2 (Project Narrative 12-29-19 & Letter of R. Cardoza 3-17-20). The applicant considered alternative sites

¹ The Hearing Examiner concludes that the provisions of SMC 17C.355A.060(G), concerning DAS and small cells, and SMC 17C.355A.060(K), regarding other published materials, are not germane to this proposal. Therefore, these standards do not need to be addressed by the Applicant.

and collocation opportunities in the area, and the viability of those options based upon coverage data. See Paragraph 6(a) above. Thus, the Applicant has demonstrated compliance with the standards in SMC 17C.355A.060(F).

The Applicant submitted a RF emissions compliance report, in fulfillment of the requirements of SMC 17C.355A.060(H). See Exhibit 2 (Non-ionizing Electromagnetic Exposure Analysis and Engineering Certification, Hatfield and Dawson, Consulting Electrical Engineers, March 2020).

The application included the required noise analysis. See Exhibit 2 (Acoustical Report 3-30-20). This satisfies the requirements of SMC 17C.355A.060(I).

The Applicant has fulfilled most of the application requirements listed in SMC 17C.355A.060. However, there are few items that the Hearing Examiner was unable to locate and review, at least in the records submitted to the Hearing Examiner. Specifically, the record supplied to the Hearing Examiner does not contain (1) the mandated FCC documentation per the provisions of SMC 17C.355A.060(A); (2) the RF analysis described in SMC 17C.355A.060(D); and (3) the collocation consent, signed by a person with legal authority to do so, as described in SMC 17C.355A.060(J).

Given the foregoing, the Hearing Examiner will include a condition to the project requiring that such materials be submitted to the Planning Department for review and approval. The RF analysis is particularly relevant to the Hearing Examiner's decision in this case. As such, some additional comment is warranted on that issue.

The Hearing Examiner deems it appropriate to approve this project, although the RF analysis is not in the record at the time of the decision, for a number of reasons. The RF analysis was obviously completed. The Staff presented existing and proposed RF coverage maps, supplied by the Applicant. See Exhibit 11; *Testimony of D. Compton*. The Applicant explained the need and purpose of the project, with reference to the coverage maps. See Exhibit 11; *see also Testimony of R. Cardoza*. The RF maps demonstrate significant improvements to the coverage in the Shadle District. See Exhibit 11. In addition, the Applicant explained the capacity concerns that would be addressed by the project. *Testimony of R. Cardoza*. Mark Tuttle, an RF engineer with Verizon, attended the hearing and was available to answer questions. Although he only provided a very brief comment, he did confirm that the issues were well covered by Mr. Compton and Mr. Cardoza. *Testimony of M. Tuttle*.

The Hearing Examiner believes the intent of SMC 17C.355A.060(D) was addressed on this record. However, the submission of the written RF analysis is still required. Among other things, that analysis must be signed by the engineer, and be accompanied by a *curriculum vitae* (CV) describing the engineer's qualifications, as provided by the municipal code. See 17C.355A.060(D).

Based upon the foregoing, the Hearing Examiner concludes that the proposal, as conditioned, satisfies the requirements of SMC 17C.355A.060. Therefore, this criterion of the CUP is satisfied.

c) *The proposal satisfies the general development standards applicable to wireless communication facilities. See SMC 17C.355A.070.*

SMC 17C.355A.070 sets forth the general development standards applicable to WCFs. The proposed WCF satisfies these standards or will do so, given the project conditions.

The proposed tower is 70 feet tall, which is within the height range allowed in the Office zone. See SMC 17C.355A-2. The project is therefore consistent with the height limitation of the development standards. See SMC 17C.355A.070(A).

The proposed setback for the tower is 9 feet, per the site plan. The adjacent use to the north is a church. If the adjacent use was residential, the required setback would have been 20 feet. *Testimony of D. Compton*. But because the adjacent use is not a residence, the applicable setback is established by the provisions of the Office zone. See *id.* The setback for O-35 property is only 5 feet for the rear yard. See *id.* The tower is setback 9 feet, which satisfies the 5-foot setback. See *id.* In addition, fencing is permitted all the way to the property line. See *id.* Thus, the project design satisfies all the setback requirements. See *id.*

Landscaping will be employed for screening on three sides (north, east, and west) to mitigate the visual impacts of the facilities. *Testimony of R. Cardoza*. The tower will be disguised as a pine tree, in order to better blend with the surrounding environment. See Exhibit 2 (Site Plan, Sheets A3.0 & A3.1, and Photo Simulations). This is a type of “stealth technology,” which is intended to lessen the visual or aesthetic impacts of the project. Thus, the proposal properly addresses the development standards concerns, landscaping, visual impacts, and the use of stealth technologies. See SMC 17C.355A.070(C)-(E).

For new towers, only lighting that is necessary to satisfy FAA requirements is permitted. See SMC 17C.355A.070(F). There is no evidence that such lighting is needed at this site.

The project will be required to satisfy the noise restrictions established in SMC 10.08D.070. See SMC 17C.355A.070(G). The Applicant has already prepared a noise analysis. See Exhibit 2 (Acoustical Report 3-30-20). An acoustics engineer has concluded that the project does not employ equipment that generates noise. See *id.*

No signage or advertisements are proposed for the facility. Thus, the proposal satisfies the standards for signage. See 17C.355A.070(H).

The equipment on the ground will be in an enclosed area, surrounded by fencing and landscaping. See Exhibit 2 (Site Plan); *Testimony of R. Cardoza*. The equipment will also be located in the rear of the lot, behind the office building, so that the facilities are set back and blend better with the surrounding area. In this way, the project satisfies the intent of See SMC 17C.355A.070(L).

There are other development standards applicable to the project as well. The project conditions explicitly state that the applicant must comply with all the development standards in Chapter 355A. The Hearing Examiner concludes that the project complies or will comply with the development standards applicable to WCFs.

d) The proposal fulfills the additional criteria which apply when a wireless communication facility is subject to a conditional use permit. See SMC 17C.355A.080.

To justify the installation of a wireless communication tower in or near a residential zone, a genuine need for the facility must be demonstrated. See SMC 17C.355A.080(A)(1). To satisfy this burden, the applicant is required to present evidence showing “...that no practical alternative is reasonably available to the applicant.” See *id.* The proposed tower must also satisfy all the provisions and requirements of chapter 17C.355A. See SMC 17C.355A.080(A)(2).

The Applicant has demonstrated a need for the facility. The record includes the testimony and documentary evidence demonstrating that an additional WCF is needed to address a gap in cellular coverage in this area. Moreover, the Applicant has shown that there are no practical alternatives to the selected site. The Hearing Examiner has also concluded that the proposal, as conditioned below, satisfies all the applicable criteria of the WCF chapter of the municipal code. The Staff concurred, concluding that the proposal meets all the requirements of 17C.355A. See Exhibit 1, p. 13. As a result, the additional requirements of 17C.355A.080(A) are satisfied.

Proposals within or near residential zones also must satisfy additional notice requirements. The public notice for these types of proposals must include a "black and white architectural elevation and color photo simulation rendering of the proposed WCF." See 17C.355A.080(B)(1)-(2). The Applicant prepared the required architectural drawings and color photo simulations, which are included in the record. See Exhibit 2 (Photo Simulation). Staff confirmed that all procedural requirements were followed. *Testimony of D. Compton*. The Hearing Examiner concludes that this criterion is fulfilled.

DECISION

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

1. *Approval is for a CUP to allow Verizon Wireless to construct a wireless communications monopole, which will use stealth technology (i.e. a "mono-pine"), built to a maximum height of 70 feet, along with related facilities. The project will be developed in substantial conformance with the plans that were submitted at the time of application for this CUP.*
2. The Applicant shall adhere to all development standards that are applicable to this proposal outlined in SMC 17C.355A.070(A)-(O) (setbacks, screening/fencing, lighting, landscaping and the continued maintenance of such).
3. *Within 20 business days of the issuance of this decision, to the extent these materials have not already been supplied to and approved by the Planning Department, the Applicant shall submit to the Planning Department the documentation required by SMC 17C.355A.060(A), (D), and (J). The approval of this project is conditioned upon the Planning Department's determination that such documentation is sufficient to address the requirements of these provisions of the municipal code.*
4. The Applicant shall complete a Boundary Line Adjustment to aggregate the property owner's four (4) parcels into one or at a minimum the two that will include the new tower and the existing office building.
5. *If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.*

6. Any wireless communication facility that is no longer needed and its use is discontinued shall be reported immediately by the service provider to the Planning and Development Director. Discontinued facilities shall be completely removed within six months and the site restored to its pre-existing condition.
7. A Certificate of Occupancy will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations. If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant immediately shall make any and all such changes required to bring the WCF installation into compliance.
8. All surface drainage must be disposed of on-site in accordance with the Spokane Regional Stormwater Manual.
9. The Applicant shall adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County, Washington State, and any Federal agency.
10. 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.

11. 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 2nd day of July, 2020.



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 CUPs 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 ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is three days after a written decision is mailed by the local jurisdiction. This decision was mailed on July 6, 2020. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 30th DAY OF JULY 2020 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.