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DLF/l dh/srf
12/15/97

RESOLUTION NO. 138

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, ADOPTING WRITTEN FINDINGS, CONCLUSIONS AND DECISION REGARDING THE NEXTEL COMMUNICATIONS FACILITY CLOSED RECORD APPEAL OF CONDITIONAL USE PERMIT (#CUP97-035).

WHEREAS, this is a closed record appeal from the Hearing Examiner's decision regarding Nextel Communications's ("Applicant") application for a Conditional Use Permit (#CUP97-035). Applicant proposes to locate a communication facility on property owned by Mr. Earl E. Dedman and Mrs. Jane Doe Dedman, located at 16926 NE 190th Street, Woodinville, and a hearing was held on the same, and

WHEREAS, on October 7, 1997, the Hearing Examiner issued a decision regarding Applicant's proposed communication facility, and approved the Conditional Use Permit with conditions. This decision was timely appealed by Mr. Jack Vermuellen ("Appellant"), 17010 NE 190th, Woodinville, to the City Council, and

WHEREAS, on December 8, 1997, the City Council conducted a closed record appeal, pursuant to Chapter 17.17 of the Woodinville Municipal Code, and

WHEREAS, proper notice of the closed record appeal was duly given, and

WHEREAS, the City Council considered the record before the Hearing Examiner, which consisted of: Exhibits 1-9; the transcript of the hearing before the Hearing Examiner; the Hearing Examiner's Findings Conclusions and Decision (Attachment A); Appellant's appeal information; the appeal materials submitted by staff and the oral arguments of the parties. The

City Council asked questions of the parties, the staff and the City Attorney, and based on the record and the material identified above, the City Council hereby resolves as follows:

1. The City Council finds that the record demonstrates that certain trees surrounding the proposed facility are necessary to visually buffer the neighboring properties from the proposed facility. The importance of the trees, and their ability to visually buffer the proposed facility is substantially evidenced by the record, and include: the Staff Report (Exhibit 1), the Nextel Site Plan (Exhibit 2), the Area Photos (Exhibit 7), the Photo Simulation (Exhibit 8), the Hearing Examiner's Findings, Conclusions and Decisions (page 2, ¶¶ 2 and 5, page 6, ¶¶ 2 and 3), and the transcript of the hearing before the Hearings Examiner. However, despite this evidence, neither the Hearing Examiner's decision, nor the current conditions attached to the Conditional Use Permit require the retention of the trees that visually buffer the facility.

2. Upon considering the record, the City Council finds that it is necessary to modify the Hearing Examiner's decision so as to include a condition that requires the retention of the trees which would visually buffer the facility. In conjunction with this condition, the City Council has reviewed the Three Party Tree Preservation Buffer Agreement, attached hereto as Attachment B, incorporated by reference, and finds that it would accomplish the goal of retaining the trees necessary for the visual buffer.

3. Accordingly, the City Council affirms, and adopts the Hearing Examiner's Findings, Conclusions and Decision, as set forth in Attachment A, attached hereto and incorporated by reference, with the following modifications:

- a. Page 1, paragraph 2 of the Hearing Examiner's Findings, Conclusions and Decision, shall be amended to identify the site in question as being 5.77 acres rather than 4.48.

- b. Page 8 of the Hearing Examiner's Findings, Conclusions and Decision is hereby modified to add a condition to the approval of the Conditional Use Permit, to read as follows:

11. The Three Party Tree Preservation Buffer Agreement ("Tree Preservation Agreement"), as approved by the City Council on December 15, 1997, shall be executed by the parties to the agreement, and recorded with King County Records & Elections, prior to any work being done on site, and no later than December 31, 1997. The "Identified Trees" set forth in Exhibit C of the Tree Preservation Agreement shall not be removed, except as provided in said agreement. If the Tree Preservation Agreement is not executed and recorded by December 31, 1997, the Conditional Use Permit (#CUP97-035) shall lapse.

4. Any party of record with standing desiring to appeal this decision of the City Council must file and serve a land use petition in King County Superior Court, as provided in Chapter 36.70C RCW, within 21 days of the date of this Resolution.

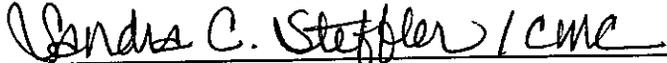
RESOLVED this 15th day of December, 1997.

APPROVED by the Mayor this 15th day of December, 1997.


ROBERT R. MILLER, MAYOR

FILED this 23rd day of December, 1997.

ATTEST:


SANDRA STEFFLER, CITY CLERK

APPROVED AS TO FORM:

BY: 
OFFICE OF THE CITY ATTORNEY

RESOLUTION NO. 138

BEFORE THE HEARING EXAMINER
FOR THE CITY OF WOODINVILLE

SEP 28 1997
CITY CLERK'S DEPARTMENT

In the Matter of the Application of) No. CUP97-035
NEXTEL Corporation)
for Approval of a Conditional Use Permit) FINDINGS, CONCLUSIONS
AND DECISION

SUMMARY OF DECISION

A Conditional Use Permit for construction of a cellular tower 165 feet above grade and an equipment shelter is GRANTED, subject to conditions.

SUMMARY OF RECORD

Request:

NEXTEL Corporation (Applicant) requested a Conditional Use Permit pursuant to the Woodinville Municipal Code Section 21.26.040, in order to construct a cellular tower 165 feet above grade and an equipment shelter. The site is located at 16926 NE 190th Street, Woodinville, King County, Washington.

Hearing Date:

A hearing on the request was held before the Hearing Examiner of the City of Woodinville on September 23, 1997.

Testimony:

At the hearing the following individuals presented testimony and evidence under oath:

- Mr. Joe Wallis, City Planner;
- Mr. Steve Meadows, representative for the applicant
- Mr. George Johnston, planner for the applicant;
- Mr. Jack Vermeulen,
- Mr. Jeff Cook,
- Mr. Tim Schriever.

Exhibits:

At the hearing the following exhibits were submitted and were admitted as part of the official record of these proceedings:

Exhibit 1: Staff Report, with the following Attachments:

- Attachment 1: Application;
- Attachment 2: Future Land Use Map from the Comprehensive Plan;
- Attachment 3: Zoning Map (Partial);

- Attachment 4: Letter from Larry Kirchner, Principal Environmental Health Specialist, Seattle-King County Department of Public Health, dated February 11, 1997;
- Attachment 5: Letter from George Johnston dated September 12, 1997;
- Attachment 6: Letter from Robert J. McGill, Attorney, dated July 25, 1997;
- Attachment 7: Memorandum from James B. Hatfield, P.E.;
- Attachment 8: Supplemental information;
- Attachment 9: Affidavit of Posting for site board dated September 8, 1997;
- Attachment 10: Mailed Notice of Public Hearing;
- Attachment 11: Published Notice of Public Hearing;
- Attachment 12: Applicant's response to Conditional Use Permit Decision Criterion;
- Attachment 13: SEPA Mitigated Determination of Non-Significance;
- Attachment 14: Comment letter from Washington Department of Transportation dated August 20, 1997;
- Exhibit 2: Nextel Site Plan;
- Exhibit 3: Letter from RF Engineers, dated September 23, 1997;
- Exhibit 4: Existing Map (of coverage area map);
- Exhibit 5: After Map (of coverage area map);
- Exhibit 6: Area Land Use Map;
- Exhibit 7: Area Photos;
- Exhibit 8: Photo Simulation;
- Exhibit 9: Letter from Jack Vermeulen, dated September 23, 1997;

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the following Findings of Fact and Conclusions of Law are entered by the Hearing Examiner:

FINDINGS

1. NEXTEL Corporation (Applicant) requested a Conditional Use Permit pursuant to Woodinville Municipal Code Section 21.26.040, in order to construct a cellular tower 165 feet above grade and an equipment shelter. The site is located at 16926 NE 190th Street, Woodinville, King County, Washington. *Exhibit 1, Attachment 1, Application.*
2. The site is 4.48 acres in area. The communication facility will be surrounded by a 35 foot square security fence with landscape screening outside the fence, and located in a mature stand of second growth evergreens that have an estimated height of 100 to 130 feet. The facility will be far off the access street. Two-thirds of the site is currently occupied by greenhouse-type structures. One-third of the site is natural vegetation. A landscape plan has been submitted and is in compliance with the requirements of the WMC. *Exhibit 1, Staff Report; Testimony of Mr. Wallis.*
3. The site is zoned R-1 (one dwelling unit per acre). The proposed use is an allowed use with a conditional use permit. *Exhibit 1, Staff Report.*
4. The closest structure to the west of the proposed facility is a church. A school and a grange hall exist to the northwest. A utility yard exists to the east, and a grocery exists to the south. There are two residences to the southwest that are approximately 240 feet and 290 feet away. There is another residence further away to the south. No areas of environmental concern are known to exist on the site. The supporting electronic equipment is housed in an equipment shelter that has air conditioning, which may cause some noise in the immediate vicinity of the shelter. The applicant has agreed to provide sound screening of the equipment from adjacent properties if the noise level exceeds 45 dB at the fence nearest the source of the noise. *Exhibit 1, Staff Report; Exhibit 1, Attachment 13, MDNS; Exhibit 6, Area Land Use Map; Testimony of Mr. Wallis..*
5. The visual impacts and the noise impacts from the proposed development should not have a significant impact on other uses in the immediate vicinity. The applicant tested the visual impact of the proposed tower by photographing tethered helium balloons raised to 165 feet at the site, and then simulating the tower location from those photos. The simulations showed little visual impact to surrounding properties. *Testimony of Mr. Johnston; Exhibit 8, photo simulation; Exhibit 7, area photos; Testimony of Mr. Wallis.*
6. Construction of the tower and equipment shelter must conform to the Uniform Building Code and Uniform Electrical Code. The facility will require electrical service and no other utilities. The facility will not interfere with other electronic devices because its transmission frequency is different from that of other devices (i.e., 800 - 850 MHz, which

- is lower than that of t.v. and radio frequencies). *Exhibit 1, Staff Report; testimony of Mr. Johnston and Mr. Meadows.*
7. The facility will not be staffed except for maintenance that will occur approximately once a month. *Exhibit 1, Staff Report.*
 8. The tower must be constructed higher than the trees in order to transmit signals effectively. Currently the City of Woodinville is in a pocket of non-coverage of the Applicant's signals and thus cellular phone service is disrupted. By placing the towers at the proposed height this non-service pocket will be eliminated. *Testimony of Mr. Johnston*
 9. The applicant questioned the need for the City's proposed Condition 8, which requires a stamped letter from an engineer verifying compliance with FCC regulations. The applicant provided a letter with an engineer's stamp, but the City contended that it did not address verification of compliance of the FCC regulations. *Testimony of Mr. Johnston; Exhibit 3, letter.*
 10. An adjacent property owner provided testimony concerning 1) the need to guarantee that the trees screening the facility will continue to exist, and 2) the possible negative impact of the facility on property resale values in the neighborhood. *Testimony of Mr. Vermeulen; Exhibit 9, letter; Statements of Mr. Schriever.* Testimony also questioned whether the tower was necessary or whether the applicant's economic concerns were the primary reason for the proposal. *Testimony of Mr. Cook.* The City responded that the existence of Rose Hill causes gaps in present signal coverage in the vicinity, and that the FCC mandates that local governments approve the building of communication towers unless there exists an exceptionally good reason not to. *Testimony of Mr. Wallis.* The applicant responded that its target market in building the tower is for business and emergency services. The applicant does not anticipate that private cellular phone users will be the main customers. Other possible sites for a tower that would cover the Rose Hill gaps are less suitable than the proposed site because of topography or existing land uses such as an elementary school. The applicant also testified there is no intention of removing any of the trees around the proposed facility. *Testimonies of Mr. Meadows and Mr. Johnston.*
 11. Public notice on this application was given by publication, posting and mailing. *Exhibit 1, Attachments 9, 10, and 11.* The City and the applicant appeared at the open record public hearing. Both parties recommended approval with conditions. *Testimonies of Mr. Wallis and Mr. Johnston.*

CONCLUSIONS

Jurisdiction The Hearing Examiner is granted the authority to hear and decide this application pursuant to Chapter 36.70 of the Revised Code of Washington and Chapter 21.02 of the Woodinville Municipal Code.

Criteria for Review

1. The Hearing Examiner shall approve the application if the Hearing Examiner finds that it meets the criteria of the Woodinville Municipal Code (WMC). However, the Telecommunications Act of 1996 gives federal regulations of the FCC limited preemption over state and local laws in applications to construct telecommunications structures (see Title 47, Section 97.15(e) of the Code of Federal Regulations). In order to be granted a conditional use permit, the applicant must prove that its proposal meets the following criteria of the WMC, where these criteria are not preempted by the FCC:
 - A. The conditional use is designed in a manner which is compatible with the character and appearance of the existing or proposed development in the vicinity of the subject property;
 - B. The location, size, and height of buildings structures, walls, fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
 - C. The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;
 - D. Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;
 - E. The conditional use (requested) is not in conflict with the health and safety of the community;
 - F. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
 - G. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area, or conditions can be established to mitigate adverse impacts on such facilities.
2. The Hearing Examiner shall approve the variance request if it finds that all of the above circumstances apply to the request. Upon approval by the Hearing Examiner of any variance, the Hearing Examiner may attach conditions to the approval that will assure that

the development will conform to the spirit and intent of this regulation and will be compatible with adjacent land uses.

Conclusions Based on Findings

1. NEXTEL Corporation requested a Conditional Use Permit pursuant to Section 21.26.040, in order to construct a cellular tower 165 feet above grade and an equipment shelter. The site is located at 16926 NE 190th Street, Woodinville, King County, Washington. *Finding of Fact No. 1.*
2. The conditional use is designed in a manner that is compatible with the character and appearance of the existing or proposed development in the vicinity of the subject property. The proposed facility is located on a sizable lot in a mature stand of second growth evergreens. Existing landscaping surrounds the fence, and the applicant's additional landscaping plan conforms to the WMC. The visual impacts of the proposed facility will be minimal. *Findings of Fact No. 1, 2, 4, 10.*
3. The location, size, and height of building's structures, walls, fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties. The facility is located far off the access street, in a stand of second growth trees. It will be visited by vehicles only once a month. If noise levels from the equipment shelter exceed the amount permitted in the WMC, the applicant will provide sound screening. *Findings of Fact No. 2 5, 7 and 8.*
4. Pursuant to federal regulations, the WMC must accommodate telecommunications facilities and have the minimum practicable regulation to accomplish the City's legitimate purpose. The federal regulations therefore establish a presumption that state and local governments should grant requests for conditional use permits for telecommunications facilities, unless doing so would unavoidably and directly conflict with the department or agency's mission, or the current or planned use of the property in question. *Telecommunication's Act of 1996, Title VII, Section 704(c), amending 47 U.S.C. 332(c).*
5. The limited preemption provided for in the Act is not intended to remove states' and local governments' control, but to ensure that they will "legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area." *101 F.C.C. 2d 952 at 960 (1985).* The federal interest at stake is a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition..." *Senate Conference Report 104-230, p. 1.* In light of these federal imperatives and the facts sited above, the proposed facility, with conditions, meets the requirements of the WMC, while not overburdening the applicant.

6. Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title. The applicant has not requested modification of standards. *Finding of Fact No. 1.* Furthermore, the City is prohibited from regulating the “placement, construction or modification” of a personal wireless facility based on the effects of radio frequency emissions from the facility, to the extent that such facilities comply with the FCC’s regulations. *47 U.S.C. § 332(c)(7)(B)(iv).*
7. The requested conditional use is not in conflict with the health and safety of the community. Construction of the tower and equipment shelter will be required to conform with the Uniform Building Code and Uniform Electrical Code. The Uniform Electrical Code has provisions for lightning protection. *Findings of Fact No. 4 and 5.*
8. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood. The proposed facility will not be staffed except for maintenance occurring once a month, and thus will not conflict with traffic in the vicinity. *Findings of Fact No. 2,3 and 7.*
9. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities. Only electrical service and no other utilities will serve the site. *Finding of Fact No. 6.*

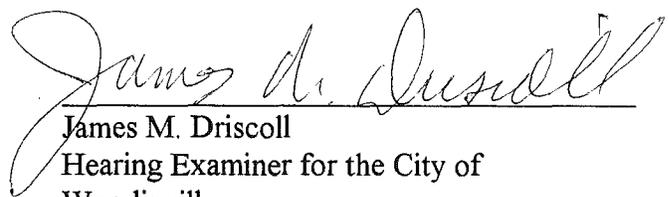
DECISION

Based upon the preceding Findings of Fact and Conclusions, and testimony and evidence presented at the Public Hearing, it is hereby ORDERED that the requested Conditional Use Permit for construction of a cellular tower 165 feet above grade and an equipment shelter is GRANTED, subject to the following conditions:

1. The height of the antennae is to be restricted to the demonstrable minimum height necessary to serve the area where located but in no case is the antennae to be higher than the height noted in the application;
2. The applicant will provide sound shielding at the equipment shelter to reduce noise levels to not more than 45 dB at the property line nearest the equipment generating the noise;
3. The applicant will provide verification that the proposed facility conforms with the FCC regulations that prohibit interference with other electronic transmissions such as radio, television and telephones;

4. The applicant will notify the City within 30 days of cessation of active use of the communication facility as a cellular telephone antennae. The monopole and all antennas will be removed from the site within 120 days of cessation of active use of the facility for cellular communications;
5. Any change in electronic emissions from the proposed communication facility will require approval of a conditional use permit prior to implementing the change;
6. The applicant will cooperate, to the extent feasible, with other cellular telephone service providers for co-location;
7. The applicant will, within six months of installation of the facility, conduct actual field measurements of radio-frequency emissions of the subject wireless communication facility. The test is to be conducted by or under the direction of a professional engineer competent to conduct such measurements. The engineer shall prepare a certified report of actual frequency emissions by measurements and compare actual frequency emissions with applicable FCC regulations with information in the report indicating conformance/non-conformance conditions of actual emissions;
8. The applicant is to provide a statement by a qualified engineer, as determined by the City, verifying compliance of the proposed communication facility with FCC regulations. The statement is to include the engineers qualifications and stamp indicating professional licensing.
9. The applicant is to provide applicable supplemental information in the same format as noted in WMC 21.26.160-2(a) through (l).
10. The applicant must conform with all of the conditions listed in the SEPA determination.

Decided this 7th day of October, 1997


James M. Driscoll
Hearing Examiner for the City of
Woodinville

BEFORE THE HEARING EXAMINER
FOR THE CITY OF WOODINVILLE

SEP 23 1997
CITY CLERK'S DEPARTMENT

In the Matter of the Application of) No. CUP97-035
NEXTEL Corporation)
for Approval of a Conditional Use Permit) FINDINGS, CONCLUSIONS
AND DECISION

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Upon consideration of the testimony and exhibits submitted at the open record public hearing, the following Findings of Fact and Conclusions of Law are entered by the Hearing Examiner:

FINDINGS

1. NEXTEL Corporation (Applicant) requested a Conditional Use Permit pursuant to Woodinville Municipal Code Section 21.26.040, in order to construct a cellular tower 165 feet above grade and an equipment shelter. The site is located at 16926 NE 190th Street, Woodinville, King County, Washington. *Exhibit 1, Attachment 1, Application.*
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6. Construction of the tower and equipment shelter must conform to the Uniform Building Code and Uniform Electrical Code. The facility will require electrical service and no other utilities. The facility will not interfere with other electronic devices because its transmission frequency is different from that of other devices (i.e., 800 - 850 MHz, which

- is lower than that of t.v. and radio frequencies). *Exhibit 1, Staff Report; testimony of Mr. Johnston and Mr. Meadows.*
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 11. Public notice on this application was given by publication, posting and mailing. *Exhibit 1, Attachments 9, 10, and 11.* The City and the applicant appeared at the open record public hearing. Both parties recommended approval with conditions. *Testimonies of Mr. Wallis and Mr. Johnston.*

CONCLUSIONS

Jurisdiction The Hearing Examiner is granted the authority to hear and decide this application pursuant to Chapter 36.70 of the Revised Code of Washington and Chapter 21.02 of the Woodinville Municipal Code.

Criteria for Review

1. The Hearing Examiner shall approve the application if the Hearing Examiner finds that it meets the criteria of the Woodinville Municipal Code (WMC). However, the Telecommunications Act of 1996 gives federal regulations of the FCC limited preemption over state and local laws in applications to construct telecommunications structures (see Title 47, Section 97.15(e) of the Code of Federal Regulations). In order to be granted a conditional use permit, the applicant must prove that its proposal meets the following criteria of the WMC, where these criteria are not preempted by the FCC:
 - A. The conditional use is designed in a manner which is compatible with the character and appearance of the existing or proposed development in the vicinity of the subject property;
 - B. The location, size, and height of buildings structures, walls, fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
 - C. The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;
 - D. Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;
 - E. The conditional use (requested) is not in conflict with the health and safety of the community;
 - F. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
 - G. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area, or conditions can be established to mitigate adverse impacts on such facilities.
2. The Hearing Examiner shall approve the variance request if it finds that all of the above circumstances apply to the request. Upon approval by the Hearing Examiner of any variance, the Hearing Examiner may attach conditions to the approval that will assure that

the development will conform to the spirit and intent of this regulation and will be compatible with adjacent land uses.

Conclusions Based on Findings

1. NEXTEL Corporation requested a Conditional Use Permit pursuant to Section 21.26.040, in order to construct a cellular tower 165 feet above grade and an equipment shelter. The site is located at 16926 NE 190th Street, Woodinville, King County, Washington. *Finding of Fact No. 1.*
2. The conditional use is designed in a manner that is compatible with the character and appearance of the existing or proposed development in the vicinity of the subject property. The proposed facility is located on a sizable lot in a mature stand of second growth evergreens. Existing landscaping surrounds the fence, and the applicant's additional landscaping plan conforms to the WMC. The visual impacts of the proposed facility will be minimal. *Findings of Fact No. 1, 2, 4, 10.*
3. The location, size, and height of building's structures, walls, fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties. The facility is located far off the access street, in a stand of second growth trees. It will be visited by vehicles only once a month. If noise levels from the equipment shelter exceed the amount permitted in the WMC, the applicant will provide sound screening. *Findings of Fact No. 2 5, 7 and 8.*
4. Pursuant to federal regulations, the WMC must accommodate telecommunications facilities and have the minimum practicable regulation to accomplish the City's legitimate purpose. The federal regulations therefore establish a presumption that state and local governments should grant requests for conditional use permits for telecommunications facilities, unless doing so would unavoidably and directly conflict with the department or agency's mission, or the current or planned use of the property in question. *Telecommunication's Act of 1996, Title VII, Section 704(c), amending 47 U.S.C. 332(c).*
5. The limited preemption provided for in the Act is not intended to remove states' and local governments' control, but to ensure that they will "legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area." *101 F.C.C. 2d 952 at 960 (1985).* The federal interest at stake is a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition..." *Senate Conference Report 104-230, p. 1.* In light of these federal imperatives and the facts sited above, the proposed facility, with conditions, meets the requirements of the WMC, while not overburdening the applicant.

6. Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title. The applicant has not requested modification of standards. *Finding of Fact No. 1.* Furthermore, the City is prohibited from regulating the “placement, construction or modification” of a personal wireless facility based on the effects of radio frequency emissions from the facility, to the extent that such facilities comply with the FCC’s regulations. *47 U.S.C. § 332(c)(7)(B)(iv).*
7. The requested conditional use is not in conflict with the health and safety of the community. Construction of the tower and equipment shelter will be required to conform with the Uniform Building Code and Uniform Electrical Code. The Uniform Electrical Code has provisions for lightning protection. *Findings of Fact No. 4 and 5.*
8. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood. The proposed facility will not be staffed except for maintenance occurring once a month, and thus will not conflict with traffic in the vicinity. *Findings of Fact No. 2,3 and 7.*
9. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities. Only electrical service and no other utilities will serve the site. *Finding of Fact No. 6.*

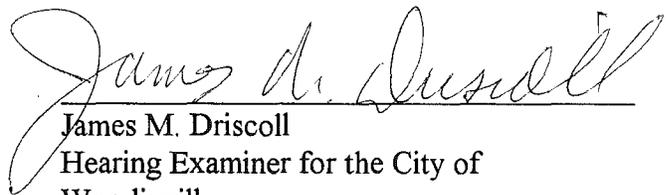
DECISION

Based upon the preceding Findings of Fact and Conclusions, and testimony and evidence presented at the Public Hearing, it is hereby ORDERED that the requested Conditional Use Permit for construction of a cellular tower 165 feet above grade and an equipment shelter is GRANTED, subject to the following conditions:

1. The height of the antennae is to be restricted to the demonstrable minimum height necessary to serve the area where located but in no case is the antennae to be higher than the height noted in the application;
2. The applicant will provide sound shielding at the equipment shelter to reduce noise levels to not more than 45 dB at the property line nearest the equipment generating the noise;
3. The applicant will provide verification that the proposed facility conforms with the FCC regulations that prohibit interference with other electronic transmissions such as radio, television and telephones;

4. The applicant will notify the City within 30 days of cessation of active use of the communication facility as a cellular telephone antennae. The monopole and all antennas will be removed from the site within 120 days of cessation of active use of the facility for cellular communications;
5. Any change in electronic emissions from the proposed communication facility will require approval of a conditional use permit prior to implementing the change;
6. The applicant will cooperate, to the extent feasible, with other cellular telephone service providers for co-location;
7. The applicant will, within six months of installation of the facility, conduct actual field measurements of radio-frequency emissions of the subject wireless communication facility. The test is to be conducted by or under the direction of a professional engineer competent to conduct such measurements. The engineer shall prepare a certified report of actual frequency emissions by measurements and compare actual frequency emissions with applicable FCC regulations with information in the report indicating conformance/non-conformance conditions of actual emissions;
8. The applicant is to provide a statement by a qualified engineer, as determined by the City, verifying compliance of the proposed communication facility with FCC regulations. The statement is to include the engineers qualifications and stamp indicating professional licensing.
9. The applicant is to provide applicable supplemental information in the same format as noted in WMC 21.26.160-2(a) through (l).
10. The applicant must conform with all of the conditions listed in the SEPA determination.

Decided this 7th day of October, 1997


James M. Driscoll
Hearing Examiner for the City of
Woodinville