

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Special Use Permit with a Variance for a Wireless Telecommunication Facility located in the Right-of-Way and on an R-6 zone property at 332 NE 180 th St.
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Tim Stewart, Planning Director Paul Cohen, Planner III

PROBLEM/ISSUE STATEMENT:

Based on the open record public hearing and Planning Commission recommendation the City Council is requested to review and make decision on the combined application for a Special Use Permit (SUP) and Variance for a Wireless Telecommunication Facility (WTF) located in the NE 180th Street Right-of-Way and ground mechanical equipment on the adjacent residential property at 332 NE 180th St. (Attachment A).

A Special Use Permit is a Quasi-Judicial decision of the Council. The Variance is not usually a Council decision but is elevated with the SUP because it is a consolidated application. An open record public hearing was conducted and the Planning Commission completed its recommendation to City Council on the subject application on July 17, 2003. Council's review must be based upon the findings, conclusions and written record and no new testimony may be heard. The Development Code states that a decision on this type of application should be made within a 120-day target.

ALTERNATIVES ANALYZED: The following options are within Council's discretion and have been analyzed by staff:

- Deny the subject SUP and Variance requests as recommended by the Planning Commission.
- Remand the subject application to the Planning Commission for modifications to the findings, conclusion and recommendation.

FINANCIAL IMPACTS: There are no direct financial impacts to the City.

RECOMMENDATION

Deny the applicant's request for SUP and Variance for the T-Mobile WTF. The decision to deny the request is based on the Planning Commission findings, conclusion and recommendation that all SUP and Variance criteria for the T-Mobile WTF are not met.

Approved By: City Manager  City Attorney 

This page intentionally left blank.

INTRODUCTION

The SUP and Variance application before Council is a request to allow an uncamouflaged WTF and ground equipment located at 332 NE 180th Street.

A public hearing before the Planning Commission was opened and closed on July 17, 2003. The Planning Commission Findings and Recommendation are included in Attachment B.

The Planning Commission unanimously recommended that the request be denied. The draft minutes from the public hearing are included in Attachment C.

BACKGROUND

In 2000 the City of Shoreline adopted its own Development Code. With the Development Code and a subsequent amendments in February and August 2001 the land use of wireless telecommunications facilities under 20.40.600 are regulated. Under Shoreline Development Code 20.40.600(1) new, uncamouflaged poles must be reviewed through a Special Use Permit. The proposal cannot meet the setback standards of 20.40.600(2) therefore a zoning variance is required.

The subject parcel and the surrounding residential areas are zoned Residential, 6 Units per acre (R-6). The Comprehensive Plan designates the subject parcel and surrounding residential area Low Density Residential.

PROCESS

The application process for this project began when a pre-application meeting was held with the applicant and City staff. The applicant then held the requisite neighborhood meeting on April 22, 2003. The formal application was submitted to the City on April 30, 2003, and it was determined complete on May 16, 2003.

The requisite public hearing was held before the Planning Commission on July 17, 2003. The Planning Commission made a recommendation and formulated Findings and Determination on the night of the public hearing. The minutes from this meeting are included in Attachment C, and the Findings and Determination are included in Attachment B. The Planning Commission voted unanimously to recommend denial of the SUP and Variance request.

PUBLIC COMMENT

No comment letters were received in response to the standard notice procedures for this application (the written comment deadline was July 3, 2003). The Planning Commission received public testimony from the applicant only. Their concerns are the following:

- The proposed WTF location is necessary to fill a gap in their coverage.

- They requested co-location on other structures in the vicinity and were denied.
- The WTF is similar in design and height to the other 100-foot poles in the neighborhood and adjacent to the I-5 freeway.
- The variance is necessary because of the small triangular lot created by the I-5 right of way.

For the detail findings, analysis of SUP and Variance criteria, conclusions and Planning Commission recommendations see Attachment B.

RECOMMENDATION

Adopt the Findings of the Planning Commission and Deny the applicant's request for SUP and Variance for the T-Mobile WTF.

ATTACHMENTS

Attachment A: Planning Commission Staff Report, July 17, 2003 with

- a) Vicinity Map with Zoning Designations
- b) Vicinity Map with Comprehensive Plan Designations
- c) Site Inventory Map
- d) Proposed Site Plan and Elevations

Attachment B: Planning Commission Findings and Determination

Attachment C: Draft Planning Commission Minutes- July 17, 2003

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Public Hearing for Special Use Permit and for Variance Permit to locate a Wireless Telecommunication Facility in the Right-of-Way and on an R-6 zone property at 332 NE 180th Street

DEPARTMENT: Planning and Development Services

PRESENTED BY: Paul Cohen, Planner III

I. PROPOSAL

This Special Use Permit (SUP), a Quasi Judicial or "Type C Action," before the Planning Commission is a request to replace an existing 43-foot utility pole with an uncamouflaged, 103-foot pole with 3 vector panel antennas in the 180th Street R-o-W. In addition, the proposal includes locating ground-mounted equipment in a proposed garage on the adjacent single family lot. A SUP is required whenever a wireless telecommunications facility (WTF) monopole is proposed without camouflage or co-location. In addition, a Zoning Variance is required because the proposed WTF pole does not meet the 50-foot minimum setback requirement from the residentially zoned property or the 30-foot height maximum for R-6 zones. See Attachment A for the applicant's more detailed proposal.

A Type C action (SUP) is reviewed by the Planning Commission, where an Open Record Public Hearing is held and a recommendation for approval or denial is developed. This recommendation is then forwarded to the City Council, who is the final decision making authority for Type C actions. The Variance is a Type B or administrative decision, however the variance review has been consolidated with the SUP, which elevates the entire process to a quasi-judicial decision.

Under SMC 20.30.130, "An applicant may elect to submit a consolidated project permit application. Such request shall be presented by the applicant in writing and simultaneously with submittal of all applications to be consolidated. The Director shall determine the appropriate procedures for consolidated review and actions. If the application for consolidated permit process requires action for more than one hearing body, the decision authority in the consolidated permit review process shall be the decision-making authority with the broadest discretionary powers." (Emphasis added)

A building permit for the proposal has not been submitted at this time. Prior to construction on the site a building permit shall be obtained. The permit submittal will be reviewed administratively and is subject to the requirements of the Shoreline Municipal Code (SMC) and the 1997 Uniform Building Code.

Environmental Review - SEPA review is required for this application under the City's substantial authority established in SMC 20.30.490. The SEPA Determination of Non-Significance was issued on June 19, 2003.

This report summarizes the issues associated with this project and illustrates whether the proposal meets the criteria for Special Use and Variance permits outlined in the Shoreline Municipal Code and the goals of the Comprehensive Plan.

II. FINDINGS

1. SITE

The subject site is located at the west end of NE 180th Street where it dead-ends against the east side of the I-5 freeway right-of-way. That portion of the freeway right-of-way and site is vegetated with mature evergreen trees. The WTF pole would be located near the end of NE 180th Street and the ground equipment located on the freeway side of the last residence on that street. The site topography is relatively flat and approximately 10 feet below the freeway roadbed. A site plan, elevation, and a photographic survey showing the proposal are in Attachments B and C.

2. NEIGHBORHOOD

The project site is located in the North City Neighborhood. The site and neighborhood along NE 180th Street are zoned R-6 and have a land use designation of Low Density Residential. The current zoning of the parcels immediately adjacent to the subject properties are all R-6. The I-5 freeway is to the west. The adjacent uses are residential to the east, south, and north, and a treed right-of-way along I-5 to the west. The zoning classifications and comprehensive plan land use designations for the project sites and immediate vicinity are illustrated in Attachments D and E.

3. TIMING AND AUTHORITY

The application process for this project began when the applicant held the requisite neighborhood meeting on April 22, 2003. A complete application was submitted to the City on May 16, 2003. A public notice of application and public hearing was posted at the site, advertisements were placed in the Seattle Times and Shoreline Enterprise, and notices were mailed to property owners within 500 feet of the site on June 19, 2003 (Attachment F). This notice solicited public comments but no comment letters were received.

The Planning Commission is being asked to review the Special Use by the nine criteria in Section 20.30.330 (B) and the Variance application by the eleven criteria in Section 20.30.310 of the Shoreline Municipal Code (SMC). The City Council may approve an application for Special Use of property and Variance of the proposal if all these criteria are met.

4. PUBLIC COMMENT

The City did not receive public comment letters regarding this proposed wireless telecommunications facility.

5. ANALYSIS OF SUP CRITERIA

Section 20.30.330.B of the Shoreline Municipal Code outlines the criteria by which Special Use Permit applications are reviewed. The City shall grant a Special Use Permit, only if the applicant demonstrates that it meets each of the following criteria. See Attachment G for the applicant's response to criteria.

Criterion 1: The use will provide a public benefit or satisfy a public need of the neighborhood, district or City.

The WTF is designed to provide better cell phone coverage for Shoreline residents. See Attachment H for applicant's coverage needs.

The special use meets criterion 1.

Criterion 2: The characteristics of the special use will be compatible with the types of uses permitted in surrounding areas.

A WTF monopole is comparable to a utility pole, which is permitted without height limit or design standards. The neighborhood has various utility poles greater than 100 feet in height. See Attachment B - Photo Survey. A WTF can be minimally compatible with the existing residential neighborhood if it is conditioned to be painted to blend with the background, located on the freeway side of the residence and the periphery of the neighborhood.

The special use meets criterion 2.

Criterion 3: The special use will not materially endanger the health, safety and welfare of the community.

The Food and Drug Administration (FDA) and the Federal Communication Commission (FCC) report that, based on current health studies, the amount of power to be used, and the antenna distance from people that there are no health risks associated with transmission antennas of this scope. The Telecommunications Act of 1996, Section 704 states that, "No state or local government...may regulate the placement, construction and modification of wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facility comply with the Commission's regulations concerning such emissions."

If approved, the City will require a building permit to construct the WTF. The City will review the monopole for and equipment for structural safety.

The special use meets criterion 3

Criterion 4: The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity.

The proposal is not deemed to be a public necessity. Presently, the proposed location will not create an over-concentration of wireless telecommunication facilities (WTF). However, if similar requests are granted on single family properties located along I-5 an over-concentration of WTFs could occur.

The special use does not meet criterion 4.

Criterion 5: The special 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 special use will not cause any increased pedestrian or vehicular traffic in the neighborhood except the infrequent service vehicle after construction.

The special use meets criterion 5.

Criterion 6: The special 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.

The need for public facilities is not increased; adequate infrastructure exists for the site.

The special use meets criterion 6.

Criterion 7: The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties.

The proposed antenna monopole will be 103 feet in height on the periphery of the neighborhood. The immediate neighboring property is the I-5 R-o-W and therefore its further development is unaffected by the proposal. All other nearby property is currently fully developed.

The special use meets criterion 7.

Criterion 8: The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title.

U4- Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

U9- Encourage the design, siting construction operation and relocation or closure of all utility systems in a manner which: ...minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

U28 – Explore strategies which minimize or reduce the impacts of the telecommunication facilities and towers on the community.

The Comprehensive Plan both encourages the growth and delivery of utility systems and networks and minimizes impacts of these facilities on the community. The location of monopoles to meet demands and provide coverage and to be aesthetically compatible can be difficult considering the amount of residential neighborhoods in Shoreline. On balance, the location of the proposed monopole adjacent to the I-5 freeway with the least obtrusive siting is consistent with the Comprehensive Plan policies. The proposal is located the furthest away from residences, on the freeway side of the property using the house as partial screen, adjacent to existing conifer trees, with screened mechanical equipment in order to create the least impact to the neighborhood.

The special use meets criterion 8.

Criterion 9: The special use is not in conflict with the standards of the critical areas overlay.

The site of the proposed wireless monopole and ground-mounted equipment is not in any known critical area.

The special use meets criterion 9.

A. ANALYSIS OF VARIANCE CRITERIA

The Shoreline Municipal Code specifies the decision for a Variance Permit in section 20.30.310. The decision criteria are listed below, followed by the City's analysis of the applicant's compliance with each criterion. See Attachment I for the applicant's response to criteria.

Criterion 1: The variance is necessary because of the unique size, shape, topography, or location of the subject property;

By Shoreline Municipal Code, the facility must be 50 feet from any residential zoned property. The property is triangular and 86 feet wide at the street and 132 feet deep. The I-5 Right-of Way cuts along the northwest side of the property. The proposal locates the pole in the right-of-way in place of an existing pole facility approximately 10 feet from residential property. The proposal also locates a new car garage on the property with internal space to accommodate ground equipment for the antennas. This ground equipment is 35 feet from the adjacent residential property but would be co-located and camouflaged within the proposed garage. There are other locations on the property between the proposed garage and the I-5 right-of-way where a WTF

could be located outside the setback requirements. However, the height variance is not necessary because of any unique conditions of the subject property.

The variance does not meet criterion #1.

Criterion 2: The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;

The strict enforcement of the provisions for residential setback does not create unnecessary hardship to the property owner because uncamouflaged WTFs are not outright permitted in R-6 zones and it does not prevent the property owner from the residential use and improvement of their property.

The variance does not meet criterion #2.

Criterion 3: The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;

The subject property is not deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone because these other properties do not enjoy the rights and privileges of an uncamouflaged WTF on their property.

The variance does not meet criterion #3.

Criterion 4: The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;

The need for the variance is the result of deliberate actions of a past property owner to create a lot size and dimension that is not adequate to provide required setbacks for a WTF that is not permitted outright in the zone. If the monopole was relocated to meet setbacks then the need for the height variance is not the result of previous deliberate actions.

The variance does not meet criterion #4.

Criterion 5: The variance is compatible with the Comprehensive Plan;

U4- Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

U9- Encourage the design, siting construction operation and relocation or closure of all utility systems in a manner which: ...minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

U28 – Explore strategies which minimize or reduce the impacts of the telecommunication facilities and towers on the community.

The Comprehensive Plan both encourages the growth and delivery of utility systems and networks and minimizes impacts of these facilities on the community. The location of monopoles to meet demands and provide coverage and to be aesthetically compatible can be difficult considering the amount of residential neighborhoods in Shoreline. On balance, the location of the proposed monopole adjacent to the I-5 freeway, on the periphery of the neighborhood, and with the least obtrusive siting is consistent with the different Comprehensive Plan policies. The proposal is located the furthest away from residences, on the freeway side of the property using the house as partial screen, adjacent to existing conifer trees, with screened mechanical equipment in order to create the least impact to the neighborhood.

The variance meets criterion #5.

Criterion 6: The variance does not create a health and safety hazard;

The City researched health and safety bulletins and a guide to transmitting antenna emission safety from the Food and Drug Administration (FDA) and the Federal Communication Commission (FCC). These agencies concluded, based on current health studies, the amount of power to be used, and the antenna distance from people that there are no health risks associated with transmission antennas of this scope. Further, in the Telecommunications Act of 1996, Section 704 states that, "No state or local government...may regulate the placement, construction and modification of wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facility comply with the Commission's regulations concerning such emissions".

The variance meets criterion #6.

Criterion 7: The granting of the variance will not be materially detrimental to the public welfare or injurious to:

a. the property or improvements in the vicinity, or

The development will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity because the public does not use the right-residential setback on this remnant and undeveloped street end.

b. the zone in which the subject property is located;

Wireless facilities are a permitted use in an R-6 Zone.

The variance meets criterion #7.

Criterion 8: The variance does not relieve an applicant from:

a. any of the procedural or administrative provisions of this title, or

The proposed variance does not relieve the applicant from procedural or administrative provisions of this title because the variance procedure has been consolidated with the SUP procedure.

b. any standard or provision that specifically states that no variance from such standard or provision is permitted, or

Setback standards may be varied through the zoning variance process (SMC 20.30.310).

c. use or building restrictions, or

The use can be conditionally permitted in R-6 zoning. Uniform building code requirements will have to be met through a require building permit.

d. any provisions of Critical Areas Overlay District requirements, except for the required buffer widths;

No critical areas are located on the subject property.

The variance meets criterion #8.

Criterion 9: The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;

No easements or covenants are recorded for this site adjacent to or regarding setbacks.

The variance meets criterion #9.

Criterion 10: The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; and .

An uncamouflaged WTF is not permitted outright in the R-6 zone but may be allowed through the Special Use Permit process.

The variance meets criterion #10.

Criterion 11: The variance is the minimum necessary to grant relief to the applicant.

The variance request is the minimum dimension needed to provide a site for the ground equipment and antenna pole because of the other setbacks needed from a developed right-of-way and residential development.

The variance meets criterion #11.

III. CONCLUSIONS

The applicant has proposed a WTF that meets their needs while attempting to meet the criteria for both the SUP and Variance. They have attempted to locate the uncamouflaged, monopole parallel to the I-5 freeway and the ground equipment inside a garage. In addition the site is at the end of a dead end street on the periphery of the neighborhood. The City's criteria is meant to test this proposal for whether it is a public necessity, compatible with the neighborhood, it is a hardship without, and deprives the property owner of a right to use their property because of past, unintended actions.

The above analysis of the applicant's request shows that the subject proposal does not meet five (5) Variance criteria. Therefore, staff recommends denial of the variance and the SUP.

IV. PLANNING COMMISSION ROLE AND OPTIONS

The Planning Commission is required to conduct a Public Hearing on the proposal because this is a Type C action. The Commission should consider the application and any public testimony and develop a recommendation for approval or denial. The City Council will then consider this recommendation prior to their final decision on the application.

The Variance cannot be separately approved or denied from the SUP because there are no alternative sites on the property, which can avoid violating a setback requirement of the Shoreline Municipal Code.

Planning Commission has the following options for their recommendation to the City Council:

1. Recommend denial of the SUP and Variance based on the staff findings and conclusions.
2. Recommend approval of the SUP and Variance based on new findings and conclusions as amended by the Planning Commission.

IV. STAFF RECOMMENDATION

Staff recommends that the Planning move to recommend to the City Council that both the proposed Special Use and Variance be denied for the property located at 332 NE 180th Street and enter into findings based on the information presented in this staff report that this proposal does not meet the decision criteria for the Variance of property as outlined in the Shoreline Municipal Code Section 20.30.310.

ATTACHMENTS

Attachment A: Applicant's Proposal
Attachment B: Site Plan and Elevation
Attachment C: Photo Survey
Attachment D: Vicinity Map with Zoning Designations
Attachment E: Vicinity Map with Comprehensive Plan Designations
Attachment F: Public Notice
Attachment G: Applicant's Response to SUP Criteria
Attachment H: WTF Coverage and Service Demand /Qualification and Certification
Attachment I: Applicant's Response to Variance Criteria

Project Description:

T-Mobile is in the process of integrating their newest technology into our existing wireless communication system called Persona Communication Service (PCS). PCS is a unique combination of telecommunication services that will provide the public with the next generation of wireless devices, such as: compact cellular telephones with paging and voicemail service, wireless fax machines and fax modems, internet access, and an array of other customized mobile equipment. Ultimately, PCS will allow for an all-in-one telecommunications device combining multiple services in a single wireless telephone.

In order to provide these services T-Mobile is developing a PCS network in the greater Puget Sound area. PCS works by splitting a region into small geographic areas called cells, that are each served by a transmitter and receiver or "base station." As a caller moves across the landscape, the call is passed or "handed-off" from one base station to another. Each base station is connected to a mobile telephone switching office, which linked to the land based phone network serving your home or office.

The T-Mobile network has a coverage gap or hole within our system from NE 188th – NE 180th, 5th Ave NE – 7th Ave, and the surrounding neighborhood. This site will provide infill coverage along I-5 between Catholic Cemetery and Cascade Bingo, as well as the neighborhood between Christa Ministries and Shoreline Water Tank. In order for the entire network to work in concert, covering and handing-off calls to various sites, this gap in the hole must be filled. T-Mobile is proposing to locate a personal Wireless Communication Facility on a replacement utility pole on Seattle City Light Right of Way property adjacent to: 332 NE 180th St., so we may provide coverage this area.

T-Mobile tries to locate in areas that will have minimal impact to the surrounding area and community. In this instance we have chose a replacement pole on NE 180th due to similar existing structures across the street and east of the proposed site. The existing wooden pole will be replaced with a 100' pole and will have flush mounted antennas to integrate their design with the pole.

The associated radio equipment will be located north of the pole on the adjacent residential parcel north of the existing pole in the Right of Way. To camouflage the ground equipment it will be enclosed new carport/storage area. To camouflage the antennas they will be flush mounted so they blend with the actual pole. Ground equipment it will be placed in a shed allowing for both security and site buffering.

Site Selection/Design

As outlined above, this particular site proposal was developed to provide T-Mobile the infrastructure necessary to provide adequate coverage to this portion of the City of Shoreline. A serious gap in coverage would be created without development of the subject facility, specifically from NE 188th – NE 180th, 5th Ave NE – 7th Ave. and

the surrounding areas. Propagation maps reflecting the coverage objectives and a letter explaining the need for this site are attached.

T-Mobile carefully selected and designed the proposed facility to provide a site that provides adequate height and range of coverage for T-Mobile, but is feasible for the area it will be located in. This site is the minimum height necessary to meet our coverage objective. The search ring for this area was only about .75-mile radius, which are entirely residential uses. We opted for this portion of the search ring after the Shoreline School District was not interested in allowing us to collocate on one of their existing light standards at their field. This portion of the residential ring currently has over 10 100' wooden utility poles that look similar to what we are proposing. City of Seattle will not allow the swap out of any of the existing structures, but will allow the replacement of this wooden utility pole.

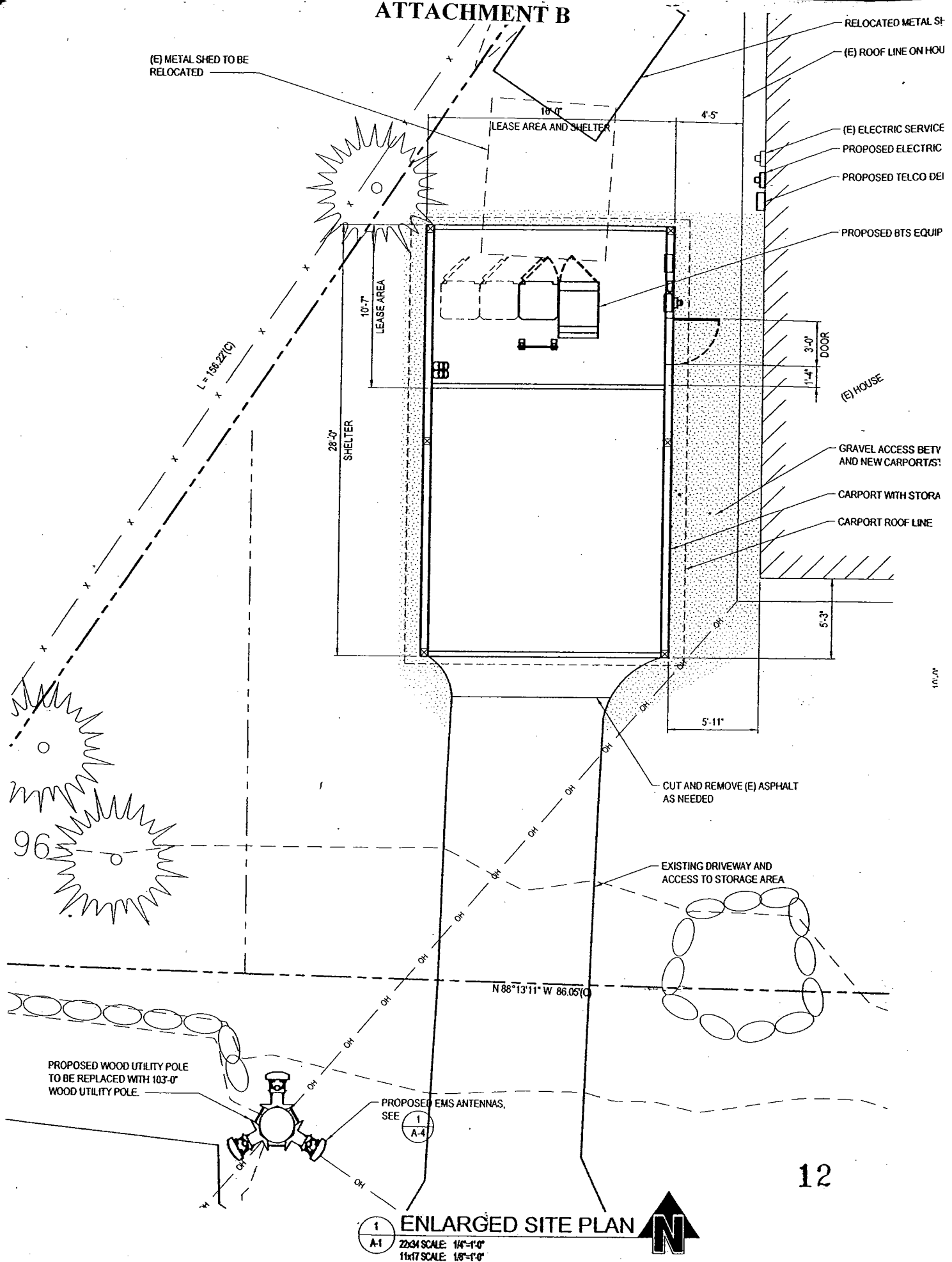
Following our staff's thorough investigation of the properties in the geographic area, we have concluded there are no other existing structures within a reasonable distance of the proposed location that are feasible for co-location, and would also meet our engineering requirements, or provide leasing options.

Services provided by this site will not only enhance the coverage of T-Mobile customers, but they will enhance general welfare. For example, (a) over 50,00 "911" calls are made from wireless phones everyday, (b) new mobile data terminals give police officers instant access to information needed for critical decisions, and (c) wireless phones are vital in times of emergency when traditional land line phones are not available or in cases of power failure. The proposed use will ensure that existing and future developments will have adequate access to necessary communication services.

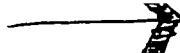
Coverage Objective

T-Mobile's FCC license requires it to operate its system in a defined service region using designated radio frequencies. Each site must be precisely located relative to other sites. T-Mobile's system must reflect the contours and topography of the area and the radius of the antenna's reliable transmission. The subject site was carefully selected in order to have minimal impact on adjacent or nearby properties. T-Mobile's network dictates that a site must be at this location to avoid a gap in our service to this area of the City of Shoreline. The enclosed propagation maps and site need letter from our radio frequency engineer support this.

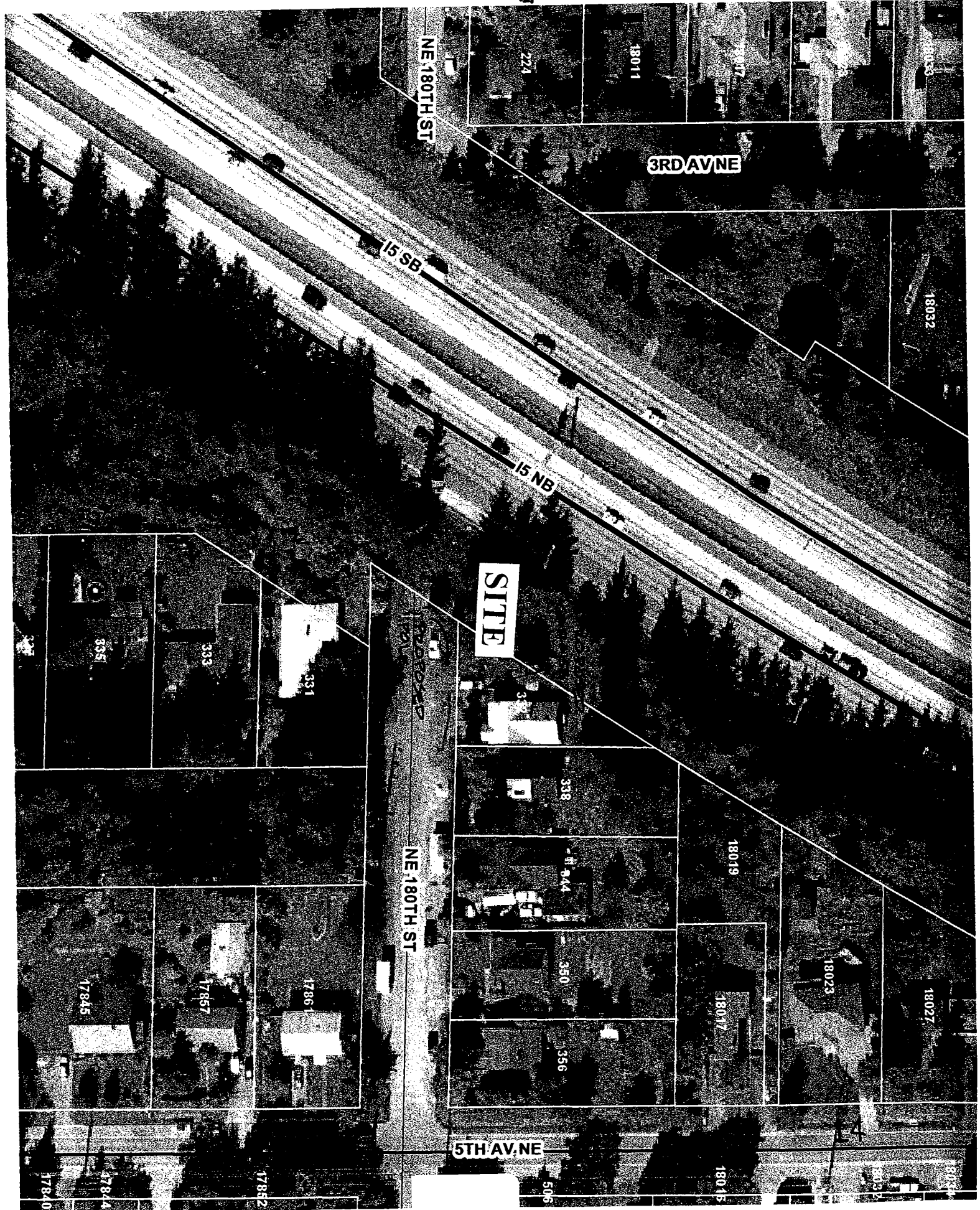
ATTACHMENT B



VICINITY

NORTH 

ATTACHMENT C





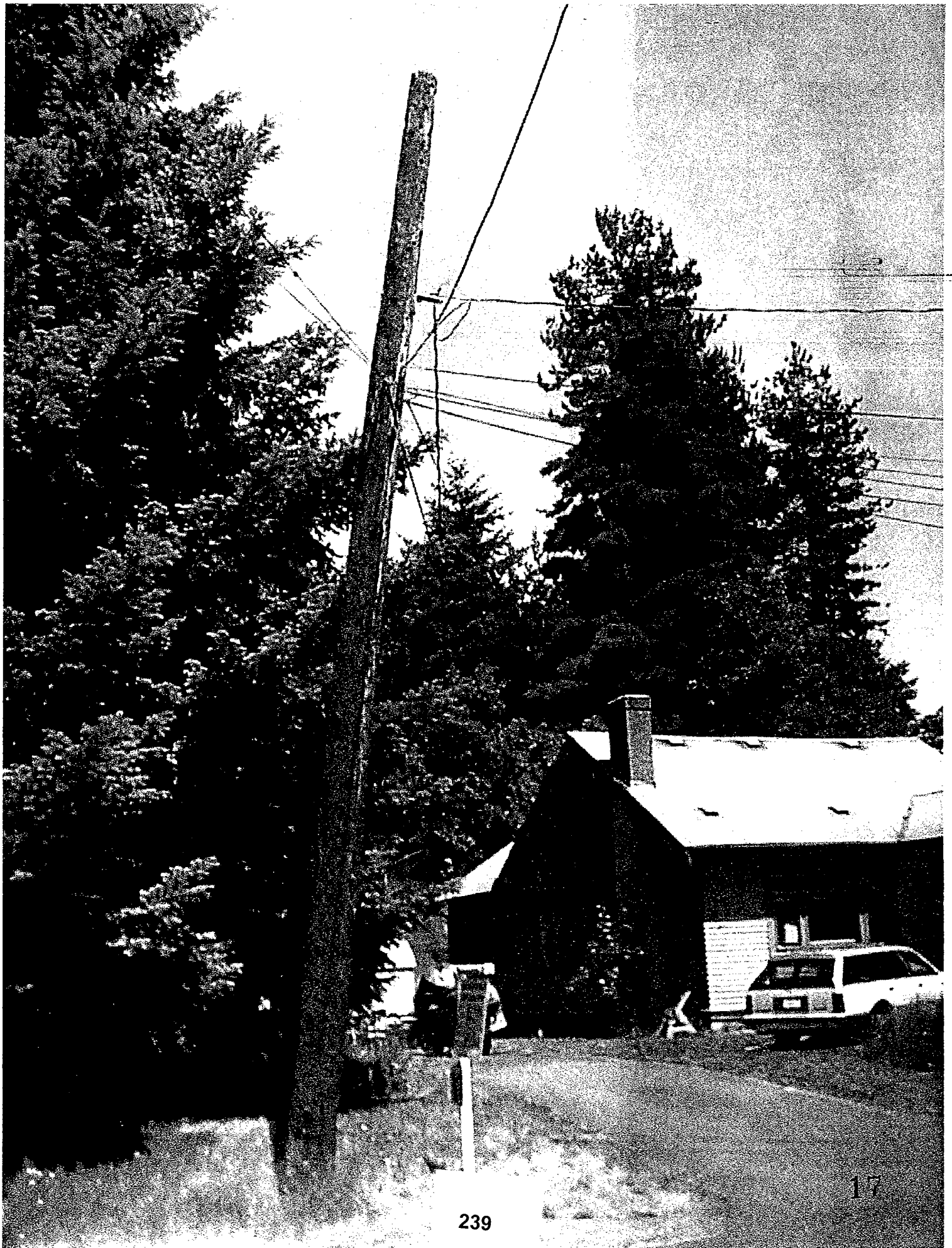
237

15

EXISTING 43 FOOT POLE TO BE REPLACED



APPROXIMATE W.T.F. POLE SUPERIMPOSED ON EXISTING POLE



EXISTING POLE WITH GARAGE SITE BEYOND



240

EXISTING UTILITY POLES IN NEIGHBORHOOD



COMPREHENSIVE PLAN



ATTACHMENT F



Planning and Development Services

17544 Midvale Avenue N., Shoreline, WA 98133-4921
(206) 546-1811 ♦ Fax (206) 546-8761

NOTICE OF APPLICATION AND PUBLIC HEARING FOR T-MOBILE USA WIRELESS MONOPOLE

PROJECT INFORMATION

PROPOSED ACTION:	Special Use Permit and Variance Permit
PROPOSED PROJECT DESCRIPTION:	The construction of an uncamouflaged, 100-foot monopole with 3 panel antenna and screened mechanical equipment at the base. A SUP is required because it is uncamouflaged in a residential area. A variance is required because it does not meet setback requirements from Rights-of-Way.
PROJECT NUMBER:	201227
PROPERTY OWNER/APPLICANT:	T-Mobile USA (applicant)
LOCAL AGENT:	Angela Brooks
LOCATION:	332 NE 180 th St., Shoreline, WA 98155
CURRENT ZONING:	R-6 (6 dwelling units/acre)
CURRENT COMPREHENSIVE PLAN LAND USE DESIGNATION:	Low Density Residential
DATE OF APPLICATION:	April 22, 2003
DETERMINATION OF COMPLETENESS:	May 16, 2003
SEPA DETERMINATION OF NON- SIGNIFICANCE	June 19, 2003 (Attached)
EFFECTIVE DATE OF NOTICE:	June 19, 2003
END OF PUBLIC COMMENT PERIOD:	July 3, 2003
OPEN RECORD HEARING DATE:	July 17, 2003, 7:00 P.M. Shoreline Center, Board Room, 18560 1 ST AVE NE, Shoreline WA

PROJECT REVIEW

The Planning and Development Services Department has conducted an initial evaluation of the project proposal in accordance with procedures outlined in the Shoreline Municipal Code. Issuance of this Notice of Application and Public Hearing does not constitute approval of this project proposal for construction. Additional conditions based on public comments and further staff review may be required for incorporation into the project proposal. Preliminary determination of the development regulations that will be used for project review and consistency include, but are not limited to: the *Shoreline Municipal Code*, *City of Shoreline Comprehensive Plan*, *Uniform Building Code*, *Uniform Fire Code*, and *King County Surface Water Design Manual*.

A SEPA determination of Non-significance has been issued on June 19, 2003.

PUBLIC COMMENT on SUP and Variance

The Planning Commission will conduct an open record public hearing on **Thursday, July 17, 2003 at 7:00 p.m.** in the Board Room of the Shoreline Conference Center at 18560 First Ave NE, Shoreline, WA. Public testimony will be accepted during this hearing. All interested Citizens are encouraged to attend the public hearing and may provide written and/or oral testimony during the public comment period of the hearing. The Planning Commission will make a recommendation on this project proposal to the Shoreline City Council. The City Council is the final decision making authority on this project. Appeals City Council decisions shall be made to Superior Court. The Planning Commission meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the City Clerk's Office at 206.546.8919 in advance for information. For TTY telephone service, call 206.546.0457. For up-to-date information on future agendas, call 206.546.2190. For questions or comments, contact the project manager, Paul Cohen, at 206.546.6 te to Planning and Development Services, City of Shoreline, 17544 Midvale Avenue N., Shoreline, WA

A

Operation

The proposed facility will be unmanned and therefore, will not require water, waste treatment or management of hazardous waste and no hazardous material will be utilized or stored at the site. Minimal traffic will be generated during the construction phase while the construction crew is traveling to and from the site. After construction is complete, there will be approximately one visit per month by a field engineer to perform safety inspection and routine maintenance.

Minimizing Hazards and Nuisance

The proposed facility is a passive use in that the facility will not be staffed and operation is fully automated. No activities will take place on the site that will produce airborne emissions, odors, vibrations, heat, glare, or hazardous wastes. There is no known environmental health hazards that occur because of wireless communication facilities, and all radio frequency output is strictly mandated by the Federal Communications Commission (FCC). The facility will not contribute significantly to storm water runoff or cause erosion since our proposed equipment will be on a concrete pad.

Special Use Permit – conditions for granting:

- (1) *The use will provide a public benefit or satisfy a public need of the neighborhood, district, or City;*

Communities must develop the communication infrastructure as thoroughly as they do with sewers, roads, and other public utilities. Poorly designed or insufficient communication infrastructure will prevent wireless providers from providing adequate education, service, information, and safety services. This site will enhance coverage for T-Mobile customers in the area as well as expand opportunities for other carriers who roam on our network.

T-Mobile's FCC license requires it to operate its system in a defined service region using designated radio frequencies. Each site must be precisely located relative to other sites. T-Mobile's System must reflect the contours and topography of the area and the radius of the antenna's reliable transmission. The subject site was carefully selected in order to have minimal impact on adjacent or nearby properties. T-Mobile's network dictates that a site be at this location to avoid a gap in their service to this area of the City of Shoreline. As outlined above, this particular site was acquired to allow T-Mobile to develop the infrastructure necessary to provide adequate coverage to this area of Shoreline. A serious gap in service would be created without the development of this facility to T-Mobile customers. Propagation maps and RF Emissions information are attached.

Everyday, over 500,000 "911" calls are made from wireless phones. The proposed T-Mobile sites enhances the general welfare of the community by

providing vital means of the communication during times of emergency when traditional land lines are not available or in cases of power failure. The carefully selected and designed facility allows for these calls to occur.

- (2) *The characteristics of the special use will be compatible with the types of uses permitted in surrounding areas;*

T-Mobile has selected the site that provides maximum coverage with minimal impact to the surrounding properties and community, by proposing a wooden pole similar to existing SCL poles in the immediate area and of similar height. The proposed location of the antennas and the pole is such that the location takes full advantage of the existing development and terrain in the area. (See attached photo-simulations). The pole site is located in the City of Shoreline Right of Way. This site will be consistent with existing development in the right of way and will be designed to camouflage the antennas to the greatest extent possible.

- (3) *The special use will not materially endanger the health, safety, and welfare of the community;*

The facility will be unmanned and will only be visited once monthly for routine maintenance. The facility will comply with the strict guidelines of the FCC, which are designed to protect the public safety. To ensure structural integrity of the pole, T-Mobile will construct and maintain in compliance with all federal, state, and local building codes and standards.

The site will also be remotely monitored for fire, smoke, and intrusion.

- (4) *The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity.*

The proposed location is consistent with the uses in the Right of Way. This facility shall not result in a detrimental over-concentration of this use with the site and throughout the application demonstrates how this location was selected and the need for the PWSF at this location. This use in this location is normally permitted outright on the existing 100' wooden poles, however SCL will not allow us to locate on those taller utility poles.

- (5) *The special 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 facility will be fenced and locked, and located within the Right of Way (pole) and in a carport (ground equipment). Minimal traffic will be generated during the

construction phase while the construction crew is traveling to and from the site. They will access the site off of N.E. 180th through the existing landlord's driveway. After the two- three week construction period is complete, there will be approximately one visit per month by a field engineer to perform safety inspection and routine maintenance.

- (6) *The special 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;*

The proposed WCF is non-staffed and doesn't require public facilities nor will it have any impact on such facilities in the area. No mitigation conditions are necessary to address this issue. The construction manager on site will address any impact on private facilities, such as gravel roads during construction during construction. Any repairs will be made at the time of construction.

- (7) *The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties.*

T-Mobile has entered into a lease agreement with the property owner for a 15' x 10' project area. The proposed facility will be comprised of a new carport/storage facility with equipment cabinets located inside the structure approximately 3'1" from the edge of the Right of Way. The replacement utility pole will remain in the ROW. This project will not hinder development of neighboring properties.

- (8) *The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title; and*

U4 – Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

T-Mobile is applying for this permit in order to meet the demand of service of our network in this area of the City of Shoreline.

U9 – Encourage the design, siting, construction, operation, and relocation or closure of all utility systems in a manner which: ..minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

This site was selected to utilize existing utility structures for the placement of our antennas. The proposed location is the best alternative in the section to allow for the minimizing of the wireless facility on the surrounding area. By looking at the attached photo-simulations we have demonstrated that our facility will blend with

existing similar structures in the area and we will flush mount our antennas to the replacement wooden pole to blend the antennas with the design of the pole.

- (9) *The special use is not in conflict with the standards of the Critical Areas Overlay.*

There are no critical areas on this site.

Variance:

T-Mobile requests a variance from set back standards on this parcel due to the size, shape and topography of the parcel and placement of existing structures on the parcel. There is no way to design the proposed project to meet City of Shoreline setbacks for the R-6 zoned property. Specifically T-Mobile USA is requesting a variance for this site for the 30' Right of Way setback, 50' adjacent residential setback, and 10' side yard setback for the construction of our proposal.

- (1) The variance is necessary because of the unique size, shape, topography, or location of the subject property;

The variance for this site is necessary due to the uniqueness of this parcel. It is not possible to meet setbacks on this parcel. The location of the pole minimizes impact with location of all equipment on the western most portion of the parcel closest to the existing native vegetation as well placement inside a new carport. No residential parcel in the search ring would provide the necessary 50' setback of our antennas or ground equipment from adjacent residential parcels so we tried to chose the parcel with the least amount of impact on the neighborhood.

- (2) The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;

As a lessee we have an interest in the land as the owner and our entitled to apply as such. T-Mobile's FCC license requires it to operate its system in a defined service region using designated radio frequencies. Each site must be precisely located relative to other sites. T-Mobile's system must reflect the contours and topography of the area and the radius of the antenna's reliable transmission. The subject site was carefully selected in order to have minimal impact on adjacent or nearby properties. Without the development of a site in this very specific area in the City of Shoreline there would be a significant gap in coverage in our overall network as demonstrated in our attached propagation maps.

- (3) The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone.

April 28, 2003

Site Ref: SE-1518J Richmond Highlands

To Whom It May Concern:

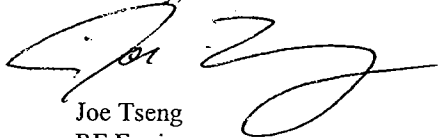
The height of this wireless communication facility (WCF) needs to be 103 feet to meet the desired coverage objectives on Interstate 5 and the surrounding neighborhoods. The height is based on the surrounding terrain profile and the average elevation of nearby vegetation. In addition the facility has been modeled using radio frequency propagation tools to verify the minimum operating height. The height of this facility cannot be reduced and still meet the desired coverage objectives. From the top of a wireless facility at one degree below the horizon the distance from the tower is increased 573 ft for every ten feet of additional tower height.

The legend of the prediction plot shows several different classes of best servers. The various colors of the plot indicate where a T-mobile handset can be reliably used to make and receive telephone calls in the presence of varying receive signals. The terrain, foliage, nearby structures, and WCF location are taken into account. The further the distance from the WCF, or the more abundant the clutter (trees, buildings, etc.) between the WCF and the handset, the weaker the receive signal will be. The following is a short explanation of each server class:

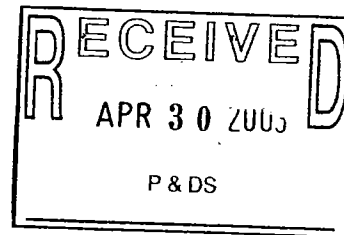
- Outdoor only coverage is represented by receive signals greater than or equal to -91dBm (typically green).
- In-Vehicle and outdoor coverage are represented by receive signals greater than or equal to -82 dBm (typically yellow).
- Residential, in-vehicle, and outdoor coverage are represented by receive signals greater than -78 dBm (typically orange).
- Suburban in building, residential, in-vehicle, and outdoor coverage are represented by receive signals greater than -73 dBm (typically red).
- Urban in-building, suburban in building, residential, in-vehicle, and outdoor coverage are represented by receive signals greater than -68 dBm (typically blue).

If you have any questions please feel free to contact me at (425) 398-7549.

Sincerely,



Joe Tseng
RF Engineer



27

**AFFIDAVIT OF QUALIFICATION AND CERTIFICATION
FOR T-MOBILE PERSONAL WIRELESS SERVICE FACILITY SE-1518-J
"RICHMOND HIGHLANDS" SCL POLE, 332 NE 180TH ST
SHORELINE, KING COUNTY, WASHINGTON**

CALCULATIONS OF RADIOFREQUENCY POWER DENSITY

Radiofrequency (RF) power densities are computed in accordance with: *"An Engineering Assessment of the Potential Impact of Federal Radiation Protection Guidance on the AM, FM, and TV Broadcast Services"* and methods described in *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields, OET Bulletin 65, August 1997*. Wireless telecommunications providers are required to comply with the FCC "Rules & Regulations" *CFR 47 §1.1310, Radiofrequency radiation exposure limits* and *CFR 47 §24.52, RF hazards*.

PREDICTED CONDITIONS AT GROUND LEVELS

Site plans provided by T-Mobile indicate that all of the proposed T-Mobile antennas will be mounted atop a replacement SCL pole at 332 NE 180th St in Shoreline. The T-Mobile antennas will be centered at approximately the 100-foot level on the 103-foot replacement pole. The pole is shown without climbing appurtenances. Thus it is unlikely that anyone other than authorized RF workers could approach near enough to the proposed antennas to cause those persons' RF exposure to exceed FCC limits. It is expected that exposure conditions inside nearby buildings and near ground level due to the contributions from all transmitting antennas will be well below the FCC public exposure limits.

FCC COMPLIANCE

The Federal Communications Commission (FCC) has determined through calculations and technical analysis that cellular and broadband PCS facilities, such as those operated by T-Mobile, are highly unlikely to cause human RF exposures in excess of FCC guideline limits. Operators of these facilities are thus "categorically excluded" (i.e., exempt) from the requirement for routine environmental processing for determining compliance with the FCC's RF exposure rules. In particular, non-building-mounted broadband PCS facilities are considered categorically exempt if all of the proposed antennas will be greater than 33 feet above ground level.

Hatfield & Dawson Consulting Engineers

The supplied drawings indicate that all of the proposed T-Mobile antennas on the SCL pole at 332 NE 180th St in Seattle will be mounted at least 35 feet above ground level. Thus according to FCC rules, the proposed T-Mobile PCS facility is exempt from further RF safety environmental assessment because it is presumed to be in compliance with the FCC's RF exposure rules.

INTERFERENCE

The transmission equipment for the proposed T-Mobile PCS facility is certified by the FCC under the equipment authorization procedures set forth in Part 2 of the FCC rules. This assures that the proposed facility will operate only within the desired PCS frequency bands, and that spurious emissions are within FCC specifications. Thus the proposed T-Mobile PCS facility is unlikely to interfere with other adjacent or neighboring transmission or reception functions.

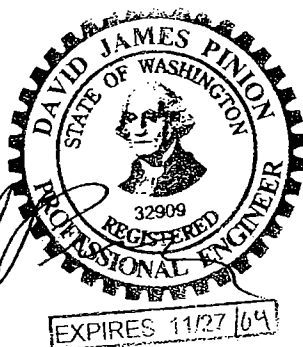
QUALIFICATIONS

I am an experienced radio engineer whose qualifications are a matter of record with the Federal Communications Commission. I am a partner in the firm of Hatfield and Dawson Consulting Engineers, I am registered as a Professional Engineer in the States of Washington, Oregon and California, and I hold an FCC General Radiotelephone Operator License PG-12-21740.

All representations contained herein are true to the best of my knowledge.

13 May 2003

David J. Pinion



David J. Pinion, P.E.

Hatfield & Dawson Consulting Engineers

existing similar structures in the area and we will flush mount our antennas to the replacement wooden pole to blend the antennas with the design of the pole.

- (9) *The special use is not in conflict with the standards of the Critical Areas Overlay.*

There are no critical areas on this site.

Variance:

T-Mobile requests a variance from set back standards on this parcel due to the size, shape and topography of the parcel and placement of existing structures on the parcel. There is no way to design the proposed project to meet City of Shoreline setbacks for the R-6 zoned property. Specifically T-Mobile USA is requesting a variance for this site for the 30' Right of Way setback, 50' adjacent residential setback, and 10' side yard setback for the construction of our proposal.

- (1) The variance is necessary because of the unique size, shape, topography, or location of the subject property;

The variance for this site is necessary due to the uniqueness of this parcel. It is not possible to meet setbacks on this parcel. The location of the pole minimizes impact with location of all equipment on the western most portion of the parcel closest to the existing native vegetation as well placement inside a new carport. No residential parcel in the search ring would provide the necessary 50' setback of our antennas or ground equipment from adjacent residential parcels so we tried to chose the parcel with the least amount of impact on the neighborhood.

- (2) The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;

As a lessee we have an interest in the land as the owner and our entitled to apply as such. T-Mobile's FCC license requires it to operate its system in a defined service region using designated radio frequencies. Each site must be precisely located relative to other sites. T-Mobile's system must reflect the contours and topography of the area and the radius of the antenna's reliable transmission. The subject site was carefully selected in order to have minimal impact on adjacent or nearby properties. Without the development of a site in this very specific area in the City of Shoreline there would be a significant gap in coverage in our overall network as demonstrated in our attached propagation maps.

- (3) The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone.

T-Mobile is not proposing a use inconsistent with the uses within this regional electric utility corridor. By strict enforcement of this title T-Mobile will not be able to develop our proposal as Seattle City Light has denied our application for the existing 100' wooden utility poles.

- (4) The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property.

The need for this variance is not the result of deliberate actions of the applicant or the property owner. The purpose of a variance ordinance is to allow exceptions in appropriate circumstances when strict enforcement of the code would prevent development on a parcel that may be suitable despite development regulations.

- (5) The variance is compatible with the Comprehensive Plan.

See Special Use Criteria #8.

U4 – Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

T-Mobile is applying for this permit in order to meet the demand of service of our network in this area of the City of Shoreline.

U9 – Encourage the design, siting, construction, operation, and relocation or closure of all utility systems in a manner which: ..minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

This site was selected to utilize existing utility structures for the placement of our antennas. The proposed location is the best alternative in the section to allow for the minimizing of the wireless facility on the surrounding area. By looking at the attached photo-simulations we have demonstrated that our facility will blend with existing similar structures in the area and we will flush mount our antennas to the replacement wooden pole to blend the antennas with the design of the pole.

- (6) The variance does not create a health and safety hazard;

This site will not create a health and/or safety hazard. The facility will be unmanned and will only be visited once monthly for routine maintenance. The facility will comply with the strict guidelines of the FCC, which are designed to protect the public safety. To ensure structural integrity of the pole, T-Mobile will construct and maintain in compliance with all federal, state, and local building codes and standards.

The site will also be remotely monitored for fire, smoke, and intrusion.

T-Mobile USA Richmond Highlands SE1518J
Contact: Angela Brooks
(425) 415-8505
angie.brooks@t-mobile.com

(7) The granting of the variance will not be materially detrimental to the public welfare or injurious to:

i. The property or improvements in the vicinity;

This development of this proposal will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity because the project will be a passive use. After the 3 week construction period the site will be visited only once a month for routine inspection by a field engineer.

The ground equipment is proposed to be secured in a new carport that allows for optimal security and visual screening. The site will also be remotely monitored for intrusion and fire and appropriate agency will be contacted immediate if other are detected.

ii. The zone in which the subject property is located;

By camouflaging the facility as a wooden utility this PWSF will blend with the existing SCL 100' wooden poles in the facility. Again, as it is a passive use it will not be detrimental to public welfare or injurious to the subject property.

(8) The variance does not relieve an applicant from:

(a) any of the procedural or administrative provisions of this title, or

The proposed variance does not relive T-Mobile from procedural or administrative provisions. T-Mobile will be applying for all necessary permits including SEPA, Special Use Permit, and Building Permit.

(b) any standard or provision that specifically states that no variance from such standard or provisions is permitted :

SMC 20.30.310 allows for setbacks to be varied.

(c) Use or building restrictions

This use can be permitted with a Special Use Permit.

(9) The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;

There are no known easements or covenants recorded for this site. (See attached title report)

(10) The variance does not allow the establishment of a use that is not otherwise permitted in the zone which the proposal is located; or

A Wireless Telecommunications can be permitted through the Special Permit process in which T-Mobile is concurrently filing for.

- (11) The variance is the minimum necessary to grant relief to the applicant.

This variance request is the minimum needed to provide a site for the ground equipment and replacement City Light utility pole because of the setbacks needed from adjacent residential zones and Right of Way.

This project is consistent and compatible with the intent, goals, objectives and policies of the City of Shoreline Comprehensive Plan and Zoning Code. As the City's population increases, new and expanded utilities are necessary to meet the demand for wireless services. This facility is needed to provide continuous and dependable wireless telecommunication service in the surrounding area. The Federal Communications Commission requires licensees, as T-Mobile USA, Inc., to provide thorough coverage within their licensed area.

T-Mobile is committed to developing a telecommunications network for wireless services that meets the highest possible standards of reliability and safety.

Findings and Recommendation Of the City of Shoreline Planning Commission

T-Mobile WTF , File #201227

Summary-

After reviewing and discussing the SUP/Variance application on July 17, 2003 the Shoreline Planning Commission did find and determine that the application to locate a wireless telecommunication facility at 332 NE 180th Street was not in compliance with City codes and detrimental to the health safety and welfare of the City of Shoreline, and therefore recommended denial of such action.

I. Findings of Fact

1. Project Description

1.1 Action: This Special Use Permit (SUP), a Quasi Judicial or "Type C Action," before the Planning Commission was a request to replace an existing 43-foot utility pole with an uncamouflaged, 103-foot pole with 3 vector panel antennas in the 180th Street R-o-W. In addition, the proposal includes locating ground-mounted equipment in a proposed garage on the adjacent single family lot. A SUP is required whenever a wireless telecommunications facility (WTF) monopole is proposed without camouflage or co-location. In addition, a Zoning Variance is required because the proposed WTF pole does not meet the 50-foot minimum setback requirement from the residentially zoned property or the 30-foot height maximum for R-6 zones.

Type C action (SUP) is reviewed by the Planning Commission, where an Open Record Public Hearing is held and a recommendation for approval or denial is developed. This recommendation is then forwarded to the City Council, who is the final decision making authority for Type C actions. The Variance is a Type B or administrative decision, however the variance review has been consolidated with the SUP, which elevates the entire process to a quasi-judicial decision.

1.2 Location and Site: 332 NE 180th Street is located at the west end of NE 180th Street where it dead-ends against the east side of the I-5 freeway right-of-way. That portion of the freeway right-of-way and site is vegetated with mature evergreen trees. The WTF pole would be located near the end of NE 180th Street and the ground equipment located on the freeway side of the last residence on that street. The site topography is relatively flat and approximately 10 feet below the freeway roadbed.

1.3 Comprehensive Plan and Zoning: The project site is located in the North City Neighborhood. The site and neighborhood along NE 180th Street are zoned R-6 and have a land use designation of Low Density Residential. The current

zoning of the parcels immediately adjacent to the subject properties are all R-6. The I-5 freeway is to the west. The adjacent uses are residential to the east, south, and north, and a treed right-of-way along I-5 to the west.

2. Procedural History

2.1 Neighborhood Meeting Date: April 22, 2003

2.2 Application Date: April 30, 2003

2.3 Complete Application Date: May 16, 2003

2.4 Notice of Application and Public Hearing Date: June 19, 2003

2.5 Public Hearing July 17, 2003

2.6 No prior action or approvals related to this project have been taken.

3. Public Comment

3.1 The following individuals participated in the neighborhood meeting:

William Simpson – 335 NE 180th St., Shoreline, WA 98155

Glorianne Knight – 337 NE 180th St., Shoreline, WA 98155

3.2 Two neighbors attended the neighborhood meeting and two called for additional information regarding health effects of cell antenna. Drew Thatcher, Independent Health Expert, explained at the meeting the health and safety effects of cellular antennas and ground equipment.

3.3 The City did not receive written public comment letters regarding this proposed wireless telecommunications facility.

3.4 No public testimony was given during the Public Hearing.

4. SEPA - SEPA review is required for this application under the City's substantial authority established in SMC 20.30.490. The SEPA Determination of Non-Significance was issued on June 19, 2003. No appeals of the SEPA determination were made.

5. Consistency –

5.1 The application has been evaluated and found to be consistent with the nine Special Use criteria listed in the Shoreline Municipal Code Section 20.30.330. and was not consistent with 5 of the 11 Variance criteria listed in the Shoreline Municipal Code 20.30.310.

ANALYSIS OF SUP CRITERIA

Section 20.30.330.B of the Shoreline Municipal Code outlines the criteria by which Special Use Permit applications are reviewed. The City shall grant a Special Use Permit, only if the applicant demonstrates that it meets each of the following criteria.

Criterion 1: The use will provide a public benefit or satisfy a public need of the neighborhood, district or City.

The WTF is designed to provide better cell phone coverage for Shoreline residents.

The special use meets criterion 1.

Criterion 2: The characteristics of the special use will be compatible with the types of uses permitted in surrounding areas.

A WTF monopole is comparable to a utility pole, which is permitted without height limit or design standards. The neighborhood has various utility poles greater than 100 feet in height. See Attachment B - Photo Survey. A WTF can be minimally compatible with the existing residential neighborhood if it is conditioned to be painted to blend with the background, located on the freeway side of the residence and the periphery of the neighborhood.

The special use meets criterion 2.

Criterion 3: The special use will not materially endanger the health, safety and welfare of the community.

The Food and Drug Administration (FDA) and the Federal Communication Commission (FCC) report that, based on current health studies, the amount of power to be used, and the antenna distance from people that there are no health risks associated with transmission antennas of this scope. The Telecommunications Act of 1996, Section 704 states that, "No state or local government...may regulate the placement, construction and modification of wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facility comply with the Commission's regulations concerning such emissions."

If approved, the City will require a building permit to construct the WTF. The City will review the monopole for and equipment for structural safety.

The special use meets criterion 3

Criterion 4: The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the

immediate area of the proposed use, unless the proposed use is deemed a public necessity.

It is unclear whether the WTF is a public necessity much like the telephone companies. The proposed location does not appear to not create an over-concentration of wireless telecommunication facilities (WTF). The City has not defined over-concentration.

The special use meets criterion 4.

Criterion 5: The special 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 special use will not cause any increased pedestrian or vehicular traffic in the neighborhood except the infrequent service vehicle after construction.

The special use meets criterion 5.

Criterion 6: The special 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.

The need for public facilities is not increased; adequate infrastructure exists for the site.

The special use meets criterion 6.

Criterion 7: The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties.

The proposed antenna monopole will be 103 feet in height on the periphery of the neighborhood. The immediate neighboring property is the I-5 R-o-W and therefore its further development is unaffected by the proposal. All other nearby property is currently fully developed.

The special use meets criterion 7.

Criterion 8: The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title.

U4- Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

U9- Encourage the design, siting construction operation and relocation or closure of all utility systems in a manner which: ...minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

U28 – Explore strategies which minimize or reduce the impacts of the telecommunication facilities and towers on the community.

The Comprehensive Plan both encourages the growth and delivery of utility systems and networks and minimizes impacts of these facilities on the community. The location of monopoles to meet demands and provide coverage and to be aesthetically compatible can be difficult considering the amount of residential neighborhoods in Shoreline. On balance, the location of the proposed monopole adjacent to the I-5 freeway with the least obtrusive siting is consistent with the Comprehensive Plan policies. The proposal is located the furthest away from residences, on the freeway side of the property using the house as partial screen, adjacent to existing conifer trees, with screened mechanical equipment in order to create the least impact to the neighborhood.

The special use meets criterion 8.

Criterion 9: The special use is not in conflict with the standards of the critical areas overlay.

The site of the proposed wireless monopole and ground-mounted equipment is not in any known critical area.

The special use meets criterion 9.

ANALYSIS OF VARIANCE CRITERIA

The Shoreline Municipal Code specifies the decision for a Variance Permit in section 20.30.310. The decision criteria are listed below, followed by the Planning Commission's analysis of the applicant's compliance with each criterion.

Criterion 1: The variance is necessary because of the unique size, shape, topography, or location of the subject property;

By Shoreline Municipal Code, the facility must be 50 feet from any residential zoned property. The property is triangular and 86 feet wide at the street and 132 feet deep. The I-5 Right-of Way cuts along the northwest side of the property. The proposal locates the pole in the right-of-way in place of an existing pole facility approximately 10 feet from residential property. The proposal also locates a new car garage on the property with internal space to accommodate ground equipment for the antennas. This ground equipment is 35 feet from the adjacent residential property but would be co-located and camouflaged within

the proposed garage. There are other locations on the property between the proposed garage and the I-5 right-of-way where a WTF could be located outside the setback requirements. However, the height variance is not necessary because of any unique conditions of the subject property.

The variance does not meet criterion #1.

Criterion 2: The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;

The strict enforcement of the provisions for residential setback does not create unnecessary hardship to the property owner because uncamouflaged WTFs are not outright permitted in R-6 zones and it does not prevent the property owner from the residential use and improvement of their property.

The variance does not meet criterion #2.

Criterion 3: The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;

The subject property is not deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone because these other properties do not enjoy the rights and privileges of an uncamouflaged WTF on their property.

The variance does not meet criterion #3.

Criterion 4: The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;

The need for the variance is the result of deliberate actions of a past property owner to create a lot size and dimension that is not adequate to provide required setbacks for a WTF that is not permitted outright in the zone. If the monopole was relocated to meet setbacks then the need for the height variance is not the result of previous deliberate actions.

The variance does not meet criterion #4.

Criterion 5: The variance is compatible with the Comprehensive Plan;

U4- Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

U9- Encourage the design, siting construction operation and relocation or closure of all utility systems in a manner which: ...minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

U28 – Explore strategies which minimize or reduce the impacts of the telecommunication facilities and towers on the community.

The Comprehensive Plan both encourages the growth and delivery of utility systems and networks and minimizes impacts of these facilities on the community. The location of monopoles to meet demands and provide coverage and to be aesthetically compatible can be difficult considering the amount of residential neighborhoods in Shoreline. On balance, the location of the proposed monopole adjacent to the I-5 freeway, on the periphery of the neighborhood, and with the least obtrusive siting is consistent with the different Comprehensive Plan policies. The proposal is located the furthest away from residences, on the freeway side of the property using the house as partial screen, adjacent to existing conifer trees, with screened mechanical equipment in order to create the least impact to the neighborhood.

The variance meets criterion #5.

Criterion 6: The variance does not create a health and safety hazard;

The City researched health and safety bulletins and a guide to transmitting antenna emission safety from the Food and Drug Administration (FDA) and the Federal Communication Commission (FCC). These agencies concluded, based on current health studies, the amount of power to be used, and the antenna distance from people that there are no health risks associated with transmission antennas of this scope. Further, in the Telecommunications Act of 1996, Section 704 states that, “No state or local government...may regulate the placement, construction and modification of wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facility comply with the Commission’s regulations concerning such emissions”.

The variance meets criterion #6.

Criterion 7: The granting of the variance will not be materially detrimental to the public welfare or injurious to:

a. the property or improvements in the vicinity, or

The development will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity because the public does not use the right-residential setback on this remnant and undeveloped street end.

b. the zone in which the subject property is located;

Wireless facilities are a permitted use with additional requirements like a SUP in an R-6 Zone.

The variance meets criterion #7.

Criterion 8: The variance does not relieve an applicant from:

a. any of the procedural or administrative provisions of this title, or

The proposed variance does not relieve the applicant from procedural or administrative provisions of this title because the variance procedure has been consolidated with the SUP procedure.

b. any standard or provision that specifically states that no variance from such standard or provision is permitted, or

Setback standards may be varied through the zoning variance process (SMC 20.30.310).

c. use or building restrictions, or

The use may be permitted in R-6 zoning with a Special Use Permit. Uniform building code requirements will have to be met during the building permit review process.

d. any provisions of Critical Areas Overlay District requirements, except for the required buffer widths;

No critical areas are located on the subject property.

The variance meets criterion #8.

Criterion 9: The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;

No easements or covenants are recorded for this site adjacent to or regarding setbacks.

The variance meets criterion #9.

Criterion 10: The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; and

An uncamouflaged WTF is not permitted outright in the R-6 zone but may be allowed through the Special Use Permit process.

The Planning Commission finds that the SUP criteria are met, therefore the variance meets criterion #10.

Criterion 11: The variance is the minimum necessary to grant relief to the applicant.

The variance request is the minimum dimension needed to provide a site for the ground equipment and antenna pole because of the other setbacks needed from a developed right-of-way and residential development.

The variance meets criterion #11.

II. Conclusions

The applicant has proposed a WTF that meets their needs while attempting to meet the criteria for both the SUP and Variance. They have attempted to locate the uncamouflaged, monopole parallel to the I-5 freeway and the ground equipment inside a garage. In addition the site is at the end of a dead end street on the periphery of the

neighborhood. The City's criteria is meant to test this proposal for whether it is a public necessity, compatible with the neighborhood, it is a hardship without, and deprives the property owner of a right to use their property because of past, unintended actions.

III. Recommendation

Based on the Findings, the Planning Commission recommends denial of this application as currently shown on plans dated May 16, 2003 because the proposal does not meet five (5) Variance criteria outlined in SMC 20.30.310. Therefore, the Planning Commission recommends denial of both the Variance and the SUP.

City of Shoreline Planning Commission

15/ Brian Z. Donnell

Chairperson

9/2/03

Date

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

July 17, 2003
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Doennebrink
Commissioner Doering
Commissioner Gabbert
Commissioner Kuboi
Commissioner Piro
Commissioner MacCully

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Rachael Markle, Planning Manager, Planning & Development Services
Paul Cohen, Planner III, Planning & Development Services
Lanie Curry, Planning Commission Clerk

ABSENT

Vice Chair Harris
Commissioner McClelland
Commissioner Sands

1. CALL TO ORDER

Chair Doennebrink, who presided, called the regular meeting to order at 7:00 p.m..

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Doennebrink, Commissioners Doering, Kuboi, Piro, Gabbert and MacCully. Vice Chair Harris and Commissioners Sands and McClelland were excused.

3. APPROVAL OF AGENDA

Chair Doennebrink noted that there were no minutes available for Commission approval. Therefore, this item should be removed from the agenda.

COMMISSIONER DOERING MOVED TO APPROVE THE AGENDA AS AMENDED.
COMMISSIONER PIRO SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

4. PUBLIC COMMENT

Amy Pleasant, 19520 – 15th NW, inquired if the agenda also includes a public hearing on the AT&T antenna at Crista. Chair Doennebrink answered that this antenna would not be discussed as part of the agenda.

Ms. Pleasant said that she appealed the third wireless antenna at the Richmond Beach Congregational Church. At that time, she also researched the AT&T antenna that is proposed for the Crista site. She found that there are already 17 antennas in that location. When antennas are co-located in a location where a lot of antennas already exist, she asked how the community could be ensured that the emissions from the antennas would be in compliance with the FCC requirements. She asked that her name be added as a person of record when the new antenna on the Crista site is discussed in the future.

Mr. Cohen said he is familiar with most of the wireless communications facilities that apply to the City for approval. The type of review that is required depends upon what is being proposed. Tonight's two applications are different in nature. He said he is not aware of any application for an antenna at the Crista site at this time. However, in the past, there have been applications for antennas to be placed on the radio tower that is located on the Crista site.

Mr. Cohen referred to Ms. Pleasant's question as to how the City would monitor the amount of emissions coming from antennas. He explained that through the 1996 Telecommunications Act, wireless facilities under a certain threshold of power were excluded from local government control. He further explained that all cellular or wireless companies must apply to the FCC for a license. The FCC tracks these licenses and reviews the amount of emissions to determine whether they exceed or are below the threshold. If there is a problem with a particular site because there are multiple antennas on one structure, anyone can request the FCC to test it. He summarized that all radio frequencies, emissions, power, etc. are handled through the FCC's licensing procedures.

Ms. Pleasant said that according to the documentation she has read on the issue, the FCC and the local governments must share this responsibility. The pattern in history is that this issue has not been dealt with because interpretation sections have not been used correctly. She said it is the public's right, and it is also the law of demand, that these antennas meet the FCC standards. It behooves the City to make sure that the cumulative impact of multiple antennas in one location does not exceed the FCC standards.

Commissioner Kuboi inquired if there is a standard definition for the word "antenna". Mr. Cohen said that lately, the City has been receiving applications for panel vector antennas. These are typically about four feet tall and one foot wide. They typically come in groups of three, with each vector covering a third of the circumference. He clarified that these would be considered one installation, but three antennas. He said there are also whip antennas, which are long, flexible antennas that are mounted on the sides of buildings and water towers. They are used for both receiving and sending signals.

Mr. Cohen said the Development Code defines an antenna as a device used to capture an incoming and/or to transmit an outgoing radio frequency signal. Antennas include, but are not limited to, the following types: omni directional (whip), direction (panel), or dish. Ancillary antennas are antennas not directly used to provide wireless telecommunications services.

5. PUBLIC HEARING

A. Type C Quasi-Judicial Public Hearing to Consider a Special Use Permit and Variance for the Construction of an Uncamouflaged, 103-Foot Monopole with Three Panel Antenna and Screened Mechanical Equipment to be Located at 332 NE 180th Street and the East Side of I-5

Chair Doennebrink reminded the Commissioners of the Appearance of Fairness Rules, in which Commissioners are required to disclose any communications that they might have received about the subject of the hearing outside of the hearing. He briefly reviewed the rules and procedures for the hearing, and then opened the public hearing.

Chair Doennebrink inquired if any of the Commissioners had been contacted by anyone concerning the subject of the hearing. None of the Commissioners indicated any ex-parte communications. In addition, no one in the audience expressed a concern about conflict of interest amongst the Commission.

Mr. Cohen reviewed the staff report. He said each of the Commissioners should have received a packet containing both applications that are scheduled for public hearing. The packet orients the Commissioners to the proposals and describes the public process and similar findings, including the review of both the special use criteria and the variance criteria.

Mr. Cohen advised that the application before the Commission is for an uncamouflaged, ground mounted monopole, with ground equipment. Because it is uncamouflaged, a special use permit is required, which is a Type C Process. The applicant is also asking for a variance on the setback requirements, which is a Type B Process. Normally, Type B actions are administrative decisions, but because the proposal involves both types of action, the two requests have been combined. He further explained that the variance and special use permit applications can be decided separately, but the proposal has to meet the criteria for both the special use permit and the variance.

Mr. Cohen advised that the first hearing is related to an application for an antenna on property located at 335 NE 180th Street. He pointed out the location of the site on a map. He also provided a picture of the utility pole that is located within the right-of-way. The pole existing pole is 43-feet high, and the proposal is to replace that pole with a pole that is approximately 103 feet high. Cable would be run off of the pole at the bottom, under ground and onto the private property to the right. He said the applicant is proposing to build a new car garage and provide a separate room where the ground mounted equipment would be placed.

Mr. Cohen said the site is located at the west end of 180th Street towards the I-5 right-of-way. There is nothing particular about the site, other than it is relatively flat and there are a number of conifer trees up against or in the I-5 right-of-way. The neighborhood is known as the North City Neighborhood, which is all zoned R-6. In addition, the Comprehensive Plan designates the whole area as low-density residential, which is consistent with the zoning. Mr. Cohen said no public comments were received related to the application.

Mr. Cohen referred to the criteria for the special use permit. He noted that he would only review those criteria that staff believes the proposal does not meet. He said staff believes the only criterion that the special use permit does not meet is Criterion 4 at the top of Page 4. The criterion states, "The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity." He said the staff does not deem the proposal to be a public necessity. He said that while the proposed location would not create an over-concentration of wireless transmitting facilities (WTF), if they get a lot of similar requests that are granted to single-family properties along the corridor, which seems to be a popular site for WTF's, then an over-concentration could occur. Therefore, staff felt the application would not meet Criterion 4.

Next, Mr. Cohen referred to the criteria for a variance. He pointed out that the reason for the variance is that the proposed pole does not meet the setback requirement for residential property. The requirement is 50 feet, and the pole would only be 10-12 feet from the front of the residential property. In addition, he said a ground-mounted WTF pole must meet the height requirements of the zoning district it would be located in. The height limit in an RS-6 zone is 30 feet, and the applicant is proposing a pole of 103 feet in height.

Mr. Cohen said the first variance criterion relates to whether or not the variance is necessary because of the unique size, shape, topography or location of the subject property. He noted that the shape of the subject property is triangular, and is truncated by the I-5 right-of-way. The site is basically flat, with nothing unusual about it. The proposal chooses to locate the monopole in the right-of-way. He said the ground-mounted equipment can be located in the garage and be completely camouflaged in the structure. But in either case, there is a location on the triangular piece of property that is 50 feet from the next residential property and 30 feet from the right-of-way. Locating the pole in this area would allow the applicant to meet the setback requirements. However, the proposed pole would still exceed the height limit. While the applicant has indicated that 103 feet is necessary to obtain sufficient coverage, the code is very cautious about these situations and that is why it encourages co-location on existing structures and buildings.

Next, Mr. Cohen referred to Criterion 2, which relates to situations where strict enforcement of the provisions of this title would create an unnecessary hardship to the property owner. He said staff believes that strict enforcement would not create unnecessary hardship because uncamouflaged WTF's are not outright permitted in R-6 zones. The property owner would not be prohibited from residential uses and improvements to their property. Therefore, staff does not believe the application meets Criterion 2.

Mr. Cohen referenced Criterion 3, which states that, "The subject property is deprived, by the provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under the identical zone." Again, Mr. Cohen said staff does not believe the property owner would be deprived of rights and privileges enjoyed by others in the vicinity because the other property owners do not enjoy the privilege of having an uncamouflaged WTF on their property. Therefore, staff does not believe the application meets Criterion 3.

Mr. Cohen said Criterion 4 states, "That the need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property." He said that if the monopole were relocated to meet setbacks, then the need for the height variance would not be the result of previous deliberate actions. Since the height variance would not be effected by the configuration of the property, staff does not believe the application meets Criterion 4.

In conclusion, Mr. Cohen said the applicant has applied for a WTF pole that meets their needs while attempting to provide coverage for the area. However, they have attempted to locate the uncamouflaged pole parallel to I-5 and the ground equipment in the garage. He emphasized that the City's criteria is meant to test the proposal for whether it is a public necessity, whether it is compatible with the neighborhood, whether it is a hardship to not have a facility on the site, and whether it deprives the property owner of the right to use their property because of past, unintended actions.

Mr. Cohen concluded his report by stating that the staff's analysis of the applicant's request shows that the subject proposal does not meet the five variance and one special use permit criteria as noted by staff. Staff's recommendation is that both the proposed special use permit and the variance be denied.

Commissioner Kuboi referred to Special Use Criterion 4. He said he understands staff's logic about the possibility of having an over-concentration in the future, but there is not one now. He recalled Ms. Pleasant's earlier comment that there were a slew of antennas at Crista. He said he would have thought that over-concentration would be an issue five years from now when some company wants to put an antenna on the subject property, and they are the 46th company that has asked to do so. Maybe, at that point, the City could deny the request because there are too many already. However, since this application is the first one for the area, he questioned the rationale for using the over-concentration argument.

Mr. Cohen explained that the I-5 corridor is lined with single-family homes and is, therefore, a primary location for antennas. If the City can justify the special use permit based on this criterion alone, they could justify it all along the I-5 corridor. At this point, the City does not have a definition for over-concentration.

Commissioner Gabbert also expressed his concern about the staff's recommendation related to Special Use Criterion 4. He questioned how the City could deny an application because of something that may possibly occur in the future. He said this appears to be arbitrary. In terms of Crista, Commissioner Gabbert said they were governed by King County at the time, and there was a recommendation when the pole was erected, that it be used as a co-location for numerous different suppliers of wireless services.

The goal was to accommodate as many antennas as possible so that poles do not have to be built all over the place. He concluded that he does not concur with the staff's recommendation for Criterion 4.

Commissioner MacCully requested clarification regarding the variance criteria. He said it sounds like there are two issues. First, there is a 50-foot setback requirement from the next residential property. He questioned if this would apply to both the pole and the ancillary equipment located inside the proposed garage. Mr. Cohen answered affirmatively, except the ground-mounted equipment would be located inside of a structure and camouflaged from view. He noted that the setback issue is related to the property line to the east, and there is an opportunity to adjust the location of the garage to the west in order to meet the setback requirements. He said he also believes it would be possible to locate the pole so that it could meet the setback requirements. However, there is still an issue associated with the height limit.

Commissioner Piro noted that the proposed location of the pole is within the public right-of-way rather than on private property. He asked staff to share their concerns about this. Mr. Cohen explained that even if the pole were to be allowed in the public right-of-way, it would still have to meet setback requirements, which are 50 feet from adjacent residential properties and 30-feet from public right-of-way properties.

Commissioner Doering asked who would lose if the application were denied, and who would benefit if the application were approved? Would the proposed antenna have a public benefit? Mr. Cohen said the applicant would be better able to answer this question, but his understanding is that the antenna would be for single, private use. However, he noted that the pole is currently being used for local distribution of electricity, and this use would continue even if the new pole were approved.

Commissioner Kuboi noted that the existing power pole is taller than the proposed new pole. He asked if the existing pole was allowed because it provides for a public necessity. Mr. Cohen said there are quite a few utility poles in the neighborhood that are approximately 100 feet tall. But these are public utility poles versus a private wireless telecommunication pole. Commissioner Kuboi inquired if a landline phone system would be considered a public necessity. Mr. Cohen answered that he is not sure.

Commissioner MacCully said that if the application is to replace the existing utility pole that is owned by the utility, who would own the new pole since it is still on public right-of-way and used for power transmission. Mr. Cohen said the public utility would own the pole, but the wireless company would install the pole, locate their antenna and reattach the utility wires to the pole.

Commissioner MacCully inquired if the same type of review process would be used if a public utility company were proposing to put in a 100-foot pole. Mr. Cohen answered that public utility poles are exempt from height requirements.

Angela Brooks, Zoning Specialist, T-Mobile Wireless, 19807 Northcreek Parkway North, Bothell, 98011, referred to the packet of materials the Commission already received. She explained that T-Mobile is requesting the granting of a special use permit and a variance to the height and setback requirements for a proposed camouflaged, unmanned personal wireless facility consisting of a 3-sector antenna array, close mounted on top of a replacement existing wooden utility pole located at 332 NE 180th Street. She further explained that the ground equipment would be camouflaged on adjacent private property, located in a new carport or shed storage area.

Ms. Brooks said T-Mobile is in the process of integrating their newest technology into their existing wireless communications system, called Personal Communications Services (PCS). PCS is a unique combination of telecommunication services that will provide the public with the next generation of wireless devices. Examples would include compact cellular telephones with paging and voicemail service, wireless fax machines and fax modems, etc. She said that, ultimately, PCS will allow for an all-in-one telecommunications device combining multiple services in a single wireless telephone.

Ms. Brooks introduced Joe Tseng, a Radio Frequency Engineer who has a Bachelor of Science degree in Electrical Engineering from the University of Minnesota and has designed over 100 sites in the telecommunications industry. She said Mr. Tseng would be able to address the Commission's questions regarding specific antennas and height. Next, she introduced Chris Arena, the Project Manager with over 20 years of construction experience. He can answer the Commission's questions as to why they want to locate an antenna at this specific location. Lastly, she introduced Fred Simpson, the Program Manager responsible for the development of wireless facilities in the State of Washington. He has over nine years of experience developing sites nationwide.

Ms. Brooks said that, in order to provide service to the residents of Shoreline, T-Mobile is promoting this particular site. She advised that the network has a coverage gap or hole within their system from NE 188th to NE 180th, 5th Ave NE to 7th Ave NE, and the surrounding neighborhood. The proposed site would provide infill coverage along I-5 between T-Mobile's existing sites at the Catholic Cemetery and Cascade Bingo, as well as the neighborhood between the towers at the Crista Ministries and the Shoreline water tank. She said that in order for the entire network to work in concert, covering and handing off calls to various sites, this gap must be filled. Therefore, T-Mobile is proposing to locate a personal wireless facility on a replacement pole on the subject property.

Ms. Brooks advised that, due to the residential nature of the proposed location, T-Mobile looked at design strategies that would incorporate their project with the existing structures for co-location in the existing neighborhood. They originally started by requesting permission to place the antenna on a light standard on Shoreline School District property in the area, but this leasing opportunity was denied. She explained that they chose 180th because of the already existing 100-foot light standards along the street. She noted that Seattle City Light denied the use of the existing pole directly across the street because of all the lines and connections going across I-5. Therefore, T-Mobile chose the pole across the street because they felt it would blend in with the existing utility structures in the neighborhood.

Ms. Brooks summarized by stating that T-Mobile feels the project meets the intent of the Shoreline Municipal Code 20.40.600 in design standards, and they have located at the best possible location in the area to meet their needs and the needs of Shoreline residents with a design that has minimal impact. She turned the time over to Mr. Tseng to explain the coverage maps.

Mr. Tseng explained that the neighborhood surrounding the proposed site has been identified through customer complaints, computer modeling and drive testing, as an area where an additional antenna is required. The height is determined by the situation and by past experience, taking into account the terrain of the land. He provided two maps showing the existing coverage and how the proposed antenna would improve the coverage. Commissioner MacCully inquired if the maps represent current conditions. Mr. Tseng pointed to the location of the proposed pole, which was located in the blue area. He explained that a computer simulation does not always fully represent the existing conditions. But drive testing does. Commissioner MacCully clarified that the proposed pole is intended to fill the red, orange and yellow hole immediately to the left. Mr. Tseng agreed.

Chair Doennebrink inquired if each cellular company has their own poles. Ms. Brooks answered that they try to co-locate as much as possible. For example, a number of different companies have located antennas on the Shoreline water tank and at Crista Ministries. Unfortunately, all of the easy sites have been completed and most of the coverage that they need now is in residential areas. Utility poles are the best candidates for co-location in residential zones.

Chair Doennebrink inquired if T-Mobile considered the option of locating their antenna closer to the 185th Overpass. Ms. Brooks said they considered different options in the area from the football stadium to the currently proposed location. They contacted every landowner in that area, and received no response. Chair Doennebrink inquired about the type of agreement that would exist between T-Mobile and the private property owner. Ms. Brooks answered that T-Mobile would obtain a lease agreement from the private property owner.

Commissioner Kuboi inquired if the height of the proposed pole takes into account the growth of trees over time. Mr. Tseng answered affirmatively. He said the trees in the area are approximately up to 76 feet in height, and T-Mobile likes their antennas to be located above the trees. Next, Commissioner Kuboi asked how much of the antenna's signal would be radiated downward. Mr. Tseng said the proposed antennas would be panels, and a lot of the energy would be focused towards the horizon. Only a very nominal amount would radiate downward. He referred to an FCC compliance letter that calculates the amount of energy that would be directed downward.

Commissioner Piro requested further information as to why T-Mobile's request to locate a pole at the football stadium was denied. Mr. Arena explained that the Shoreline School District denied the use of poles along the football stadium. At that time, they decided to move east of the freeway down NE 5th, but Seattle City Light denied them access to the poles along this street. They also considered poles along 180th, but because of the high voltage of energy running through the lines, Seattle City Light does not like to replace these poles. However, Seattle City Light does have "drop poles," and most utilities like to replace these poles because they have fewer lines and are easy to replace. There is currently both power and telephone service on the pole that is being proposed.

Chair Doennebrink inquired how T-Mobile decides whether or not a pole should be camouflaged. Ms. Brooks said that, from an industry standpoint, the utilization of an existing utility pole would be considered an attempt at camouflage. The existing wooden pole would be replaced with a new wooden pole. Mr. Arena noted that, oftentimes, when T-Mobile replaces wooden poles and installs antennas, they paint the antennas to match the color of the pole so they don't stand out. Ms. Brooks referred to the photo simulations for the proposed project, and noted that the antenna would be closely mounted on the pole in order to blend in.

Ms. Brooks referred to Special Use Permit Criterion 1, which relates to whether or not the use would provide a public benefit or satisfy a public need. She explained that the proposed site would enhance coverage for T-Mobile customers in the area as well as expand opportunities for other carriers who roam on their network. She noted that, last year in King County, over 60 percent of all emergency calls made to 911 were from cell phones. Everyday, well over 50,000 emergency calls come from cell phones throughout the United States. Development of the site would enhance 911 capabilities.

Next, Ms. Brook referred to Special Use Permit Criterion 2 regarding whether or not the proposal would be compatible with the types of uses permitted in surrounding areas. She noted that on the south side of 180th Street, there are existing 100-foot wooden utility poles, and the proposed replacement pole would blend with the existing wooden poles in the neighborhood.

Ms. Brooks advised that Special Use Permit Criterion 4 requires that the proposed location not result in the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use unless the proposed use is deemed a public necessity. She pointed out that the City of Shoreline Municipal Code provides provisions for denial of any future permit that would cause over-concentration to occur. But at this time, there is not an over concentration of wireless telecommunication facilities and decisions must be based on current uses in the area not potential future developments.

Ms. Brooks reminded the Commission that T-Mobile is requesting a variance from setback standards on the parcel due to the size, shape and topography of the parcel and placement of existing structures on the site. She said there is no way to design the proposed project to meet the City's required setbacks for the R-6 zoned property. Specifically, she said T-Mobile is requesting a variance for the 30-foot right-of-way setback, the 50-foot adjacent residential setback and the 10-foot side yard setback. They are also requesting a variance to the height requirement.

Ms. Brooks explained that there are special circumstances and conditions that exist on the subject property that are not applicable to other lands. First is its unique triangular shape. She noted that the proposed facility would be located on a parcel that is 86 feet wide and 132 feet deep. She referred to the site plan showing what the developable area would be after the setback requirements have been applied. In order for a personal wireless facility design to work in the City in residential areas, both the ground equipment and antennas must meet setbacks of 50 feet from adjacent residentially zoned properties and 30 feet from any public right-of-way. The maximum height allowed is 35 feet. Because of the setback and height restrictions, it is not possible to achieve any coverage objective.

Ms. Brooks noted that the subject parcel is located adjacent and east of I-5 and is an ideal location to provide excellent wireless transmission coverage to the surrounding neighborhood. Because of the irregular terrain of the area, high tree coverage and high phone usage from the freeway and community, this area is difficult to provide transmission coverage north and south along the freeway and in the neighborhoods surrounding the site. The tall trees in the Washington Department of Transportation right-of-way provide a noise buffer between the adjacent freeway and the neighborhood. But it also makes a unique terrain situation adjacent to the parcel. She noted that wireless technology operates on a line-of-sight technology and the antennas need to be able to see over all surrounding trees, buildings, etc.

Next, Ms. Brooks referred to Variance Criterion 2, which relates to whether or not strict enforcement of the code would create an unnecessary hardship to the property owner. Ms. Brooks explained that wireless telecommunication facilities are conditionally permitted in the area. Denial of the permit does not allow the property owner to enjoy a use that provisions are made for in the Shoreline Municipal Code, as well as denial of an identical use of 100-foot wooden utility poles on the southern side of 180th.

Ms. Brooks referred to Variance Criterion 3 related to whether or not the subject property is deprived of rights and privileges enjoyed by other properties in the vicinity and under an identical zone. She explained that T-Mobile is not proposing a use that is inconsistent with the uses already on 180th. There are existing 100-foot wooden utility poles located up and down 180th.

Ms. Brooks said Variance Criterion 4 states that the need for the variance must not be the result of deliberate actions of the applicant or property owner, including any past owner of the same property. She explained that the special conditions and circumstances are not the result of the actions of the applicant or the current landowner. Neither the location of the parcel in relation to I-5 nor the size and shape of the parcel are the result of actions by the landlord or the applicant. The wireless code came into fact long after the parcel was developed, and no deliberate action has occurred since adoption of the wireless code. She further explained that when I-5 was built, a portion of the property was condemned by the State of Washington to make room for the freeway and right-of-way. The action was not deliberate of any owner, past or present. The property was taken for the expansion of I-5 long before the wireless code was permitted.

Ms. Brooks said that since the application meets the remaining variance criteria, there is no need to review each one specifically. She concluded her presentation by stating that in order for the design of their facility to work in the City's residential areas, both the ground equipment and the antennas must meet the setbacks that they are requesting a variance for. Because of the tree cover that provides a buffer between the residential area and the freeway, the height of the antenna must be well over the 30-foot height limit. She summarized that strict enforcement of the code would prohibit the development of any type of pole of this nature in residential areas.

Commissioner Gabbert recalled that Mr. Cohen indicated the possibility of locating the pole within the triangular shape while meeting all of the setback requirements. Mr. Cohen explained that he was not considering a setback from I-5, as does Ms. Brook's map.

Mr. Cohen said the code defines camouflage very clearly. While he understands that T-Mobile views their proposal as camouflaged, the Commission must remember that their proposal would replace a 43-foot pole with a 103-foot pole. Therefore, it would be hard to hide the pole within the context of the existing structure. He said the current definition camouflage is "A WTF that is disguised, hidden or integrated within an existing structure that is not a monopole, guide or lattice tower or placed within an existing or proposed structure." Also, the Development Code does provide opportunities to find wireless sites and make them easier to locate. This does not mean that there is an opportunity on every corner, but the applicant can find an exiting utility pole and co-locate an antenna and add 15 feet, even though it might not meet the height requirement for the zone. While the criteria is tough, there are also opportunities available that would not require either a special use permit or a variance.

Commissioner Piro inquired how far away a pole could be from I-5 and still accomplish T-Mobile's goal. Ms. Tseng said this would depend upon the height of the pole, etc. The technology is line of sight. If there is any obstruction between the telephone and the antenna on the tower, the signal would be degraded significantly.

Commissioner MacCully inquired if the 30-foot setback requirement would apply to the property owned by the Department of Transportation. Ms. Cohen said staff has indicated that the setback would not apply.

Commissioner Piro inquired if staff has worked with the applicant to find alternative locations. Mr. Cohen answered affirmatively. He said he has met informally with a number of applicants who are looking for opportunities in the Shoreline area. He is happy to make suggestions on alternative locations that he knows about.

Commissioner Kuboi inquired if 911 calls from T-Mobile phones could only be transferred on a T-Mobile Network. Mr. Tseng answered that 911 calls from a T-Mobile phone must be routed to 911 through the T-Mobile network.

Commissioner Doering cautioned that this is not a matter of whether or not the Commission approves of T-Mobile service, but whether it meets the criteria that is before them. She suggested that the Commission should keep the discussion focused on issues related to criteria.

Commissioner MacCully inquired if there is any way that a 103-foot pole would meet the variance criteria. Ms. Cohen said staff believes that it would not.

Mary Jo Heller, 14804 North Park Ave North, said she is a cell phone user, but she questioned the statement that if the new antenna were not allowed, T-Mobile customers would not be able to use other cell phones. She said she donates her old cell phones to a women's shelter, and they can use old cell phones just for 911. She said she has a clear understanding of the 1996 standards and was at the very first Commission meeting when cell towers were discussed. However, there is a new study coming out next year that the City needs to review. She questioned how much the Commissioners know about cell phone emissions and how harmful they are. She encouraged the Commission to educate themselves. They should also review the telecommunication regulations from other jurisdictions.

Ms. Heller asked that the Commission be careful when considering variances. She inquired how much money property owners who allow telecommunication companies to locate facilities on their property are making. She questioned if it is fair to ask homeowners who are not receiving any economic benefit to have a pole in their neighborhood. Lastly, Ms. Heller asked how many towers are currently located in the City.

Ms. Brook said that although the City does not require studies to be done, T-Mobile did conduct this study at the request of Mr. Cohen at the pre-application meeting, and the study was included in the Commission's packet. She noted that T-Mobile is bound to comply with the FCC Standards.

Commissioner MacCully recalled Mr. Tseng's response that a cell phone has to go into its own network and then gets routed to the 911 system. He asked how a donated T-Mobile phone that is given to a program for 911 calls only would work. Mr. Tseng said he is not sure who pays for the service. But if a phone is donated, it is already programmed to operate on a specific network. If someone dials 911 from a T-Mobile phone, it will automatically go to a T-Mobile site and then be forwarded to the 911 system.

Chair Doennebrink referred to Variance Criterion 4 and asked that staff provide further explanation. Mr. Cohen said this criterion is about whether the current owner or past owners have created a situation for themselves that makes it difficult for them to obtain a variance. In this case, the property owner is responsible for creating the existing situation. He noted that while the I-5 corridor does cut across the property, staff does not believe it creates the need for the variance. If the I-5 corridor is no longer part of the issue or if the pole were moved to a different location that meets the setback requirements, there would still be an issue related to the height.

Commissioner MacCully inquired if the City has approved proposals for special use permits that have not met all of the criteria. Mr. Cohen explained that if a proposal cannot meet each of the criteria, the only real choice is to deny the permit. However, it is possible for the Commission to disagree with the staff's recommendation on the criteria. Another option would be to condition the proposal to address a specific criterion. If the proposal can meet the condition, then it would meet the criterion.

Commissioner MacCully inquired if there is anything that could be done that would allow a 103-foot pole to meet the variance criteria. He said he would have to say no. He said he could see where several of the other concerns that were raised might be addressed by relocating the garage or the pole. But the pole would still be 103 feet in height. Mr. Cohen agreed and added that the pole would not be camouflaged as per the City's definition. He said staff does not consider the proposal to be a replacement pole. If it were merely a replacement of the pole, the new pole would be the same height (43 feet) as the existing pole, with 15 additional feet for the antenna.

Commissioner Kuboi referred to Variance Criterion 4 and inquired what a previous property owner did to cause the deliberate action that encumbered the property. Mr. Cohen said the previous property owner purchased and developed the property in its current dimension, whether it was before or after the freeway. He also developed it as a single-family residential property, and the zoning on the property has been the same for many years. All of these things were attached to the property when it was purchased.

Commissioner Kuboi inquired if the setback requirement that are in place now are the same as the setback requirements that were in force when the property was purchased. Mr. Cohen said the setback requirements could have been different, but the existing zoning requirements are attached to a property when it is purchased.

Commissioner Kuboi expressed that he is still having a hard time understanding what the owner did to cause the current situation. He said he interprets Criterion 4 to mean that a property owner basically “paints himself into a corner” by virtue of some action he took that is causing the problem. He said he is having a hard time seeing what the present or previous owner did to exacerbate the problem. Mr. Cohen said they did not exacerbate the problem until they considered a proposal that requires a variance. When they purchased the property, they inherited all of the restrictions that go with the property, and these restrictions could change over time.

Commissioner Kuboi inquired how a property owner could ever meet Criterion 4. Mr. Cohen said one example of when a variance might be appropriate would be a situation in which the City purchased land for a right-of-way that divided a property in such a way that they couldn’t fit a normal sized, single-family house on the property. In this case, the City’s action affected the property owner’s ability to develop the property as per the zone. Commissioner Kuboi inquired if the construction of I-5 would be a similar circumstance. Mr. Cohen answered that, in this case, I-5 does not affect the setback requirements. The setback issues are related to the front property line and the property line to the east.

Commissioner Gabbert referred to Variance Criterion 2. He inquired if the staff would have reached the same conclusion if the proposed pole were shorter and camouflaged. Mr. Cohen said that if the proposal were for a pole of 43 feet, plus an additional 15 feet of the same diameter, staff would have found that the pole met Variance Criterion 4. Commissioner Gabbert clarified that if the pole was camouflaged, they would meet Criterion 2. Mr. Cohen answered that if the pole was camouflaged, but still 103 feet in height, a conditional use permit would be required. It is possible that it could be approved. He noted that the wireless companies do not favor camouflaging because it is expensive. A good example of a camouflaged tower is not a wood tower with an antenna on the top because the existing pole is wood. A good example of camouflage is having the poles look like trees, but this is very expensive and would still require a conditional use permit.

Mr. Cohen said the code defines a camouflaged pole as “A WTF that is disguised, hidden or integrated within an existing structure that is not a monopole, guide or lattice tower or placed within an existing or proposed structure.” This definition is difficult to meet and there are different interpretations as to what is considered camouflage.

Commissioner MacCully said there is a camouflaged monopole adjacent to I-5 on a former school property that is now a church property on 220th in Mountlake Terrace. It is designed to look like a church tower. Commissioner Gabbert said there is also one at a church north of 145th in Shoreline. He inquired if this would be considered camouflaged. Mr. Cohen said that structure was built under the old code. Staff felt that was a bad result, and the code has now been amended. Mr. Cohen said that in 1997 a church in Richmond Beach applied for a building permit to extend their church steeple an additional 24 feet, up to a total of 78 feet.

Along with that, they wanted to locate cellular antennas. Since 1997, two cell companies have located there. Last night, he attended an appeal hearing related to a third company's application to locate an antenna on the site, and this is an example of a real steeple that is attached to a church and completely screens the wireless communications facilities within the church or steeple. This is a good example of camouflage.

Commissioner Gabbert expressed his concern that there is a gray area as far as what private and public utilities are allowed to do.

THE PUBLIC HEARING WAS CLOSED.

COMMISSIONER DOERING MOVED THAT THE COMMISSION RECOMMEND DENIAL OF THE SPECIAL USE PERMIT AND VARIANCE APPLICATIONS FOR THE PROPERTY LOCATED AT 322 NE 180TH STREET BASED ON THE STAFF'S FINDINGS AND CONCLUSIONS. COMMISSIONER MACCULLY SECONDED THE MOTION.

Commissioner Doering said she does not like the concept of special use permits. From all the planning material she has read over the course of three years she has been a Commissioner, it is clear that the City needs to be very careful in issuing special use permits. Rather, they should stay within the boundaries of the zoning laws. Because the application does not meet all of the variance criteria, she is recommending the application be denied.

Commissioner MacCully said he, too, is concerned about the gray area that exists between public and private utilities. He suggested that if a public utility company had submitted this proposal, the Commission would not be having a discussion. He explained that municipalities contract for a lot of their services, and he questioned if these private companies would become public entities. He said he wishes there were a way that he could vote in favor of the proposal. But based on the criteria the Commission has before them, he must vote against it. He said that while he does not agree with the staff's analysis of Special Use Permit Criterion 4, he sees no way to condition the 103-foot criteria that would allow him to say that the proposal meets the rest of the criteria.

Commissioner Kuboi asked about the ramifications of approving the special use permit, but denying the variance. He noted that a number of Commissioners have expressed that the rationale behind Special Use Permit Criterion 4 is questionable, and that is the only criterion that would keep the Commission from recommending approval. If the majority of the Commission concurs, then the Commission would be led to recommending approval of the special use permit, but denial of the variance. Mr. Cohen said that if the Commission decides that the proposal can meet all the special use permit criteria but not all of the variance criteria, because the proposal is just one application, the Commission would have to recommend denial for the whole application.

Ms. Markle said that by recommending approval of the special use permit, the Commission would merely be saying that they agree that it is okay to not camouflage the facility. That is the only issue that is related to the special use permit.

Technically, the Commission could recommend approval of the special use permit on moral grounds, but the application, as a whole, would still be denied because it cannot meet all of the variance criteria.

Commissioner Kuboi inquired if the staff's interpretation of future over-concentration being the basis for not allowing the proposal is based on common legal precedent and consistent with what other jurisdictions in the area would do. Mr. Cohen said he is not aware of how other jurisdictions handle this particular criterion. Commissioner Kuboi stated that he does not agree with the staff's rationale for Special Use Permit Criterion 4. Perhaps the first companies that request an antenna in this location should receive approval, but anything beyond a certain number would be considered over-concentration.

Commissioner MacCully inquired if the applicant would be able to resubmit the application if the Commission were to recommend denial and the City Council concurs. Mr. Cohen said the applicant would be able to resubmit their application. Commissioner MacCully asked how much change would have to occur in order for the application to be a valid resubmission that could receive approval. Mr. Cohen said the applicant would have to address the issue of camouflage and height. In addition, they would have to change the location of the project to address the setback requirements.

Commissioner Gabbert said he does not agree with the conclusion reached by the staff regarding Special Use Permit Criterion 4. However, he realizes that the application does not meet the variance criteria and can therefore, not be approved as proposed.

Commissioner Piro said the applicant made a compelling presentation. He said he also finds fault with some of the information in the staff analysis and would encourage staff to provide more clear definitions for terms such as over-concentration. However, because the applicant cannot meet all of the variance criteria, he would support a motion to deny the application.

Chair Doennebrink also stated that he does not agree with the staff's rationale related to Special Use Permit Criterion 4. But he agrees with their recommendations related to the variance criteria.

If the ultimate outcome is that the tower would not be recommended to the City Council for approval, Commissioner Kuboi inquired if there would be a down side to the Commission approving the special use permit component of the application. He said he would like the City's processes and procedures to be viewed as objective as possible. It is important that the Commission does not appear to be denying the special use permit based on Criterion 4.

COMMISSIONER KUBOI PROPOSED THAT THE MOTION BE AMENDED AS FOLLOWS: THAT THE COMMISSION RECOMMENDS THE CITY COUNCIL APPROVE THE SPECIAL USE PERMIT AND DENY THE VARIANCE. OVERALL THE APPLICATION WOULD BE DENIED.

COMMISSIONERS DOERING AND MACCULLY ACCEPTED THE AMENDMENT. THE MOTION CARRIED UNANIMOUSLY.