



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3006702
Applicant Name: Todd Walton for Clearwire US LLC
Address of Proposal: 3800 West Dravus Street

SUMMARY OF PROPOSED ACTION

Land Use Application to allow expansion of an existing minor communication utility (Clearwire) by adding five (5) microwave dishes on an existing City owned water tank (Magnolia Water Tank).

The following approvals are required:

Administrative Conditional Use Review - to allow a minor communication utility on a public facility in a Single Family Residential Zone (Seattle Municipal Code (SMC) Chapter 23.57.010.C).

SEPA - Environmental Determination (Seattle Municipal Code Chapter 25.05).

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND INFORMATION

Site and Vicinity Description

The proposal site occupies one (1) block in the Magnolia neighbor of Seattle bounded by West Prosper Street to the north, 38th Avenue West to the east, West Dravus Street to the south and 39th Avenue West to the west. The property contains a total area of approximately 1.27 acres. The parcel and existing structures are located within a Single Family (SF 5000) zone. Development on the site consists of a City of Seattle water tower (Magnolia Water tank) and equipment cabinets. This existing water tower is 100' in height measured from existing grade to

the top of the tank, exceeding the 30' SF 5000 height limit allowed for structures in this zone. However, the building is a legally non-conforming structure as it was built before this zoning designation was in effect.

Clearwire and Cingular Wireless have minor communication utilities on this site. Clearwire (#3003747) was issued a DPD Master Use Permit to install three (3) panel antennas and seven (7) microwave dishes along the water tank's perimeter handrail with accessory equipment cabinets located at the base of the water tower. This permit also facilitated Clearwire in removing a previous wireless carrier's facility (Metricom – DPD MUP #710529) consisting of sixteen (16) panel antennas and reinstalling five (5) panel antennas on existing mounts. DPD also issued a Master Use Permit to Cingular Wireless to install nine (9) panel antennas and five (5) equipment cabinets at the base of the water tower. An application (#3007001) from Verizon to install twelve (12) panel antennas and accessory radio equipment cabinets is currently being reviewed by DPD.

The surrounding property is also zoned SF 5000. Existing development in the vicinity of the proposal consists of a variety of single family residences varying in age and architectural style.

Proposal Description

The proposed project consists of the expansion of an existing minor communication facility for Clearwire-a wireless broadband internet service provider. The facility will expand to include five (5) microwave dishes projecting 75' above existing grade. These microwave dishes will be attached to the catwalk handrail situated on the main body of the water tower. All associated cabling will be located within an existing cable tray that is affixed to the handrail and routed along the water tower's legs to an existing radio equipment cabinet located at the base of the water tower. No new equipment cabinets are proposed. The microwave dishes will be painted to match the appearance of the water tower.

Public Comments

The public comment period for this project ended May 9, 2007. DPD received two written comments regarding this proposal. The neighbors expressed concerns regarding possible health impacts due to exposure to electromagnetic radiation emissions and the collective effects of multiple carriers on one site.

ANALYSIS -ADMINISTRATIVE CONDITIONAL USE

Seattle Municipal Code (SMC) 23.57.010.C provides that a minor communication utility, as regulated pursuant to SMC 23.57.002, may be permitted in a Single Family zone as an Administrative Conditional Use when they meet the development standards of SMC 23.57.010.C and the following criteria, as applicable.

- 1. The proposal shall not be significantly detrimental to the residential character of the surrounding residentially zoned area, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing*

service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units.

The proposed microwave dishes will be affixed to the catwalk hand railing situated on the main body of the existing Magnolia water tower. The subject site is located in the SF 5000 zone. According to the plans, the microwave dishes will conform to codified development standards, visual impacts and design standards of SMC 23.57.010 and 23.57.016. The microwave dishes will be screened by colors consistent with the current exterior of the water tower. No new equipment cabinets are proposed.

Director's Rule (DR) 8-2004 clarifies terms-specifically "Effectively providing service", "Least intrusive location" and "Least intrusive facility"-and criteria pertaining to the placement of minor communication utilities (personal wireless facilities). The proposal is located within a SF 5000 zone on a non-arterial street which is considered the most intrusive location. However, the proposal will be located on a City Water Tower, which is identified as the second least intrusive facility to be located on. DR 8-2004 further states, "*The Director may allow a deviation from the order of preference contained in subsections (A.2), provided that the Director finds that such a deviation would result in a less intrusive location than would otherwise be provided under strict adherence to the order of preference*".

The applicant submitted an area map that delineated the location of the surrounding microwave links. Per the applicant, Clearwire utilizes modeling based on selecting latitude and longitude coordinates that provide optimal coverage objective. The microwave dishes are not for site specific coverage in the area but to provide important internet backhaul to surrounding City of Seattle sites.

The applicant states that no other alternative sites were sought for this expansion proposal; mainly because alternative sites were sought for a previously permitted Clearwire facility at this same location (#3003747). The Neighborhood Commercial (NC) zoned properties previously sought in the area, including a property at the intersection of 33rd Avenue West and West McGraw Street, were considered more favorable for minor communication utility facilities. However, site specific constraints such as structural insufficiency for rooftop loading, low building heights and proximity of evergreen trees greatly compromised the viability of such sites to meet the applicant's network objectives and responsibilities under federal, state and local regulations. Therefore, the proposed location was chosen. The applicant is now seeking to continue collocating with other wireless carriers at this property.

The proposed minor communication utility expansion is not likely to be substantially detrimental to the residential character of the residentially zoned area, and the location of the microwave dishes and cabling are the least visually intrusive location consistent with effectively providing service and minimizing impacts to the existing neighborhood. The minor communication utility will be integrated into the design of the water tank and painted to match the existing color(s). The negative impacts to the neighbors will likely be minor.

The views from immediately neighboring residential structures would not be substantially altered by the presence of the facility. The applicant has provided photographically simulated evidence suggesting that the visual intrusion would be minor.

The antennas will not emit noise. The noise level associated with the existing radio equipment cabinets is not expected to change.

Traffic impacts are not anticipated other than one (1) service visit per month. The proposal would be compatible with uses allowed in the zone, and since no housing or structure will be removed, the proposal will not result in displacement of residential dwelling units.

As proposed, the proposed expansion of the minor communications utility will not constitute a commercial intrusion that will be substantially detrimental to the residential character of the surrounding neighborhood.

2. *The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable.*

The applicant has designed the size, shape and materials of the proposed utility to minimize negative visual impacts on adjacent or nearby residential areas to the greatest extent possible. Clearwire will affix the microwave dishes to existing mounts. The associated cabling will be contained within existing cable trays and routed to an existing radio equipment cabinet located at the base of the water tower. The microwave dishes and associated cabling will be painted to match the exterior color of the water tank. As proposed, this proposal meets this criterion.

3. *Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when:*
 - a.) *The antenna is at least one hundred feet (100') from a MIO boundary, and*
 - b.) *The antenna is substantially screened from the surrounding neighborhood's view.*

The proposed site is not located within a Major Institution Overlay District. Therefore, this criterion does not apply to the subject proposal.

4. *If the proposed minor communication utility is proposed to exceed the permitted height of the zone, the applicant shall demonstrate the following:*
 - a.) *The requested height is the minimum necessary for the effective functioning of the minor communication utility, and*
 - b.) *Construction of a network of minor communication utilities that consists of a greater number of smaller less obtrusive utilities is not technically feasible.*

The proposed microwave dishes will be located on the catwalk handrail of an existing water tank that is legally non-conforming in regards to maximum height limits allowed in SF 5000 zones. This minor communication facility located approximately 75' above grade on a water tower that is measured at an overall height of 100' would be taller than the 30' base height

limit allowed for structures in this zone. However, this additional height may be granted through an administrative conditional use permit.

Per the applicant, the proposed microwave dishes are required to provide internet to the neighboring Clearwire sites; all require line of sight to the dishes at the other end of the microwave internet shot. A letter of certification signed by James C. Cornelius, P.E. states the proposed height of the microwave dishes is essential in order to provide the necessary coverage. The applicant further states the height is necessary to limit potential interference with the heights of other providers and Clearwire's own antennas. Data demonstrating the need for expansion of the wireless facility in this area was included.

This site was chosen because its elevation, location and existing water tower are uniquely suited to serve the surrounding area. No commercial properties were identified in the surrounding areas with sufficient elevation height to provide the coverage needed to meet service objectives. The additional height above the zone development standard is the minimum required to attach the antennas to the water tower and obtain sufficient coverage. Therefore, the proposal complies with this criterion.

- 5. If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.*

The proposed minor communication utility will not be a new freestanding transmission tower. Therefore, this criterion does not apply to the subject proposal.

- 6. If the proposed minor communication utility is for a personal wireless facility and it would be the third separate utility on the same lot, the applicant shall demonstrate that it meets the criteria contained in subsection 23.57.009.A, except for minor communication utilities located on freestanding water tower or similar facility.*

The proposed minor communication utility is located on a freestanding water tower. Therefore, this criterion does not apply to the subject proposal.

SUMMARY

The proposed project is consistent with the Administrative Conditional Use criteria of the City of Seattle Municipal Code as it applies to wireless communication utilities. The facility is minor in nature and will not be detrimental to the surrounding area while providing needed and beneficial wireless communications service to the area.

The proposed project will not require the expansion of public facilities and services for its construction, operation and maintenance. The site will be unmanned and therefore will not

require waste treatments, water or management of hazardous materials. Once installation of the facility has been completed, approximately one visit per month would occur for routine maintenance. No other traffic would be associated with the project.

DECISION - ADMINISTRATIVE CONDITIONAL USE

The Conditional Use application is **CONDITIONALLY APPROVED** as noted below.

SEPA ANALYSIS

The initial disclosure of the potential impacts from this project was originally made in the environmental checklist dated April 11, 2007. The information in the checklist, applicant's statement of Federal Communication Commission Compliance, supplemental information and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

Many environmental concerns have been addressed in the City's codes and regulations. The SEPA Overview Policy (SMC 25.05.665) discusses the relationship between the City's code/policies and environmental review. The Overview Policy states, in part, "*Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulation are adequate to achieve sufficient mitigation*" subject to some limitations. It may be appropriate to deny or mitigate a project based on adverse environmental impacts in certain circumstances as discussed in SMC 25.05.665 D1-7. In consideration of these policies, a more detailed discussion of some of the potential impacts is appropriate.

Short - term Impacts

The following temporary or construction-related impacts are expected; decreased air quality due to suspended particulate from building activities and hydrocarbon emissions from construction vehicles and equipment; increased traffic and demand for parking from construction equipment and personnel; consumption of renewable and non-renewable resources. These impacts are expected to be very minor in scope and of very short duration considering the installation process. No conditioning pursuant to SEPA is warranted.

Construction and Noise Impacts

Codes and development regulations applicable to this proposal will provide sufficient mitigation for most impacts. The initial installation of the microwave dishes may include loud equipment and activities. This construction activity may have an adverse impact on nearby residences. Due to the close proximity of nearby residences, the Department finds that the limitations of the Noise Ordinance are inadequate to appropriately mitigate the adverse noise impacts associated with the proposal. The SEPA Construction Impact policies, (SMC 25.05.675.B) allow the Director to limit the hours of construction to mitigate adverse noise and other construction-related impacts. Therefore, the proposal is conditioned to limit construction activity to non-holiday weekday hours between 7:00 a.m. and 6:00 p.m.

Long - term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal, namely increases in demand for energy and increased generation of electromagnetic radiation emission. These long-term impacts are not considered significant or of sufficient adversity to warrant mitigation. However, due to the widespread public concerns expressed about electromagnetic radiation, this impact is further discussed below.

Environmental Health

The Federal Communications Commission (FCC) has been given exclusive jurisdiction to regulate wireless facilities based on the effects of electromagnetic radiation emissions. The FCC, the City and County have adopted standards addressing maximum permissible exposure (MPE) limits for these facilities to ensure the health and safety of the general public. The Seattle-King County Department of Public Health has reviewed hundreds of these sites and found that the exposures fall well below all the maximum permissible exposure (MPE) limits. The Department of Public Health does not believe these utilities to be a threat to public health.

The City is not aware of interference complaints from the operation of other installations from persons operating electronic equipment, including sensitive medical devices (e.g. - pacemakers). The Land Use Code (SMC 23.57.012C2) requires that warning signs be posted at every point of access to the antennas noting the presence of electromagnetic radiation. Directors Rule (DR) 8-2004 requires an outside third party review for all minor communication utility applications in single family zones. Pursuant to this requirement, the applicant submitted a letter from Dean Busch, RF Engineer (Radiowave Compliance Services, Inc.) dated August 15, 2007 that finds the technical documentation submitted by the applicant accurate. In the event that any interference was to result from this proposal in nearby homes and businesses or in clinical medical applications, the FCC has authority to require the facility to cease operation until the issue is resolved.

The information discussed above, review of literature regarding these facilities, and the experience of the Departments of Planning and Development and Public Health with the review of similar projects form the basis for this analysis and decision. The Department concludes that no mitigation for electromagnetic radiation emission impacts pursuant to SEPA policies is warranted.

Other long term impacts such as height, bulk and scale, traffic, and air quality are minor and adequately mitigated by the City's existing codes and ordinances. Provided that the proposal is constructed according to approved plans, no further mitigation pursuant to SEPA is warranted.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this

declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

ADMINISTRATIVE CONDITIONAL USE CONDITIONS

For the Life of the Permit

1. The owner(s) and/or responsible party(s) shall ensure that the microwave dishes, support structures and equipment cabinets are painted to blend with the color (non-glare) of the water tower.

CONDITIONS - SEPA

During Construction

The following condition to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

2. In order to further mitigate the noise impacts during construction, the hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:00 a.m. and 6:00 p.m. This condition may be modified by DPD to allow work of an emergency nature or allow low noise interior work. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

Signature: _____ (signature on file) Date: September 13, 2007
Tamara Garrett, Land Use Planner
Department of Planning and Development

TG:bg