



# 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:** 3010508

**Applicant Name:** Steven Topp for Clearwire

**Address of Proposal:** 5301 Phinney Ave North

#### SUMMARY OF PROPOSED ACTION

Land Use Application to install a new minor communication utility (Clearwire) consisting of two panel antennas, and three microwave antennas all mounted on the rooftop of existing building. Project includes one equipment cabinet to be located on rooftop.

The following approvals are required:

**SEPA - Environmental Determination** Seattle Municipal Code (SMC) 25.05.

**Administrative Conditional Use Review** - to allow a minor communication utility in a residential Lowrise 3 zone.

**SEPA DETERMINATION:** [ ] Exempt [X] DNS [ ] MDNS [ ] EIS

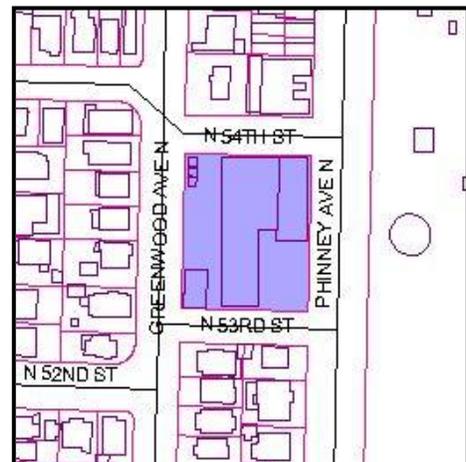
[X] DNS with conditions

[ ] DNS involving non-exempt grading, or demolition, or another agency with jurisdiction.

#### BACKGROUND INFORMATION

##### Site and Vicinity Description

The proposal site is located on the west side of Phinney Avenue N. between N. 53<sup>rd</sup> St and N. 54<sup>th</sup> St. and is occupied by the Norse Home, a 131-unit senior residential facility. The site is located directly across from the Woodland Park Zoo in the Phinney Ridge neighborhood. The 34,000 sq. ft. parcel and existing building is split-zoned with the east one-half of the parcel along Phinney Ave N. zoned Lowrise-3 (L3) and the west one-half of the parcel along Greenwood Ave N. zoned Single Family 5000 (SF5000). The SF5000 zoning extends west for several blocks.



### Proposal Description

Clearwire is proposing a minor communications utility that consists of two panel antennas, three microwave antennas and a radio equipment cabinet to be located on the roof of an existing residential care facility. The panel antennas and microwave antennas are to be mounted on the walls of the existing stair penthouses and painted to match building colors. The radio equipment cabinet will be located on an existing shelf attached to one of the existing penthouses and will be screened and painted to match building colors. None of the proposed equipment will rise above the height of the existing penthouse structures. Appropriate security signage will be mounted at all access points to the roof.

### Public Comments

The original public comment period for this project ended September 30, 2009 but was extended to October 15, 2009 by request of a neighbor. DPD received two written comments regarding this proposal. The comments opposed the proposal for aesthetic reasons and the possible interference with residents' access rights.

### **ADMINISTRATIVE CONDITIONAL USE CRITERIA AND ANALYSIS**

Section 23.57.011.B of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted in a Multi-Family zone as an Administrative Conditional Use subject to the requirements and conditioning considerations of this Section enumerated below.

- 1. The project shall not be substantially detrimental to the residential character of nearby residentially zoned areas, 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 project application packet contains considerable detail regarding the site search. According to the plans, the antennas will conform to codified requirements regarding setbacks and visual impacts (SMC 23.57.011). All of the antennas will be mounted to the walls of the existing stairway penthouses atop the roof of the building. The antennas will not rise higher than the highest point on the stair penthouse. In fact, there are two existing television antennas atop the stair penthouses that are much higher than the proposed facilities. The applicant's plans depict screening around the proposed equipment cabinet which is also located at the side of the stair penthouse. As documented by the photographic simulations, appearances of the structure from nearby perspectives would not be substantially altered by the presence of the facility.

The proposed minor communication utility is not likely to result in any detrimental compatibility impacts to the existing neighborhood. Neighbors and tenants of the host building will not likely know the facility exists, in terms of its land use, once it is constructed, and cell phone coverage in the area will be improved which will likely be beneficial to many residents and visitors to the neighborhood.

Traffic will not be affected by the presence of the constructed facility. The antennas will not emit noise, and any noise associated with the equipment cabinets is not likely to be heard by any nearby

residential uses. No dwelling units will be displaced in conjunction with this application. Thus, the proposal will not be substantially detrimental to the residential character of nearby residentially zoned areas.

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

According to the plans submitted, the proposed antennas will be mounted to existing stair penthouses and will be as inconspicuous as possible, within the parameters of the SMC, while remaining functionally effective. Therefore, the proposal complies with this criterion, as detailed below.

*23.57.016 Visual Impacts and Design Standards:*

- A. *Telecommunication facilities shall be integrated with the design of the building to provide an appearance as compatible as possible with the structure. Telecommunication facilities, or methods to screen or conceal facilities, shall result in a cohesive relationship with the key architectural elements of the building.*

The applicant's plans depict the antennas mounted to the outside walls of the existing stair penthouses on the rooftop of the building and will be painted to match the color of the host building. Given the relatively small size of the antennas they will be virtually invisible from the street level. Therefore, the proposal complies with this criterion. The fact that one property might have somewhat better view of the installations than typical properties in the area is acknowledged.

- B. *Not Applicable.*

- C. *If mounted on a flat roof, screening shall extend to the top of communication facilities except that whip antennas may extend above the screen as long as mounting structures are screened. Said screening shall be integrated with architectural design, material, shape and color. Facilities in a separate screened enclosure shall be located near the center of the roof, if technically feasible. Facilities not in a separate screened enclosure shall be mounted flat against existing stair and elevator penthouses or mechanical equipment enclosures shall be no taller than such structures.*

The applicant's plans depict screening that encloses the proposed equipment cabinets located at the stair penthouse near the center of the roof and which will be painted to match the building. The antennas are small in size and mounted to the outside wall of the stair penthouse they will be visually unobtrusive.

- D. *Not Applicable.*

- E. *Not Applicable.*

- F. *New antennas shall be consolidated with existing antennas and mechanical equipment unless the new antennas can be better obscured or integrated with the design of other parts of the building.*

No existing antennas or minor communication utility equipment exists on the subject structure.

G. *Not Applicable.*

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.*

Not applicable.

4. *If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The existing building was constructed in 1955 long before the adoption of the current Land Use code. The existing zoning on the site is L3 and SF500 both of which have a height limit of 30 feet. The roof of the building rises to 36' 11" above grade with top of the tallest penthouse at 54' 2". None of the proposed antennae exceed the height of the existing penthouse. Therefore, the proposal will exceed the zone height limit but not the height of the existing structure. It therefore, 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.*

Not applicable.

## **SUMMARY**

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

## **DECISION - ADMINISTRATIVE CONDITIONAL USE**

The Conditional Use application is **APPROVED**.

## **SEPA ANALYSIS**

Because the proposed minor communication facility will be located on a structure that contains a residence, the application is not exempt from SEPA review.

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated August 21, 2009. The information in the checklist, supplemental information provided by the applicant, project plans, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: "where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" (subject to some limitations). Under certain limitations/circumstances (SMC 25.05.665 D 1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

#### Short-term Impacts

The following temporary or construction-related impacts on the identified critical area are expected: increased vibration from construction operations and equipment. These impacts are not considered significant because they are temporary and/or minor in scope (SMC 25.05.794).

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. The Building code provides for construction measures and life safety issues. Compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts to the environment and no further conditioning pursuant to SEPA policies is warranted.

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

#### Construction and Noise Impacts

Codes and development regulations applicable to this proposal will provide sufficient mitigation for most impacts. The construction of the equipment shelter 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 adequate to appropriately mitigate the adverse noise impacts associated with the proposal.

#### Long-term Impacts

Long-term or use-related impacts are not anticipated as a result of this proposal.

Operational activities, primarily vehicular trips associated with the project and the projects' energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions

which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Environmental Health

The Federal Communications Commission (FCC) has pre-empted state and local governments from regulating personal wireless service facilities on the basis of environmental effects of radio frequency emissions. As such, no mitigation measures are warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The applicant has submitted a "Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility" and an accompanying "Affidavit of Qualification and Certification" for this proposed facility giving the calculations of radiofrequency power density at roof and ground levels expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. This complies with the Seattle Municipal Code Section 25.10.300 that contains Electromagnetic Radiation standards with which the proposal must conform. The City of Seattle, in conjunction with Seattle King County Department of Public Health, has determined that Personal Communication Systems (PCS) operate at frequencies far below the Maximum Permissible Exposure standards established by the Federal Communications Commission (FCC) and therefore, does not warrant any conditioning to mitigate for adverse impacts.

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

- 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 2C.
- 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 2C.

**CONDITIONS - SEPA**

None.

**ADMINISTRATIVE CONDITIONAL USE CONDITIONS**

None.

Signature: \_\_\_\_\_ (signature on file) Date: November 5, 2009  
Marti Stave, Land Use Planner

MS:bg