

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

EARL MACKIE FOR SSCC/INTERSTATE
MOBILE PHONE CO. (aka McCaw
Cellular Communications
for City Council land use
authorization pursuant to
the provisions of Title 23,
Seattle Municipal Code

FILE NO. 8800253
C.F. NO. 296225

Introduction

Applicant seeks City Council approval for establishment of a 75 ft. transmission tower and accessory building at a South Seattle Community College site. The proposal's street address is 6000 - 16th Avenue S.W.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, Title 23, as amended, unless otherwise indicated.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the application be conditionally granted.

The matter came before the Hearing Examiner on September 13, 1988. At applicant's request a continuance was granted and the matter was scheduled for hearing date of January 9, 1989. When the matter came on for hearing on January 9, 1989, the applicant McCaw Cellular Communications was represented by Merle Cox, Site Acquisition Manager. The DCLU Director was represented by land use specialist Arthur Ward.

After due consideration of the evidence presented by the applicant, the information provided by the Director's report, all evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

Findings of Fact

1. Petitioner, McCaw Cellular Communications, Inc. (dba Cellular 1), has acquired Interstate Mobile Phone Company as a subsidiary. The petitioner provides in-vehicle telephone service to private and public subscribers.

2. In attempting to accommodate "an increasing demand for cellular telephone service" in the local area, petitioner proposes to establish a new communication utility on a site located on the campus of the South Seattle Community College (SSCC).

3. According to petitioner's credible testimony, the company's present utility is at the Seafirst Plaza Building. The facility is "too large, and overused." In order to serve more users, petitioner plans to add service units or "cells" to the city of Seattle. Presently, the West Seattle area is not covered or served by petitioner.

4. The SSCC site is a level, grassy site that is within the Institutional 1, Lowrise 1 (I-1/L-1) zone. The 50 ft. by 50 ft. site is approximately 525 ft. east of 16th Avenue S.W., roughly 68 ft. north of West Morgan Street and some 40 ft. north of SSCC's southerly boundary. The nearest lot is approximately 76 ft. away.

5. Petitioner proposes to construct on site a 75 ft. high steel tower with a 5 ft. extended antenna (total 80 ft.). Based on the height of surrounding trees, the 75-80 ft. tower height level is the minimum acceptable for proper transmission/coverage.

Also proposed for the area directly north of the tower is a 28 ft. by 12 ft. 10 in. single story structure which would contain the communications equipment. No employees would be located on site. Access to the site is via a 20 ft. wide easement from the north that extends west to 16th Avenue S.W. The utility use would be electronically connected in a line of site and integrated with other company towers.

6. Antenna radiation would be within OSHA standards at the base of the structure. And, according to applicant, the utility use would not interfere with neighbors' radio and television reception.

7. Immediate vicinity development is limited. Vacant, single family zoned property is south across S.W. Morgan Street, and is designated as greenbelt property. Single family development and zoning is approximately 350 ft. to the southwest. Approximately 400 ft. to the north is accessory parking for the SSCC campus. Approximately 95 ft. west of the subject site is a 93 ft. high transmission tower owned by New Vector Communications (aka U.S. West), a competitor in the cellular phone market. As found in the Hearing Examiner recommendation entered April 8, 1987, the New Vector tower is 80 ft. and the antenna an additional 13 ft. File No. CC-8603744, C.F. No. 295494.

8. DCLU recommends that the proposal be granted on the condition that petitioner "co-locate" or share the new utility

...with the U.S. West facilities so an additional transmission tower is not required...If U.S. West does not allow colocation, the Department recommends approval subject to FAA approval, matching the color of the transmission tower to the color of the New Vector transmission tower and screening the tower and base from the parking lot by landscaping per approved plan.

9. As noted in the Introduction to these findings, the hearing on this matter began September 13, 1989. At that time, petitioner requested postponement so that efforts could be undertaken to secure U.S. West agreement on co-location.

10. Petitioner generally favors co-location which, as a rule, reduces total cell-site costs. However, petitioner has not previously co-located on a competitor's utility. And, generally, the holder of a pre-existing utility will allow co-location to the degree that competitive advantages would be unaffected.

11. At the January 9, 1989, hearing, petitioner described some of the issues affecting the petitioner-U.W. West co-location negotiations. First, there is no question of structural capacity. The existing tower can support a new, co-located utility. Secondly, it is generally agreed that New Vector and the petitioner's antennae should be at the same general height (75-80 ft.) to compensate for vicinity tree height. The third issue remains unresolved. According to petitioner's credible testimony, New Vector wishes to reserve their choice of a co-location on one of petitioner's towers selected by New Vector. The several months between Hearing Examiner hearings has yet to result in an agreement on such a co-location. Added to this is the unknown effect of pending Justice Department and FCC review, i.e. whether said review will dash the possibility of shared towers/facilities between New Vector and petitioner, "the largest cellular company." Petitioner is unable to project the dates of the reviews' conclusions. Petitioner also raised attenuation and building siting as possible negative consequences. Either the utility building would need to be located closer to the New Vector Tower (generally off the subject site); or, the extra "90-100 ft." of cabling could result in attenuated transmissions.

12. Accordingly, petitioner now asks that the application be considered as if co-location will not be feasible.

13. With the limitations noted above, petitioner is in agreement with DCLU's recommended conditions.

14. DCLU issued a determination of non-significance on the proposal. The noise, air quality traffic and other environmental, construction-related impacts will be temporary in nature and of a minor environmental impact. The longer term environmental impact, aesthetic in nature, will be somewhat offset by the landscaping and tower color conditions imposed pursuant to the State Environmental Policy Act (SEPA). DCLU also recommended that landscaping be installed and maintained as a condition of the Council land use approval. As a further condition to the Council land use decision DCLU recommended documentation of FAA approval and maintenance of "a light blue color for the transmission tower."

15. McCaw Cellular Communications has more than 300 cell sites nationwide. In the Puget Sound area U.S. West and McCaw (petitioner) have 50 cell sites.

16. As of June 29, 1988, McCaw Cellular had an existing facility on the Seafirst Fifth Avenue Plaza building, as noted in Finding 3, above; and a monopole tower at 4905 Aurora Avenue North (Woodland Park location). Under consideration in June, 1988 were the following additional sites:

- 405 Prospect Avenue (building mount vs. a new tower in the lower Queen Anne area)
- 1200 South Dearborn (undeveloped land zoned C-M)
- the South Seattle Community College site, subject of this recommendation.

Letter to Art Ward, DCLU (DCLU receipt date June 30, 1988).

17. Correspondence and testimony from petitioner indicate that petitioner will try to minimize new tower construction by attempting mounts on existing buildings or by co-location on existing tower facilities.

18. No correspondence or testimony from the general public was entered into the record.

Conclusions

1. The location of communication facilities is the subject of Seattle Municipal Code Section 23.45.104:

The location or expansion of communication utilities shall be permitted outright in all multi-family zones, if all of the development standards for institutions...are met (emphasis added)...

Seattle Municipal Code Section 23.45.104(A).

2. If the development standards of Seattle Municipal Code Section 23.45.092 through 23.45.102 are not met, the communication utility may be permitted

...by the Council, according to the procedures for public projects and City facilities provided in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. The Council may waive or change development standards.

Seattle Municipal Code Section 23.45.104(B).

3. The subject property is in a Lowrise 1 (L-1) zone. "Institutions," cf. Section 23.45.104, have a maximum 30 ft. height limit in the L-1 zone. Seattle Municipal Code Section

23.45.092. Applicant's proposal is for a 75-ft. high transmission tower. Since the height development standard is not met, the use may be permitted, but "by the Council."

4. In the absence of standards for change or waiver of development standards, it is reasonable to review the analysis and criteria for conditional use approvals. Cf. Seattle Municipal Code Section 23.44.035 (communication utility applications for single family zones to be handled as Council conditional use applications).

5. Generally, the determination on a conditional use application is based on whether

the proposed use meets the criteria for establishing a specific conditional use and whether the use will be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the property is located.

Cf. Seattle Municipal Code Section 23.45.116(C); Seattle Municipal Code Section 23.44.018(C).

6. Presuming that co-location is not viable, the proposed use will not be materially detrimental to the public welfare nor injurious to property within the vicinity or zone, particularly as conditioned. Proposed is utility use of a vacant level lot near the southern boundary of South Seattle Community College. To the south is treed, greenbelt designated property that is zoned single family. Some 350 ft. to the southwest of the site are single family zoned and developed properties. Some 400 ft. to the north is South Seattle Community College accessory parking. Approximately 95 ft. west of the proposed use is a competitor's 93 ft. high transmission tower.

7. Conditions recommended will facilitate a harmony and blending of the New Vector (U.S. West) tower/development and that proposed by applicant McCaw Cellular Communications. Those conditions require matching colors of the towers as well as screening of the tower and base by approved landscaping.

8. The Land Use Code is nonspecific as to heights for utility towers within the (L-1) zone. By reference, however, it can be concluded that the subject proposal is not inconsistent with the Code spirit and intent. Seattle Municipal Code Section 23.45.156 provides that an "amateur radio device" tower, inclusive of antennae, may extend to 65 ft. above grade. Further, the base of the tower shall be at least half of the height of the tower from any other lot. The subject proposal is for a 75 ft. commercial (vs. amateur) tower. The proposed tower is approximately 76 ft. from the nearest lot. The considerations of Section 23.45.156 would require only a 36.5 ft. distance. (See also Seattle Municipal Code Section 23.44.012, radio and television aerials in single family zones exempt from height limits, so long as they are no closer to an adjoining lot line than 50 percent of their height above grade.)

9. The increased traffic, parking, noise and other construction-related impacts will be of a temporary nature and will not be significant. No employee would be located on site, and no radio television interference is anticipated. Radiation from the antenna is expected to be within OSHA standards at the base of the structure.

10. For the foregoing reasons, the Hearing Examiner recommends that the application be considered and conditionally granted, separate and apart from the possibility of New Vector co-location. (Applicant should, however, pursue co-location and be prepared to provide current information on the issue before Council review of this application.) The petition should be approved on the following conditions recommended by DCLU:

Prior to Issuance of a Master Use Permit

1. The applicant, owner(s) and/or responsible party(s) shall submit a landscape plan satisfactory to the Land Use Division of the Department of Construction and Land Use.
2. The owner(s) and/or responsible party(s) shall obtain and document that the Federal Aviation Agency has approved the proposed plans.

Prior to Occupancy

1. To reduce the aesthetic impacts of the equipment shelter building and the base of the transmission tower from the parking lot, the owner(s) and/or responsible party(s) shall provide landscaping according to the plan approved by the Land Use Specialist. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan.

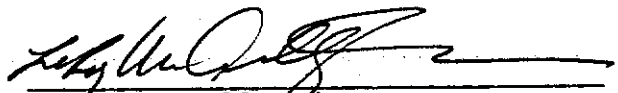
Permanent for the Life of the Project

1. To reduce the aesthetic impact of the equipment shelter building and base of the transmission tower from the parking lot, the owner(s) and/or responsible party(s) shall provide landscaping according to the plan approved by the Land Use Specialist. The owner(s) and/or responsible party(s) shall submit to the Construction Inspector an affidavit from a landscape professional that the landscaping is installed per plan.
2. The owner(s) and/or responsible party(s) shall maintain a light blue color for the transmission tower.

Recommendation

The Hearing Examiner recommends that the City Council Conditionally Grant the petition.

Entered this 24th day of January, 1989.


Leroy McCullough
Hearing Examiner

NOTICE OF RIGHT TO PETITION
FOR FURTHER CONSIDERATION

Pursuant to Seattle Municipal Code Section 23.76.054, as amended, any person substantially affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fifteen days after the date of mailing the recommendation of the Hearing Examiner and addressed to: City Council, Urban Redevelopment Committee, Municipal Building, Seattle, Washington 98104. The request for further reconsideration shall clearly identify specific objections to the Hearing Examiner's recommendation, facts missing from the record, and the relief sought.

Pursuant to Seattle Municipal Code Section 23.76.054(D), if there is no request for further consideration Council action shall be based on the record established by the Hearing Examiner.

The City Council Urban Redevelopment Committee should be consulted for further information on the Council review process.