

CITY OF OAK HARBOR
HEARING EXAMINER

RE: Conditional Use Permit) CUP-16-01
Application for)
)
Verizon Wireless Telecommunications) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant proposes to construct a new telecommunications tower designed as a 75-foot stealth flagpole installation. Associated improvements include a fenced enclosure and equipment cabinet.

Decision: The Hearing Examiner for the City of Oak Harbor hereby grants approval for the requested Conditional Use Permit, subject to the Conditions of Approval recommended by the Development Services Department of the City of Oak Harbor.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

I.

Applicant's Representative: Glotel, Inc.

Property Owner: Brian M. Hearst

Address of Proposal: 130 NE Midway Blvd.
Oak Harbor, WA 98277

Parcel Number: R13335-094-3830

Comprehensive Plan Designation: Community Commercial

Zoning Designation: Community Commercial [C-3]

Application Presented for Action:

Conditional Use Permit (CUP-16-01), Review Process III

SEPA DNS issued March 13, 2015 for CUP14-03, SEPA [SEP-14-08]

Legal Notices: Published: Notice of Application and Public Hearing, March 16, 2016
Notice of Application, March 16, 2016

Certificate of Mailing, Notice to adjacent Property Owners, 03/15/2016

Posted on subject property: Notice of Application and Public Hearing,
March 29, 2016

Hearing Date: April 11, 2016

Parties of Record

Verizon Wireless
3245 -158th Avenue SE, MS231
Bellevue, WA 98008

Glotel, Inc.
Carly Nations, Representative
15375 SE 30th Place, Suite 160
Bellevue, WA 98007

Brian M. Hearst
101 Shy Bear Way NW
Issaquah, WA 98027

Raymond Lindenburg, Associate Planner
Development Services Department

Exhibits

- 1 Staff Report with attached Exhibits
 - 1-1 Staff Report, Conditional Use Permit, CUP-14-03
 - 1-2 Vicinity and Aerial Map
 - 1-3 Zoning Map
 - 1-4 Hearing Examiner Findings of Fact, Conclusions of Law and Decision, CUP-14-03
 - 1-5 Public Noticing Documents

II.

The Development Services Department of the City of Oak Harbor recommended approval of the requested Conditional Use Permit, subject to conditions. Staff noted, in the Staff Report, that the Applicant had previously received approval for the proposed Conditional Use Permit, CUP-14-03, approved by the Hearing Examiner in 2015. The reason the Applicant is requesting the 2016 extension is due to the death of the property owner, and the subsequent need to transition to new ownership. Staff noted that there have been no material changes in the surrounding area and that no new analysis of the approved CUP-14-03 Application was needed.

The Findings of Fact and Conclusions of Law of the Department are set forth in the attached copy of the Staff Report, CUP14-03, Exhibit No.1-1 in the Hearing Examiner's file, and are incorporated herein by this reference.

The Findings of Fact set forth by Staff in the Staff Report are supported by the record as a whole. The Applicant's representative, Carly Nations, indicated that there were no factual inaccuracies in the Staff Report and indicated no concerns with the recommended Conditions of Approval.

There was no public comment on this proposal either in writing or at the public hearing.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The Hearing Examiner concurs with Staff's review in the Staff Report of the Conditional Use Criteria and with Staff's Recommendation that the Conditional Use Permit Approval is

consistent with the Conditional Use Criteria of OHMC 19.67. Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Conditional Use Permit should be granted, subject to conditions approved in the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision for CUP-14-03, Exhibit 1-4 in the Hearing Examiner file.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

The Hearing Examiner for the City of Oak Harbor hereby grants Conditional Use Permit Approval to Verizon Wireless for the construction of a new telecommunications tower to be designed as a 75-foot stealth flagpole installation, addressed as 130 NE Midway Blvd., Oak Harbor, Washington, parcel R13335-094-3830, subject to the following Conditions of Approval:

1. The project shall be in general conformance with the narrative and application materials of CUP14-03, Exhibit 1-1 in the Hearing Examiner file, and abide by conditions and requirements set forth within the Staff Report, a copy of which is attached hereto.
2. The Applicant shall construct the tower structure at least 50 feet from the nearest point of a residential zone district.
3. Lighting of the flag must be directed away from residential properties and must meet the requirements of the United States Flag Code.
4. The project shall be in conformance with all applicable sections of the Oak Harbor Municipal Code, including, but not limited to, Chapters 19.28.050, and 19.29.
5. The Applicant shall ensure that the site meets or exceeds all criteria and evaluations within the Noise Evaluation Report and Non-Ionizing Electromagnetic Radiation Report [see CUP14-03, Exhibit 1-1 and Exhibit 2 in the Hearing Examiner file].
6. Limited expansions or modifications to the facility can be requested through a Type

II administrative review process.

7. The Applicant shall apply for and receive any required building permits before commencement of construction activity.
8. The Conditional Use Permit shall not be transferable to a subsequent user unless specifically authorized by the Hearing Examiner who finds it appropriate and a permit authorizing the transferability is on record with the Island County Auditor.
9. The Conditional Use Permit must be acted on within one year of the date of granting. Otherwise the Conditional Use Permit shall expire and be null and void.
10. The Conditional Use Permit applies only to the property for which the Application is made.
11. This site has a low probability of encountering cultural resources. The Applicant shall coordinate with the Washington State Department of Archaeology & Historic Preservation [DAHP] to determine if an archeological survey will be required, and follow all guidelines and requirements set forth by DAHP.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for enforcement action pursuant to OHMC 19.100. Complaints regarding a violation of the conditions of this permit should be filed with the City of Oak Harbor Development Services Department.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF

This decision of the Hearing Examiner for the City of Oak Harbor is final ten days after the issuance of this decision unless it is appealed to the Island County Superior Court within ten days of the issuance of this decision, pursuant to 30.70C R.C.W.

DATED this 27th day of April 2016.



Michael Bobbink, Hearing Examiner

EXHIBIT

VERIZON WIRELESS TOWER NE MIDWAY BLVD
Conditional Use Extension
Case No. CUP-16-01
Staff Report to Hearing Examiner

#1

APPLICATION:

The applicant is requesting an extension to the previously-approved CUP-14-03, which was a proposal to construct a new Verizon Wireless Telecommunications Tower on a vacant lot located to the north of Whidbey Animal Improvement Foundation (WAIF) on Midway Boulevard. The tower is designed as a 75-foot stealth flagpole installation. Associated improvements include a fenced enclosure, landscaping and equipment cabinet.

The extension is requested due to the death of the owner of the property, and the subsequent need to transition to new ownership. There have been no material changes in the surrounding area that would alter staff's previous review and analysis of the application.

No changes are proposed to the original proposal. The previous staff report and summary of application and decision are attached for reference.

PRELIMINARY INFORMATION:

Applicant: Glotel, Inc. 15375 SE 30th Place, Suite 160, Bellevue, Washington 98007

Property Owner: Brian M. Hearst, 101 Shy Bear Way NW, Issaquah, WA 98027

Address of proposal: 130 NE Midway Blvd., Oak Harbor, WA 98277

Parcel Number: R13335-094-3830

Comprehensive Plan Designation: Community Commercial

Zoning Designation: C-3, Community Commercial

Application Presented for Action:

Conditional Use Application (CUP-16-01) - Review Process III

Attachments:

Exhibit 1 Conditional Use Staff Report to Hearing Examiner (CUP-14-03)
Exhibit 2 Vicinity and Aerial Map
Exhibit 3 Zoning Map
Exhibit 4 Findings of Fact, Conclusions of Law and Decision from CUP-14-03
Exhibit 5 Public Noticing Documents

RECOMMENDED ACTION:

Staff recommends the Hearing Examiner conduct a public hearing and approve CUP-16-01, subject to the same conditions of approval previously associated with CUP-14-03.

VERIZON WIRELESS TOWER NE MIDWAY BLVD
Case No. CUP-14-03
Staff Report to Hearing Examiner

APPLICATION:

The applicant proposes to construct a new Verizon Wireless Telecommunications Tower on a vacant lot located to the north of Whidbey Animal Improvement Foundation (WAIF) on Midway Boulevard. The tower is designed as a 75-foot stealth flagpole installation. Associated improvements include a fenced enclosure, landscaping and equipment cabinet.

PRELIMINARY INFORMATION:

Applicant: Glotel, Inc. 15375 SE 30th Place, Suite 160, Bellevue, Washington 98007

Property Owner: Robert G. Hearst, 216 240th St. SE, Bothell, WA 98021

Address of proposal: 130 NE Midway Blvd., Oak Harbor, WA 98277

Parcel Number: R13335-094-3830

Comprehensive Plan Designation: Community Commercial

Zoning Designation: C-3, Community Commercial

Application Presented for Action:

Conditional Use Application (CUP-14-03) - Review Process III
SEPA (SEP-14-08)

Attachments:

- Exhibit 1 Conditional Use Application and Applicant Narrative
- Exhibit 2 Vicinity and Aerial Map
- Exhibit 3 Zoning Map
- Exhibit 4 Public Noticing Documents

BACKGROUND:

The site is currently a vacant parcel, part of which is being used as parking for nearby retail outlets. The applicant proposes to locate the communications tower near the northeastern corner of the property. This application is considered to be a Monopole I according to OHMC 19.29, which requires Conditional Use approval in the C-3 zone district. Further, OHMC 19.29.070(2) states, "Site location and development shall preserve the pre-existing character of the surrounding buildings and land uses and the zone district to the extent consistent with the function of the communications equipment." As such, the applicant proposes to construct a 75-foot tall flag pole which

PROJECT DESCRIPTION

The proposed project consists of the construction of a 75-foot tall flagpole structure, which will house the wireless telecommunications antennae inside the pole itself. No antennae will be visible from the exterior. An equipment building will be located near the base of the structure. The compound will be fenced and a landscaped perimeter installed.

SITE GEOGRAPHY

The subject property is an approximately 0.37 acre parcel located north of East Whidbey Avenue on NE Midway Blvd. With the exception of an approximately 10-foot high scarp near the east property line, the site slopes slightly downward from east to west. Currently, a gravel parking area occupies much of the western portion of the parcel, with the east side being mostly undeveloped.

	Existing Land Use	Zoning
North:	Commercial	C-3, Community Commercial
South:	Commercial	C-3, Community Commercial
East:	Commercial	C-3, Community Commercial
West:	Commercial	C-3, Community Commercial

Note regarding zoning districts: while it appears that the neighboring parcel to the east is zoned Residential, there is actually a narrow parcel that exists between the subject parcel and the multi-family housing to the east. Therefore, the subject parcel is surrounded on all sides by C-3 zoning.

SEPA

A Determination of Nonsignificance was issued on March 13, 2015.

LEGAL NOTICE:

A Notice of Application was advertised on February 7, 2015 and Notice of Public Hearing was advertised on March 18, 2015, both in the Whidbey News Times. Notice to neighboring property owners within a 300-foot radius of the property were mailed on March 18, 2015 and a notice was posted on the subject property on March 17, 2015.

The public hearing to consider CUP-14-03 is scheduled for April 6, 2015 at 10:00 a.m.

PUBLIC COMMENTS:

The City has received no public comments as of the date of this staff report.

CONDITIONAL USE REVIEW

The Oak Harbor Municipal Code 19.67 Conditional Uses, states that a conditional use permit shall be granted if certain criteria are met. The following is an analysis of the conditional use criteria:

degradation from utility operation, installation, replacement, repair and maintenance. The design of the proposed tower will minimize negative impacts of undisguised cellular phone antennas and equipment and provides a patriotic visual landmark for the community.

Land Use – Goal 14: To strengthen and enlarge the commercial economic base of the community by promoting the development of facilities that provided a competitive and stimulating business environment. This proposed cellular facility will help strengthen cellular service in the community, assisting commercial businesses and residents alike in communication with local and out-of-area contacts.

RECOMMENDED ACTION:

Staff recommends that the Hearing Examiner conduct the public hearing and approve CUP-14-03 subject to the following conditions:

1. The project shall be in general conformance with the narrative and application materials submitted by the applicant as attached in Exhibit 1 and abide by conditions and requirements set forth within this report.
2. The tower structure shall be constructed at least 50 feet from the nearest point of a residential zone district
3. Lighting of the flag must be directed away from residential properties and must meet the requirements of the United States Flag Code.
4. The project shall be in conformance with all applicable sections of the Oak Harbor Municipal Code, including but not limited to, Chapters 19.28.050 and 19.29.
5. That the site meets or exceeds all criteria and evaluations within the attached Noise Evaluation Report and Non-Ionizing Electromagnetic Radiation Report.
6. Limited expansions or modifications to the facility can be requested through a Type II administrative review process.
7. Applicant shall apply for and receive any required building permits before commencement of construction activity.
8. The conditional use shall not be transferable to a subsequent user unless specifically authorized by the hearing examiner who finds it appropriate and a permit authorizing the transferability is on record with the Island County auditor.
9. The conditional use permit must be acted on within one year of the date of granting. Otherwise the conditional use permit shall expire and be null and void.

