

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On August 2, 2010 the Hailey Planning and Zoning Commission considered an application submitted by Verizon Wireless, LLC for Wireless Permit approval for a modification to an existing Wireless Permit, located at Warehouse West Condos, on a US West Easement (1141 Airport Way). The Commission, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

Notice

Notice for the application was published in the Idaho Mountain Express on and mailed to property owners within 300 feet on July 14, 2010.

Application

Verizon Wireless has submitted an application for a Wireless Permit, to be located at Warehouse West Condos on a tower easement owned by US West (1141 Airport Way). The applicant proposes to add one (1) two foot (2') microwave dishes at the 30 foot level of the tower and replace the existing propane generator with diesel generator. All PWSF's or WCF's, mounted on existing buildings or structures, upon the issuance of a Wireless Permit in accordance with the provisions of Article 8A of this Ordinance, are accessory uses in the Light Industrial (LI) district.

Procedural History

The City approved a Design Review application for the original tower in 1993, prior to the adoption of Article 8A, Wireless Facilities. In 2005, after the adoption of Article 8A, the Commission approved a Wireless Permit for antennae and microwave dish changes on the existing tower. No conditional use permit was required in 2005 because Section 4.8.4 (b) of the Light Industrial zoning district identifies "All PWSF's or WCF's, mounted on existing buildings or structures, upon the issuance of a Wireless Permit in accordance with the provisions of Article 8A of this Ordinance" as accessory uses. Wireless facilities mounted on new freestanding towers are conditional uses, in accordance with Section 4.8.3 (c). 8A.6.1 Permit Granting Authority, provide the Hailey Planning Administrator with granting authority for Wireless Permits not requiring a Conditional Use Permit, subject to final approval or denial by the Planning and Zoning Commission on its consent agenda.

Standards of Evaluation

Section 8A of the Hailey Zoning Ordinance establishes the criteria for applications for Wireless Permits. For each applicable standard (in bold print), the Commission makes the following Findings of Fact:

8A.3.1 Permits Required.

It shall be unlawful to commence construction or placement of any PWSF or WCF without having first obtained a valid written Wireless Permit pursuant to this Article, and as set forth in Section 8A.4, a Conditional Use Permit pursuant to Hailey Zoning Ordinance Article XI.

- a. **Building Permit. It shall be unlawful to commence construction on any new PWSF or WCF, or to modify, alter or add on to an existing PWSF or WCF, without having first obtained a valid written Building Permit as required under the International Building Code as adopted by Hailey Ordinance.**

It is a condition of approval that a Building Permit shall be obtained as required, prior to any changes being made to the wireless facility.

8A.3.2 Pre-existing Personal Wireless Service Facilities or Wireless Communications Facilities.

- a. **A PWSF or WCF for which a permit has been issued prior to the effective date of this Article shall be deemed a permitted use, subject to the conditions of that permit.**

The city approved a Design Review application for the existing tower in 1993 and a wireless permit in 2005.

8A.4 Zoning District Regulations, General Prohibitions and Restrictions.

- a. **The placement, use or modification of any wireless communication facility at any location within the City of Hailey is subject to the provisions of this Article.**

The applicant proposes the addition of one (1) two foot (2') in diameter microwave dishes and the replacement of the existing propane generator with a diesel generator.

- b. **Limited Business District, Business District, Light Industrial District, Technological Industry District, Service Commercial Industrial District, and the Airport District.**

The subject property is within the Light Industrial District.

1. **PWSFs or WCFs attached to street poles shall be a permitted use in the aforementioned zoning districts upon issuance of a Wireless Permit in accordance with the provisions of this Article.**

Not applicable. The subject facility is located on a tower or monopole.

2. **All other PWSFs or WCFs, excluding freestanding towers, shall be permitted as an accessory use in the aforementioned zoning districts of Hailey upon issuance of a Wireless Permit in accordance with the provisions of this Article.**

The following LI district zoning regulations apply to this application:

4.8.3 Conditional Uses. Conditional uses for the LI District are limited to the following:

- c. **PWSF's and WCF's, mounted on any proposed freestanding tower, upon the issuance of a Wireless Permit in accordance with the provisions of Article VIII A of this Ordinance. (Lattice towers are prohibited.).**

The freestanding tower exists. A new tower is not proposed.

4.8.4 Accessory Uses. Accessory uses in the LI District are limited to the following:

- b. **All PWSF's or WCF's, mounted on existing buildings or structures, upon the issuance of a Wireless Permit in accordance with the provisions of Article VIII A of this Ordinance.**

The existing wireless facility is mounted on an existing structure.

3. **Freestanding towers and monopoles, excluding lattice towers, shall be a conditional use within these zoning districts of Hailey upon issuance of a Wireless Permit and a Conditional Use Permit in accordance with this Article and Hailey Zoning Ordinance Article XI.**

Facilities attached to freestanding tower that were installed prior to the adoption of the Wireless Facilities Ordinance do not require a Conditional Use Permit; only new tower facilities do. Refer to the above standard, which addresses accessory and conditional uses in the LI district.

- d. **Prohibitions. The following are prohibited within the City:**

1. **Lattice towers larger than two (2) feet by two (2) feet;**

A lattice tower is not proposed. The applicant requests adding one (1) microwave dishes on an existing tower and replacing generator equipment.

2. **WCFs and PWSFs that interfere with City and public safety communication systems and/or area television or radio broadcast.**

There is no indication that the requested modification would interfere with any communication systems. The City Public Works, Fire, and Building Departments have reviewed the application and have no concerns.

- e. **Restrictions. In all zoning districts within Hailey, no guy wire or other support wires shall be used in connection with antenna, antenna array or its support structure except when used to anchor the antenna, antenna array or support structure to an existing building to which such antenna, antenna array or support structure is attached.**

The requested modifications do not include the changes to antenna or the addition of guy wire.

8A.5 Location and Facility Type Standards and Priorities.

8A.5.1 Location Selection Criteria.

Not applicable. This section pertains to Wireless Permits for new facilities, not to Wireless Permits for modification to existing facilities.

8A.5.2 Co-Location Requirement. Co-location is considered to be the least intrusive and visually unobtrusive installation method because the equipment is attached to an existing structure. No new tower shall be permitted unless the applicant demonstrates a good faith effort to co-locate on an existing facility including good faith efforts to negotiate lease rights, and there is no reasonable alternative location, site, or design.

Not applicable. A new tower is not proposed.

8A.6 Application and Hearing Procedures.

8A.6.1 Permit Granting Authority.

- a. **The Hailey Planning Administrator shall be the granting authority for Wireless Permits not requiring a Conditional Use Permit, subject to final approval or denial by the Planning and Zoning Commission on its consent agenda. Such approval or denial shall specify the ordinance and standards used in evaluating the application; the reasons for the approval or denial; and the actions, if any, that the applicant could take to obtain a permit. An applicant who is denied or aggrieved by a decision may appeal such decision as set forth in Section 8A.15.1 of this Article. The Planning Administrator may attach reasonable conditions to the approval of an application including, but not limited to, those that will minimize adverse impact on adjacent properties or public ways, and/or assure the PWSF or WCF is constructed and/or maintained in accordance with this Article and the Hailey Zoning Ordinance.**

The proposal does not require a conditional use permit. In accordance with the LI zoning district it is considered an accessory use because it is not a new tower. Section 8A.4 provides more details. The Planning Administrator may grant the Wireless Permit, subject to final approval or denial by the Commission on the consent agenda.

- b. **The Planning Administrator shall also have the authority to approve or deny all PWSF or WCF Master Development Plans.**

Verizon has submitted a Master Development plan and it has been approved by the Hailey Planning Administrator.

- c. **The Commission shall have the authority to approve or deny all Conditional Use Permit applications for PWSFs or WCFs, which shall be jointly processed with Wireless Permit applications in accordance with the procedures for Conditional Use Permits set forth in the Hailey Zoning Ordinance Article XI.**

Not applicable. A conditional use permit is not required. The proposal does not involve a new tower.

8A.6.2 Master Development Plan.

- a. **An applicant for a Wireless Permit must obtain approval of a Master Development Plan by the Hailey Planning Administrator and pursuant to this Article prior to or concurrently with the processing of any Wireless Permit application. A Master Development Plan shall be submitted by each company seeking placement of a PWSF or WCF within the City.**

Verizon has submitted a Master Development plan and it has been approved by the Hailey Planning Administrator.

- b. **The Planning Administrator may waive the processing of a Master Development Plan if the applicant demonstrates by clear and convincing evidence that a network of PWSFs or WCFs will not be required of the owner/operator of the proposed PWSF or WCF.**

Not applicable. Verizon has submitted a Master Development plan and it has been approved by the Hailey Planning Administrator.

- c. **The Master Development Plan shall illustrate a carrier's expected network of PWSFs or WCFs within and adjacent to the City. It shall forecast five years in advance the approximate locations of future facilities and the areas of service, but is not required to detail the specific siting or type of facility (e.g., pole, roof, building attached). Future amendments to each company's Master Development Plan shall be submitted and reviewed by the Planning Administrator prior to approval of additional PWSF or WCF facility locations.**

Verizon has submitted a Master Development plan and it has been approved by the Hailey Planning Administrator.

- d. **If a PWSF or WCF is placed without a Master Development Plan, the applicant shall file for and receive approval of a Plan prior to the filing of an application for another PWSF or WCF.**

A Master Development had not previously been submitted for review and approval by the Hailey Planning Administrator. Due to the filing of a new Wireless Permit, the applicant has recently submitted a Master Development plan and it has been approved by the Hailey Planning Administrator.

8A.6.5 Permit Form, Annual Reports, and Renewal.

- a. **Upon approval, the City shall issue the applicant a Wireless Permit in written form stating the exact PWSF or WCF approved and the conditions, if any, of said permit.**
- b. **As a condition of each Wireless Permit, the applicant shall file with the City on each anniversary date of the issuance of the permit an Annual Report containing the following information:**
1. **Name of permittee, landowner;**
 2. **Any co-location added to the site or removed from the site within the preceding year;**
 3. **Any modifications to the site in the preceding year, including change of ownership;**
 4. **Updated list of hazardous substances as set forth in Section 8A.6.3.3.o.5 of this Article together with a plan of the site showing the exact location of each such substance and means of access in case of an emergency;**
 5. **Date of the last physical inspection of the site by the permittee and any carrier on the site;**
 6. **The name and telephone number of contact person in case of emergency at the site and for any required maintenance of the site.**
 7. **Annual renewal fee as set by City Ordinance.**
- c. **The permit shall be automatically renewed annually upon the filing of an annual report and renewal fee as set by City Ordinance. Failure to file an Annual Report shall result in the expiration of the Wireless Permit. Expiration occurs one year after the due date of the Annual Report. A new application, together with all applicable fees, shall be required to reinstate the permit.**
- d. **Where an application is also required as set forth in this Article, the City shall issue the applicant a Conditional Use Permit in written form stating the exact PWSF or WCF and the conditions of said permit. Such permit shall be subject to the terms and conditions set forth in Hailey Zoning Ordinance Article XI, as well as any supplementary conditions set forth in this Article.**

The applicant is hereby notified of the annual reporting requirements listed in the above Section and detailed in (a) through (c). Meeting this requirement is a condition of approval.

8A.7 Standards and Criteria.

8A.7.1 Applicability.

The standards identified in the subsections below shall apply to all Wireless Permits and all PWSFs or WCFs constructed or located in the City, unless otherwise herein specified. Such standards shall also be considered in the issuance of a Conditional Use Permit pursuant to this Article and Hailey Zoning Ordinance Article XI. The applicant for a Wireless Permit has the burden of demonstrating compliance with these standards.

8A.7.2 Height.

The proposed request will not modify the height of the tower in any way. The proposed microwave dish will be located on the tower, 30 feet from the ground.

8A.7.3 Setbacks.

No modifications are proposed that would change the existing setbacks.

8A.7.4 Design Standards.

The following design criteria shall be met by each application for Wireless Permit approval.

a. Architectural Compatibility.

- 1. All facilities shall be designed to minimize the visual impact to the greatest extent feasible, considering technological requirements, by means of placement, screening and camouflage to be compatible with existing architectural elements and building materials and other site characteristics. The applicant shall use the smallest and least visible antennas possible, as well as the smallest possible equipment enclosure.**

The visual changes consist of one (1) microwave dish that will be mounted at 30 feet, measured from above ground level. The dish is two feet (2') in diameter and will be painted non-reflective grey to match the existing dishes. The equipment enclosure is not visible from any public right-of-way. It is partially visible from Skymaster Lane, which is a private street.

- 2. Equipment enclosures of PWSFs or WCFs shall be placed in underground vaults or within buildings where possible. All other equipment enclosures shall be designed consistent with the requirements of this Article. The equipment enclosure shall be constructed so as to minimize its visual impact. Landscape planting shall be installed and maintained to completely obscure the visibility of the equipment enclosure from the developed street and adjacent properties. Sight distance clearance shall be maintained for the equipment enclosure and associated landscape pursuant to the requirements of this Article and other applicable Ordinances and standards of the City. Any above ground equipment enclosure greater than 90 cubic feet in size shall be subject to Design Review pursuant to Article VI-A of this Ordinance.**

The equipment enclosure is not underground or within a building. It is above ground, located at the base of the tower and is enclosed within a chain link fence with inserted vertical vinyl slats. Deciduous trees screen the west side; the side that is adjacent to Skymaster Lane. All other elevations are screened from view and are within the Warehouse West Condos development, where the enclosure is not visible from public right-of-ways or adjacent properties.

b. Landscaping or Screening Standards.

The tower is enclosed within a chain link fence with inserted vertical vinyl slats. The property surrounding the existing tower is already developed with asphalt or buildings leading up to the perimeter of the equipment enclosure. The equipment enclosure is surrounded on east, south, and north sides by existing warehouses and vehicular access ways to the various warehouse entrances. Deciduous trees screen the west side; the side that is adjacent to Skymaster Lane. All other elevations are screened from view and are within the Warehouse West Condos development, where the enclosure is not visible from public right-of-ways or adjacent properties.

c. Color and Materials Standards.

- 1. PWSFs or WCFs located on buildings, walls, or roofs, or structures shall be painted or constructed of materials to match the color of the structure directly behind them to reduce the visibility of the PWSF or WCF.**

Not applicable. The proposed microwave dish will be located on an existing tower.

- 2. To the extent any PWSFs or WCFs extend above the height of the vegetation immediately surrounding it, they shall be painted in a nonreflective light gray, light blue or other hue, which blends with the skyline and horizon.**

The microwave dish is shown in a nonreflective light grey, which matches the existing microwave dishes.

d. Facility Lighting and Signage Standards.

- 1. Facility lighting shall be designed so as to meet but not exceed minimum requirements for security, safety and/or FAA regulations. Lighting of antennas or support structures shall be prohibited unless required by the FAA and no other alternatives are available. In all instances, the lighting shall be designed so as to avoid glare and minimize illumination on adjacent properties. No strobe or flashing lights shall be permitted unless no other lighting can meet FAA regulations and the applicant provides written confirmation from the FAA that the specific WCF under review cannot meet its regulations by the use of any other alternative other than such lighting. Lighting shall also comply with any applicable City lighting standards.**

There is an existing red light located on top of the tower. The light is required by the FAA due to its close proximity to the airport.

- 2. Signs shall be limited to those needed to identify the telephone number(s) to contact in an emergency, public safety warnings, certifications or other required seals. These signs shall also comply with the requirements of the City's sign regulations.**

The Fire Department has reviewed the application and does not require any new signage.

- 3. All facility lighting shall comply with the standards as set forth in Article VIII B of this Ordinance.**

Meeting this standard is a condition of approval.

8A.7.5 Parking Standards.

- a. If the freestanding PWSF or WCF is fully automated, one off-street parking space shall be provided for maintenance workers.**

There is an area for one (1) parking space. In addition, the facility is accessible to vehicles via Skymaster Lane and interior vehicular access ways within the Warehouse West Condominium development.

8A.7.6 Access Standards.

In addition to ingress and egress requirements of the International Building Code and the International Fire Code, access to and from PWSFs or WCFs, and equipment shall be regulated as follows:

- a. **No PWSF or WCF or equipment shall be located in a required parking, maneuvering or vehicle/pedestrian circulation area such that it interferes with, or in any way impairs, the intent or functionality of the original design.**

The existing tower is not located in such an area.

- b. **The PWSF or WCF shall be secured from access by the general public but access for emergency services must be ensured. Access roads shall comply with Fire Department and other City standards for emergency vehicular access.**

The facility is accessed on Skymaster Lane or from within the Warehouse West Condo development. The Fire Department has reviewed this application and has no issues with safety or access.

8A.7.7 Scenic Landscapes and Vistas Standards.

- a. **Freestanding PWSFs or WCFs shall not be located within open areas that are visible from public roads, recreational areas, or residential development. As specified in Subsection 8A.7.4.a.1 above, PWSFs or WCFs shall be installed to blend with existing landscaping and structures.**

Not applicable. The proposal will add one (1) two foot (2') microwave dish on an existing tower.

- b. **Any PWSF or WCF that is located within three hundred (300) feet of a scenic vista, scenic landscape or scenic road as designated by the City, in addition to height regulations specified in Section 8A.7.2 above, shall not exceed the height of vegetation at the proposed location. If the facility is located further than three hundred (300) feet from the scenic vista, scenic landscape, or scenic road, said Section 8A.7.2 shall apply exclusively.**

Not applicable. The proposal will add one (1) two foot (2') microwave dish on an existing tower.

8A.7.8 Environmental Standards.

- a. **PWSFs or WCFs shall not be located in floodways and wetlands. PWSFs or WCFs shall also be avoided whenever possible in floodplains and disturbance to floodplain areas shall be minimized.**
- b. **PWSFs or WCFs shall not be located in riparian setbacks along watercourses.**
- c. **PWSFs or WCFs shall avoid locating in avalanche prone areas, as determined by site-specific studies on a case-by-case basis as part of the PWSF or WCF approval process. Evidence shall be submitted to demonstrate that no location outside an avalanche prone area can accommodate the applicant's proposed antenna as specified in the co-location requirement section above, Section 8A.5.2. PWSFs or WCFs located within avalanche prone areas shall provide proof of FCC acceptance of the proposed location.**
- d. **No hazardous waste shall be discharged on the site of any PWSF or WCF. If any hazardous materials are to be used on-site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred ten per cent (110%) of the volume of the hazardous materials stored or used on-site.**
- e. **Storm water run-off shall be contained on-site.**
- f. **PWSFs or WCFs locating within the floodplain shall comply with the additional placement standards set forth in the Hailey Floodplain Ordinance and provide written proof of FCC acceptance of the proposed location.**
- g. **Above ground equipment for PWSFs or WCFs, exclusive of roof and facade**

attached PWSFs or WCFs, shall not generate noise in excess of fifty (50) decibels (db) at the property line.

- h. Roof or facade attached equipment for PWSFs or WCFs shall not generate noise in excess of fifty (50) db at ground level at the base of the structure closest to the antenna.**
- i. The noise standards of this Article require measurements by a qualified acoustical engineer.**

The existing tower is not located within a floodplain, avalanche, or riparian area. No hazardous waste will be discharged.

8A.7.10 Review of Alternatives.

- a. In reviewing the alternatives submitted with regard to an application under Section 8A.6.3.3.o.11 of this Article, the City shall compare the PWSF or WCF proposed in the application with the alternatives submitted. Comparisons shall be made between (a) the location selection criteria set forth in Section 8A.5.1, (b) the co-location requirement set forth in Section 8A.5.2, and (c) the standards and criteria set forth in Section 8A.7, in order to determine which best meets those standards, criteria and priorities and which is the least intrusive on the values set forth in the intent and purpose set forth in this Article.**

Not applicable. This section pertains to Wireless Permits for new facilities, not to Wireless Permits for modification to existing facilities.

8A.8 Safety Requirements.

- a. Federal Requirements. All PWSFs or WCFs shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, the owners of the PWSFs or WCFs governed by this Article shall bring such PWSFs or WCFs into compliance with the revised standards and regulations. Failure to bring PWSFs or WCFs into compliance with such revised standards and regulations shall constitute grounds for revocation of the Wireless Permit and removal of the PWSF or WCF at the owners' expense.**

The applicant has submitted a letter from the microwave manufacture that states that the microwave series manufactured by Radio Frequency Systems meets the FCC's category (A) requirements.

- b. Antenna Support Structure Safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas shall not be negatively affected by support structure failure, falling ice or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.**

The Fire Department has reviewed the application and has not issues with the proposal.

8A.9 Maintenance Requirements.

- a. Each permittee shall maintain its PWSF or WCF in a good and safe condition, preserving the original appearance and concealment, disguise or screening elements incorporated into the design at the time of approval and in a manner which complies with all applicable federal, state and local requirements. Such maintenance shall include, but not be limited to, such items as painting, repair of equipment and maintenance of landscaping. If the permittee fails to maintain the facility, the City may undertake the maintenance at the expense of the permittee or**

terminate the permit, at its sole option.

- b. **To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the EIA, as amended from time to time. If, upon inspection, the City concludes that the tower fails to comply with such codes or standards and constitutes a danger to person or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days constitutes grounds for revocation of the Wireless Permit and removal of the PWSF or WCF at the owner's expense.**

The applicant is hereby notified of these requirements and it is a condition of approval the maintenance requirements be met, as specified in Section 8A.9.

8A.10 Modification of PWSFs or WCFs

- b. **New Permit. Any proposed change or addition to any PWSF or WCF shall require the issuance of a new Wireless Permit, pursuant to the requirements of this Ordinance. This provision shall not apply to routine maintenance of a PWSF or WCF, to the replacement of any portion of the PWSF or WCF with identical equipment, or to a change in ownership.**

The applicant requests the addition of one (1) two foot (2') microwave dish, to be placed 30 feet up the pole, measured from the ground.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Commission makes the following Conclusions of Law and Decision:

1. That adequate notice, pursuant to Zoning Ordinance No. 532, Section 8A.6, was given.
2. That the project is in accordance with the Hailey Comprehensive Plan.
3. That the project does not jeopardize the health, safety, or welfare of the public.
4. That upon compliance with the conditions set forth, the project conforms to the required specifications outlined in the Design Standards adopted by the City of Hailey.
5. That the Planning & Zoning Administrator has the authority to approve minor modifications to this project prior to, and for the duration of a valid Building Permit.

DECISION

The application submitted by Verizon Wireless, LLC for Wireless Permit approval for a modification to an existing Wireless Permit, located at Warehouse West Condos, on a US West Easement (1141 Airport Way) is hereby approved subject to the following conditions:

- a) All Fire Department and Building Department requirements shall be met.
- b) All exterior lighting shall comply with the Outdoor Lighting Ordinance.
- c) A Building Permit shall be obtained as required, prior to any changes being made to

- the wireless facility.
- d) A report shall be required annually to renew the wireless permit and shall be submitted to the Planning Administrator. If the applicant fails to submit a completed annual report in accordance with Section 8A.6.5, this wireless permit shall expire and a new wireless permit application and applicable fees will be required to reinstate the permit.
 - e) The maintenance requirements shall be met, as specified in Section 8A.9.

Signed this ____ day of _____, 2010.

Owen Scanlon, Chair
Hailey Planning and Zoning Commission

Attest:

Becky Mead, Administrative Assistant