

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND**

In the Matter of the Application of)	NO. L090455
)	
Michael Cady,)	
on behalf of T-Mobile)	South Kern Wireless Communication
)	Facility
)	
)	DECISION ON REQUEST FOR
For an Essential Public Facility Permit)	RECONSIDERATION
_____)	

BACKGROUND

On March 17, 2010, the City of Redmond Hearing Examiner (Examiner) issued Findings, Conclusions, and a Recommendation to the City Council to approve with conditions a request for Essential Public Facilities permit submitted by T-Mobile.

On March 23, 2010, City of Redmond Department of Planning and Community Development Staff (the City) timely requested reconsideration of the Examiner's recommendation. The Examiner denied in part and granted in part the City's request on March 29, 2010.

On March 31, 2010, party of record Janet Rothfels Warden submitted a request for reconsideration of the March 17, 2010 findings, conclusions, and recommendation.

JURISDICTION

Requests for reconsideration of Hearing Examiner Type IV applications (Essential Public Facilities) are governed by Redmond Community Development Code (RCDG) 20F.30.45-100(6), which states:

Any party of record may file a written request with the Hearing Examiner for reconsideration within 10 business days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of procedure or fact. The Hearing Examiner shall act within 14 days after the filing of the request for an appeal by either denying the request, issuing a revised decision, or calling for an additional public hearing.

REQUEST

1. Ms. Rothfels Warden sought to draw attention to pages 13 and 14 (recommended conditions of approval) as follows:

Page 13, Section 2(a), Water Service: There is need for water service as the landscaping around the fenced area is on an automatic watering system, which reference is also omitted in section 4(c) on page 14.

Page 14, Section 4(c), Landscaping - fencing to be wooden around the ground equipment site with thuja and sarcococca - plantings around the monopole were not originally stated, though they are here; but if they are going to be planted, water and maintenance will be needed there as well. No reference to maintenance of fence, plantings, or water system is evident here.

2. Notice of the March 17, 2010 hearing examiner recommendation included the following information on requests for reconsideration:

Pursuant to the Redmond Community Development Guide (RCDG) 20F.30.45-100(6), any party of record may file a written Request for Reconsideration with the Hearing Examiner. To be considered, a Request for Reconsideration must explicitly set forth alleged errors of procedure or fact, and must be filed within ten business days of the Hearing Examiner's Decision. Reconsideration requests must be received by the Office of the Hearing Examiner of the City of Redmond prior to 5:00 p.m. on March 31, 2010.

3. Ms. Warden filed her request for reconsideration with the Development Services Center on March 31, 2010. It was received by the Office of the Hearing Examiner on April 1, 2010, at 3:20 p.m. Because the request does not explicitly call itself a request for reconsideration, Hearing Examiner Office staff contacted Ms. Rothfels Warden to confirm her intent. Ms. Rothfels Warden indicated that her submittal was intended to add additional information to the record and that she wished it to be processed as a request for reconsideration.¹
4. The Notice of decision did not include an address or contact information for the Office of Hearing Examiner. Ms. Rothfels Warden was not informed at the time she submitted the request that the submittal needed to be made to the Office of Hearing Examiner. Staff was unable to forward the request to the Hearing Examiner Office until the following day, April 1, 2010.

DISCUSSION

Finding number 6 on page 4 of the March 17, 2010 recommendation references the approved preliminary landscaping plans by sheet number (Sheets L-1 and L-2) and notes that the proposed plantings would be irrigated. Sheet L-1 is a landscaping plan, depicting plantings. Sheet L-2 is an irrigation plan, depicting irrigation components. Sheet L-2, Note 23 states:

¹ On April 2, 2010, Ms. Rothfels Warden submitted an email restating her request. The Examiner notes it contained essentially the same language as the March 31, 2010 submittal. Only the March 31, 2010 submittal is considered here.

Water meter or water connection is not determined. Meter location (if applicable) or water connection and appropriate water service agreements shall be in place prior to construction.

On pages 12-13 of the Examiner's March 17, 2010 recommendation, at A, Site Specific Conditions of Approval, the first box of the first table requires compliance with the preliminary landscaping and irrigation plans referenced in Finding number 6, and further notes that the preliminary plans were approved by the Technical Committee.

Condition 4(c) requires submission of a final landscaping plan, which would be required to be consistent with the approved preliminary plans.

Condition 4(d)(3) establishes removal of the WCF (monopole and ground equipment) as the penalty for allowing the facility to fall into disrepair, regardless of future possible changes in ownership. The condition defines disrepair as including "structural features, paint, landscaping, or general lack of maintenance, which could result in safety or visual impacts".

CONCLUSIONS

1. Given the circumstances, Ms. Rothfels Warden's submission should be considered a timely request for reconsideration.
2. Conditions of approval adequately address the maintenance of all proposed improvements and irrigation of the Type 1 landscape buffer. Nothing in the sections cited (page 13, Section 2a and page 14 Section 4c) would remove or alter the requirement that all project development comply with the approved plan sets.

DECISION

1. The request for reconsideration is **DENIED**.
2. Ms. Rothfels Warden's March 31, 2010 request for reconsideration and this decision on reconsideration shall be added to the record of the above captioned matter.

Decided April 5, 2010.

By:



Sharon A. Rice
Toweill Rice Taylor LLC
City of Redmond Hearing Examiner