

KITTITAS COUNTY VALLEY HEARING EXAMINER

IN THE MATTER OF)	DECISION ON APPEAL OF
)	ADMINISTRATIVE CONDITIONAL
Appeal of Administrative CUP)	USE PERMIT DECISION
Decision 10/26/23)	
)	ACU 23-00003
Appellant: Francis Ceraolo)	
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This matter came in front of the Kittitas County Hearing Examiner on February 21, 2024. The Hearing Examiner having admitted exhibits into the record and taken testimony, hereby submits the following Findings of Fact, Conclusions of Law, and Decision:

I. FINDINGS OF FACT

1. On July 13, 2023, Atlas Tower No. 1, LLC submitted an application for an Administrative Conditional Use Permit for a proposed wireless communication facility to be located on property located at 4140 Manastash Road, Ellensburg, Washington, Kittitas County, Parcel No. 17-18-18010-0001. Kittitas County processed this application under the applicable rules and regulations for an Administrative Conditional Use Permit.
2. On October 26, 2023, Kittitas County issued a SEPA Determination of Mitigated Determination of Non-Significance.
3. On October 26, 2023, Kittitas County issued its Administrative Conditional Use Permit decision.
4. On November 8, 2023, an appeal of this Administrative Conditional Use Permit decision was filed by Francis Ceraolo.
5. On January 8, 2024, the Hearing Examiner conducted a pre-hearing conference. Participating for the Applicant was Francis Ceraolo. Appearing for Kittitas County was attorney Stephanie Hartung. Appearing on behalf of the Applicant was Sandra Layton.
6. On January 9, 2024, the Hearing Examiner issued his Order on Pre-Hearing Conference.
7. On January 25, 2024, argument and materials were submitted in a timely fashion by the Appellant.
8. On February 7, 2024, the Applicant submitted a timely response to Appellant’s briefing with exhibits.
9. On February 9, 2024, Kittitas County timely filed its brief and Certificate of Service.
10. The public hearing was held on February 21, 2024.

11. Appearing for the Appellant was Francis Ceraolo. Appearing for Kittitas County was attorney, Stephanie Hartung. Appearing for the Applicant was attorney, Michael Powers.
12. The Appellant provided testimony. Her testimony was consistent with her written appeal materials. It should be noted that in the appeal document filed by the Appellant, the Appellant clearly stated that she did not wish that the Administrative Conditional Use Permit decision be reversed, but instead wished that the decision be modified.
13. In her testimony, Ms. Ceraolo challenged various portions of the Administrative Conditional Use Permit decision and the application materials.
14. Michael Powers, who appeared for the Applicant, argued consistent with their written response to the Appellant's appeal and their application materials.
15. Stephanie Hartung, attorney for Kittitas County, argued consistent with the County's legal briefing.
16. It is noted by the Hearing Examiner that this was not an appeal of the SEPA determination, but only an appeal of the underlying permit, that being the Administrative Conditional Use Permit decision.
17. Admitted into the record were the following exhibits:
 - 17.1 Ex. 1 Administrative Conditional Use Permit decision dated October 26, 2023;
 - 17.2 Ex. 2 Mitigated Determination of Non-Significance dated October 26, 2023;
 - 17.3 Ex. 3 All file materials in Kittitas County file of record, ACU 23-0003, which includes all of those items indexed as Nos. 1-60 in the County's index of the disclosure of the complete file materials;
 - 17.4 Ex. 4 Appeal filed by Francis Ceraolo and attached documents received November 8, 2023;
 - 17.5 Ex. 5 Purported cell coverage maps (three of them);
 - 17.6 Ex. 6 November 16, 2023, Kittitas County Notice of Appeal;
 - 17.7 Ex. 7 January 9, 2024, Hearing Examiner order on pre-hearing conference;
 - 17.8 Ex. 8 January 26, 2024, Kittitas County Affidavit of Mailing;
 - 17.9 Ex. 9 January 25, 2024, pre-hearing appeal materials submitted by Appellant;
 - 17.10 Ex. 10 February 7, 2024, Applicant response to Appellant briefing with exhibits A and B;
 - 17.11 Ex. 11 February 9, 2024, brief by Kittitas County;
 - 17.12 Ex. 12 February 9, 2024 County Certificate of Service of brief filed by Kittitas County;
18. The Hearing Examiner considered all testimony and evidence admitted into the record in making this decision.
19. The Appellant bears the burden of proof that the decision made by Kittitas County was in error.
20. Kittitas County's factual findings within the Administrative Conditional Use Permit decision are reviewed for substantial evidence, which is evidence of "sufficient quantity to persuade a fair-minded person of the truth or correctness of the agency order."

21. The subject property where the proposed telecommunication tower has a zoning designation of Agriculture 20, with a Comprehensive Plan Land Use Designation of Rural Working. Communication facilities are permitted with a Conditional Use Permit.
22. In review of all the evidence submitted into the record, the Hearing Examiner finds that Kittitas County clearly exercised due diligence in the consideration of this application and in making the Administrative Conditional Use Permit decision.
23. Finding of Fact No. 22 is based upon the County sending this application to agencies with jurisdiction for their comment and incorporating those comments, where appropriate, into the conditions of approval. Additionally, the County accepted public comments and addressed those public comments.
24. The Hearing Examiner would note that there were several public comments that were submitted. All public comments related to the October 26, 2023 MDNS and the Administrative Conditional Use Permit.
25. The Hearing Examiner finds that the decision on the Administrative Conditional Use Permit reviewed all the factual evidence submitted to the County and correctly determined that the review criteria set forth in KCC 17.60A.015 had been satisfied.
26. The Appellant has failed to prove that the Administrative Conditional Use Permit decision was in error.
27. The Administrative Conditional Use Permit decision set forth adequate conditions of approval to mitigate potential adverse consequences of the telecommunications facility.
28. The Applicant's proposed telecommunication facility is a utility as defined by the Kittitas County Code.
29. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW


1. The Hearing Examiner has been granted the authority to render this decision.
2. The Appellant has failed to prove that the Administrative Conditional Use Permit decision was rendered in error.
3. Telecommunication facilities are utilities as defined by the Kittitas County Code.
4. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based upon the Findings of Fact and Conclusions of Law, the appeal of the Administrative Conditional Use Permit is hereby **DENIED**. The Administrative Conditional Use Permit decision issued October 26, 2023, is hereby **AFFIRMED** in all respects.

Dated this 4 day of March, 2024.

KITTITAS COUNTY HEARING EXAMINER



Andrew L. Kottkamp

This Decision is subject to appeal pursuant to the Kittitas County Code and the Revised Code of Washington.