



**King County**  
**Department of Development and Environmental Services**  
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## **REGULATORY REVIEW COMMITTEE**

**- MINUTES -**

**MEETING DATE: January 9, 2002**

**TO:** Building Services Division Staff  
Chris Ricketts  
Jim Chan  
Pam Dhanapal  
Ken Dinsmore

Land Use Services Division Staff  
Joe Miles  
Greg Borba  
Lisa Pringle

Caroline Whalen, Deputy Director  
Harry Reinert, Special Projects Manager  
Tim Barnes, Prosecuting Attorney's Office

**FM:** Harry Reinert, Co-Chair

Present: Greg Borba, Ken Dinsmore, Jim Chan, Pam Dhanapal, Caroline Whalen, Lisa Pringle, and Harry Reinert

Issue:

**1. Is the relocation of a utility pole that will accommodate new telecommunication antennas permitted outright under K.C.C. 21A.26.400(A)?**

Background:

Puget Sound Energy (PSE) currently operates an electrical transmission/distribution line system in the Somerset residential area near Bellevue. Some, but not all, of the existing power poles are located in the street right-of-way. Others are located in utility easements, not within the street right-of-way. Utility facilities, such as power poles, are permitted outright in urban residential zones, and are not subject to setback or height requirements.

In conjunction with VoiceStream Wireless, PSE wants to move one of its existing 30-foot poles onto a residential property (not currently included within the existing, defined utility corridor), increase the existing height of the pole to 70 feet, and attach telecommunication antennas at the top of the pole. The location of the existing pole is on property owned by the City of Bellevue — the site of a water tank. PSE has obtained an easement from a residential property on whose lot the pole would be re-located. The easement between PSE and the residential property owner describe the use of a portion of the subject property for utility purposes.

PSE and VoiceStream have stated that the existing 30-foot power pole is structurally deficient to accommodate the antennas and also lacks sufficient height to provide the required signal coverage needs.

Discussion:

The first sentence of K.C.C. 21A.26.400A states:

"The mounting of antenna upon existing...power poles, located within ...privately maintained...utility...right-of-ways [sic] is permitted outright."

The existing pole is located within a privately maintained utility easement within an established utility corridor. The antennas are not proposed to be placed on the existing power pole. The proposal relies on the relocation of the existing pole and an increase in the pole's height. Therefore, the provisions of this sentence do not apply at this time.

The second sentence of K.C.C. 21A.26.400A states:

"If an existing structure within a ... utility ... right-of-way cannot accommodate an antenna due to structural deficiency or does not have the height required to provide adequate signal coverage, the structure may be replaced with a new structure that will serve the original purpose and will not exceed the original height by forty feet."

A strict reading of this sentence would be that this provision applies only if the pole is "replaced" in the same location – it does not allow relocation onto a "new" easement area. A more liberal reading would be that the pole can be "replaced" and relocated as long as it serves the same purpose as the pole that it is replacing. Under this reading, the proposed modification would be permitted outright and would not be require a conditional use permit and would not be subject to height and setback requirements.

If the strict interpretation were followed, PSE would be able to move the 30 foot utility pole to a new location and then replace it with a 70 foot pole under the provisions of K.C.C. 21A.26.400A. Forcing the utility to go through these two steps would serve no useful purpose. In addition, it would be at odds with the policy set forth in K.C.C. 21A.26.400B, which provides that "The placement of antenna on existing or replacement structures within street, utility, or railroad rights-of-way is the preferred alternative in residential neighborhoods ...."

Under these circumstances, K.C.C. 21A.26.400A should be read to allow a replacement pole in a right-of-way or utility easement to be located in a new location in a right-of-way or utility easement as long as the replacement pole serves the same purpose for the utility as the pole that is being replaced. Under the provisions of K.C.C. 21A.26.400A, the replacement pole height in the new location may be increased by up to forty feet if the pole does not have the height necessary to provide signal coverage or has some other structure deficiency that does not allow attachment of an antenna.

Conclusion:

K.C.C. 21A.26.400A allows a utility to replace a utility pole located in a right-of-way or utility easement with a new utility pole located in a different location in a right-of-way or utility easement, if the pole in the new location serves the same purpose as the pole that is replaced.

The height of the replacement pole may be increased by up to forty feet in order to accommodate an antenna for a minor communication facility, if the requirements of K.C.C. 21A.26.400 concerning the deficiency of the existing structure or the need for additional height are satisfied.

Issue:

**2. Do the provisions of K.C.C. 21A.26.380 allow multiple increases in height of a transmission support structure of up to 40 feet on each occasion? Or can the height of the transmission support structure only be increased a total of 40 feet over the life of the structure?**

Background:

A question has been raised whether or not the provisions of K.C.C. 21A.26.380 can be applied cumulatively over the life of a transmission support structure, i.e. applied on multiple occasions, raising the height up to an additional 40 feet on each occasion, or if there is a limitation such that the height of the structure can only be raised a total of 40 additional feet over the life span of the structure.

Example: In 1998, a 100-foot tower (a transmission support structure) in a commercial zone is permitted and constructed. In 2000, a request to collocate and raise the height of the structure to 130 feet is requested and approved pursuant to K.C.C. 21A.26.400. In 2002, another collocation request is proposed that would increase the height to 170 feet. Is the latter allowed outright under K.C.C. 21A.26.380? Or, is a conditional use permit required under K.C.C. 21A.26.140 because the increase is 30% greater than the original height or exceeds 40 feet of the original height?

Discussion:

K.C.C. 21A.26.140 limits cumulative increases in the height of a communication facility or a transmission support structure to thirty percent. This limitation can be exceeded under allowances for minor communication facilities. K.C.C. 21A.26.140A.4.

K.C.C. 21A.26.380 allows modifications of transmission support structures to accommodate collocation of antennas or new technologies. K.C.C. 21A.26.360 provides in part that

"Modifications to transmission support structures are also permitted outright, provided there is no increase in the height of the transmission support structure except when ...

B. Limited to no more than forty feet above the height of the existing transmission support structure ...."

The provision of this sections hinges in part on the meaning of the word "existing." If "existing" means the structure as it exists at the time that antenna modification is proposed, there would appear to be no limit on the height of the structure. If "existing" means the structure as it was constructed, prior to any modifications, the maximum increase in height the would be permitted outright would be forty feet.

K.C.C. 21A.26.380 starts with the general rule that no increase in height is allowed and then follows with an except when the three criteria of subsection A, B, and C are met. If subsection B is read to allow sequential requests to increase the height of a transmission support structure, there would be no height limit. The intent of the County Council to have height limits is reinforced by the provisions of K.C.C. 21A.26.140, which specifically limits increases in height to thirty percent. K.C.C. 21A.26.380B is an exception to that limit, i.e. a forty foot increase may exceed the thirty percent limit depending on the height of the structure proposed for modification.

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Conclusion:

The Committee did not reach any firm conclusions on the issue. It will be revisited at the next Committee meeting. Legislative history will be examined for any guidance.