

**BEFORE THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Appeal of

GEORGE C. NICKUM, ET AL.

BLD14448MIS

regarding issuance of a Building Permit to
John Powers and Verizon Wireless, by the
Director, Planning and Community Development

**ORDER OF
DISMISSAL**

Motion

On December 19, 2007, the Hearing Examiner received a Motion for Dismissal from the Applicant, Verizon Wireless, asserting that the Hearing Examiner lacks jurisdiction and the appeal was untimely filed. On December 28, 2007, the Hearing Examiner requested that the other parties communicate their intentions regarding response to the Motion. The Director declined to comment on the Motion and Appellants' representative indicated that response would be submitted by January 2, 2008. At the time of issuance of this Order, no response has been filed.

Facts

On September 14, 2007, the Director issued a building permit (BLD14448MIS) to John Powers and Verizon Wireless for wireless communication facilities in the NE Blakely Avenue right-of-way of adjacent property owned by John Powers. On November 8, 2007, an appeal on behalf of George C. Nickum, Jr., Margaret Nickum, David M. Snedeker, and Bonnie Snedeker was filed with the City Clerk.

Procedural Requirements

BIMC 2.16.025A establishes that building permits are administrative land use decisions to be processed in accordance with BIMC 2.16.095. BIMC 2.16.095H allows appeal of such decisions to the City's Hearing Examiner pursuant to the procedures of BIMC 2.16.130. An appeal of an administrative land use decision must be "...*filed with the City Clerk 14 days after the date of the decision or 21 days if the land use decision requires a SEPA threshold decision comment...*"

The Hearing Examiner Rules provide that:

Rule 3.2, Chapter III: To be considered timely filed, an appeal must be received...no later than the last day of the appeal period.

Rule 5.3 in Chapter III, Section 4: An appeal may be dismissed without hearing if the Hearing Examiner determines that it fails to state a claim for which the Examiner has jurisdiction to grant relief...

Ruling

The Hearing Examiner may only hear and decide appeals that are timely filed. This appeal, filed on November 8, 2007 (more than 50 days after the issuance of the subject permit on September 14, 2007), was not timely filed (for either the 14 day or 21 day appeal period). The appeal must be, and hereby is, **DISMISSED**. The hearing scheduled for January 10, 2008 is **CANCELLED**.

Entered this 3rd day of January 2008.

signed in original
Meredith A. Getches
Hearing Examiner