

RESOLUTION NO R- 3660

A RESOLUTION OF THE CITY OF KIRKLAND APPROVING THE ISSUANCE OF A PROCESS IIB PERMIT AS APPLIED FOR IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO IIB-90-108 BY CELLULAR ONE (INTERSTATE MOBILE PHONE CO) BEING WITHIN A SINGLE-FAMILY (RS 8 5) ZONE, AND SETTING FORTH CONDITIONS TO WHICH SUCH PROCESS IIB PERMIT SHALL BE SUBJECT

WHEREAS, the Department of Planning and Community Development has received an application for a Process IIB permit, filed by Cellular One, and by Olaf and Dorothy Olsen, representing the owners of said property described in said application and located within an RS 8 5 zone

WHEREAS, the application has been submitted to the Hearing Examiner who held hearing thereon at his regular meeting of February 14, 1991, and

WHEREAS, pursuant to the State Environmental Policy Act, RCW 4321C, and the Administrative Guideline and local ordinance adopted to implement it, an environmental checklist has been submitted to the City of Kirkland, reviewed by the responsible official of the City of Kirkland, and a negative determination reached, and

WHEREAS, said environmental checklist and determination have been available and accompanied the application through the entire review process, and

WHEREAS, the Hearing Examiner after his public hearing and consideration of the recommendations of the Department of Planning and Community Development did adopt certain Findings, Conclusions, and Recommendations and did recommend approval of the Process IIB permit subject to the specific conditions set forth in said recommendation, and

WHEREAS, the City Council, in regular meeting, did consider the environmental documents received from the responsible official, together with the recommendation of the Hearing Examiner

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows

Section 1 The findings, conclusion, and recommendation of the Hearing Examiner as signed by him and filed in the Department of Planning and Community Development File No IIB-90-108 are adopted by the Kirkland City Council as though fully set forth herein

Section 2 The Process IIB permit shall be issued to the applicant subject to the conditions set forth in the recommendations hereinabove adopted by the City Council

Section 3 Nothing in this resolution shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinance, or regulations applicable to this project, other than expressly set forth herein

Section 4 Failure on the part of the holder of the permit to initially meet or maintain strict compliance with the standards and conditions to which the Process IIB permit is subject shall be grounds for revocation in accordance with Ordinance 2740, as amended, the Kirkland Zoning Ordinance

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS, AND RECOMMENDATIONS**

APPLICANT: U S. West Cellular

FILE NO. IIB-90-104

APPLICATION:

Site Location 5325 116th Avenue NE, the single-family residence of Olaf and Dorothy Olsen (see Exhibit A, Attachment 2)

Request Process IIB Zoning Permit and variance to install a 40-foot-high antenna utility pole and a one-story accessory building to house the related electrical equipment (not for human occupancy) The variance is requested because the maximum allowable height in the zone is 25 feet The antenna and associated accessory building is classified as a "public utility use" in a single-family zone (see Exhibit A, Attachments 3 through 7)

Review Process Process IIB, Hearing Examiner conducts public hearing and City Council makes final decision Houghton Community Council has a courtesy hearing and then has final review after the City Council makes final decision

Major Issues Zoning Code compliance, including variance criteria

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development Approve with conditions

Hearing Examiner. Approve with conditions

PUBLIC HEARING:

After reviewing the official file which included the Department of Planning and Community Development Advisory Report and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the U S West Cellular application was opened at 7:20 p.m., February 14, 1991, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington, and was closed at 7:53 p.m. Participants at the public hearing and the exhibits offered and entered are listed in this report. A verbatim recording of the hearing is available in the City Clerk's office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development.

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FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS:

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following

I FINDINGS

- A.** The findings of fact recommended on pages 4 to 11 of the Department of Planning and Community Development Advisory Report (Hearing Examiner Exhibit A) are found by the Hearing Examiner to be supported by the evidence presented during the hearing and, by this reference, are adopted as part of the Hearing Examiner's findings of fact except as modified below. A copy of said report is available in the Department of Planning and Community Development.
- B.** Staff indicated at the hearing that neighbors to the north and to the south of the subject property had signed landscape modifications. The neighbors to the north did not realize two buildings would be on the site, however. Also, site work eliminated some of the natural screening on the north. Therefore, U S West will need to meet the City's requirements for buffering on the north side of the property. This will mean that the U S West Building will need to be moved to the south to allow installation of the landscaping. This in turn will necessitate moving the joint pole closer to the Cellular One Building than originally proposed.
- C.** The applicant's representative explained how the pole would look when it was erected and said that the 25 foot landscape buffer which had been removed in error would be replaced.

II CONCLUSIONS

- A.** The conclusions recommended by the Department of Planning and Community Development, as set forth on pages 4 to 11 of the Department's Advisory Report (Exhibit A), accurately set forth the conclusions of the Hearing Examiner and, by this reference, are adopted as part of the Hearing Examiner's conclusions except as modified below. A copy of said report is available in the Department of Planning and Community Development.
- B.** The shift of the pole to the south to allow installation of landscaping is viewed as a minor modification which should be reviewed and approved by the Department of Planning and Community Development.
- C.** The landscaping along the north side of the property will need to meet the requirements specified in Section 95.25.1a of the Kirkland Zoning Code.

III RECOMMENDATIONS.

Based upon the foregoing findings of fact and conclusions, approval of this application is recommended subject to the following conditions

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- 1 This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Exhibit A, Attachment 8, Development Standards, is provided to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Exhibit A, Attachment 8, the condition of approval shall be followed.
- 2 The Department of Planning and Community Development shall be authorized to approve modifications to the approved site plan, unless
 - a There is a change in use and the Zoning Code establishes different or more rigorous standards for the new use than for the existing use, or
 - b The Planning Director determines that there will be substantial changes in the impacts on the neighborhood or the City as a result of the change (see Exhibit A, Conclusion II D 8 b), and
- 3 The variance request for a 40-foot-high antenna is approved as shown in Attachment 4 (see Exhibit A, Conclusion II D 14 b, 15 b, and 16 b)
- 4 The parking stall and driveway area immediately east of the accessory equipment building may be gravelled instead of paved (see Exhibit A, Conclusion II D 5 b)
- 5 The applicant is exempt from installing right-of-way improvements along NE 53rd Street and 116th Avenue NE under Section 110.10 of the Zoning Code (see Exhibit A, Conclusion II D 5 b)
- 6 As part of the application for a building permit for the new antenna height, the applicant shall submit, or at least within 60 days of final City approval
 - a. Plans for a permanent and construction-phase storm water control system to be approved by the Department of Public Works (see Exhibit A, Conclusion II D 4 b)
 - b. Plans for installing 16 feet of pavement within a 20-foot unobstructed area on NE 53rd Street from 116th Avenue NE to the leased area and a 20-foot-wide vehicular turnaround on site per Fire Department approval (see Exhibit A, Conclusion II B 1 b)
- 7 Prior to use of the antenna, the applicant shall
 - a Complete all site improvements indicated on the site plan approved by the Department of Planning and Community Development at the time of application for a Building Permit

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- b Complete installation of the 16-foot-wide pavement in NE 53rd Street and the 20-foot-wide paved vehicular turnaround on site (see Exhibit A, Conclusion II B 1 b).
 - c Install a fully-operational permanent storm water control system (see Exhibit A, Conclusion II D 4 b)
 - d Submit to the Department of Planning and Community Development a security device to ensure maintenance of the permanent storm water retention system (see Exhibit A, Conclusion II D 11 b)
 - e Install a 25 foot wide landscape buffer which meets the requirements of Section 95 25 1a of the Kirkland Zoning Code
 Prior to installation, the applicant shall submit a landscape plan to the Department of Planning and Community Development for review and approval (Hearing Examiner Conclusion C)
- 8 Within seven (7) calendar days after the final public hearing, the applicant shall remove all public notice signs and return them to the Department of Planning and Community Development The signs shall be disassembled with the posts, bolts, washer, and nuts separated from the sign board (see Exhibit A, Conclusion II D 9 b)

EXHIBITS: *

The following exhibits were offered and entered into the record

- A. Department of Planning and Community Development Staff Advisory Report
- B Photos taken around the site

PARTIES OF RECORD:

John Hunt, 1218 Third Avenue #2205, Seattle, WA 98101
 Derek Deitz, 12305 41st SE, Bellevue, WA 98006
 Olaf & Dorothy Olsen, 5325 116th Avenue NE, Kirkland, WA 98033
 Debra Ellertson & Frank Pampiks, 5425 - 116th NE, Kirkland, WA 98033
 Eleanor Moon, 12230 NE 61st, Kirkland, WA 98033
 Ron Smith, U S West New Vector Group, Inc., P O. Box 7329, Bellevue, WA 98008
 Department of Planning and Community Development
 Department of Public Works
 Department of Building and Fire Services

*Exhibits and references can be found within File No. IIB-90-104 maintained in the Department of Planning and Community Development

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Entered this 28th day of February, 1991, per authority granted by Section 152 70, Ordinance 2740 of the Zoning Code This recommendation is final unless a request for reconsideration is filed within five (5) working days as specified below A final decision on this application will be made by the City Council My recommendation may be challenged to the City Council within ten (10) working days as specified below


 Ronald L. McConnell
 Hearing Examiner

RECONSIDERATIONS, APPEALS, CHALLENGES AND JUDICIAL REVIEW

The following is a summary of the deadline and procedures for filing reconsiderations and challenges Any person wishing to file or respond to a recommendation or challenge should contact the Planning Department for further procedural information.

A. REQUEST FOR RECONSIDERATION

Section 152 80 of the Zoning Code allows the applicant or any person who submitted written or oral testimony to the Hearing Examiner to request that the Hearing Examiner reconsider his/her recommendation The request must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department within five (5) working days following the postmarked date when the Hearing Examiner's written recommendation was distributed (by March 11, 1991) Within this same time period, the person making the request for reconsideration must also mail or personally deliver to the applicant and all other people who submitted testimony to the Hearing Examiner a copy of the request letter together with notice of the deadline and procedures for responding to the request

Any response to the request for reconsideration must be delivered to the Planning Department within five (5) working days after the request letter was filed with the Planning Department. Within the same time period, the person making the response must also mail or personally deliver a copy of the response to the applicant and all other people who submitted testimony to the Hearing Examiner

Proof of such mail or personal delivery must be made by affidavit, attached to the request and response letters, and delivered to the Planning Department. The affidavit form is available from the Planning Department.

B CHALLENGE

Section 152 85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral testimony to the Hearing Examiner The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by March 18, 1991, ten (10) working days following the postmarked date of distribution of the Hearing Examiner's written recommendation on the application

Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted testimony to the Hearing Examiner a copy of the challenge together with notice of the deadline and procedures for responding to the challenge

Any response to the challenge must be delivered to the Planning Department within five (5) working days after the challenge letter was filed with the Planning Department Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted testimony to the Hearing Examiner

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department

The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner

C JUDICIAL REVIEW (FOR ZONING PERMIT ONLY)

Section 152 110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court The petition for review must be filed within 30 days following the postmarked date when the City's final decision was distributed

If issues under RCW 43 21C (the State Environmental Policy Act--SEPA) are to be raised in the judicial appeal, the "SEPA" appeal must be filed with the King County Superior Court within 30 days following the postmarked date when the City's final decision was distributed

IV LAPSE OF APPROVAL

A. ZONING PERMIT

Under Section 152 115 1 of the Zoning Code, the applicant must submit to the City a complete building permit application within one year after the final decision on the matter, or the decision becomes void In the event that judicial review proceedings are initiated pursuant to Section 152 110, the decision would be void one year after the termination of judicial review proceedings Furthermore, the applicant must substantially complete construction of the development activity, use of land, or other actions approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within five (5) years after the final decision on the matter, or the decision becomes void Application and appeal procedures for a time extension are described in Section 152 115 2 and 152 115 3

Section 5 Notwithstanding any recommendation heretofore given by the Houghton Community Council, the subject matter of this resolution and the permit herein granted are, pursuant to Ordinance 2001, subject to the disapproval jurisdiction of the Houghton Community Council or the failure of said Community Council to disapprove this resolution within sixty days of the date of the passage of this resolution


Section 6 A certified copy of this resolution, together with the findings, conclusions, and recommendations herein adopted shall be attached to and become a part of the Process IIB permit or evidence thereof delivered to the permittee

Section 7 Certified or conformed copies of this resolution shall be delivered to the following

- (a) Department of Planning and Community Development of the City of Kirkland
- (b) Fire and Building Departments of the City of Kirkland
- (c) Public Works Department of the City of Kirkland
- (d) The City Clerk for the City of Kirkland


PASSED by majority vote of the Kirkland City Council on the 19th day of March, 1991

SIGNED IN AUTHENTICATION thereof on the 19th day of March, 1991



Mayor

Attest



City Clerk
RES CCI 1 MAR

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS, AND RECOMMENDATIONS**

APPLICANT: Cellular One

FILE NO. IIB-90-108

APPLICATION:

Site Location 5325 116th Avenue NE, the single-family residence of Olaf and Dorothy Olsen (see Exhibit A, Attachment 2)

Request Process IIB Zoning Permit and variance to install a 35-foot-high antenna utility pole and a one-story accessory building to house the related electrical equipment (not for human occupancy) The variance is requested because the maximum allowable height in the zone is 25 feet The antenna and associated accessory building is classified as a "public utility" in a single-family zone (see Exhibit A, Attachments 3 through 8)

Review Process Process IIB, Hearing Examiner conducts public hearing and City Council makes final decision Houghton Community Council has a courtesy hearing and then has final review after the City Council makes final decision.

Major Issues Zoning Code compliance, including variance criteria

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development Approve with conditions

Hearing Examiner Approve with conditions

PUBLIC HEARING:

After reviewing the official file which included the Department of Planning and Community Development Advisory Report and after visiting the site, the Hearing Examiner conducted a public hearing on the application The hearing on the Cellular One application was opened at 7 20 p m., February 14, 1991, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington, and was closed at 7 53 p m Participants at the public hearing and the exhibits offered and entered are listed in this report A verbatim recording of the hearing is available in the City Clerk's office The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS:

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following

I FINDINGS

- A.** The findings of fact recommended on pages 4 to 11 of the Department of Planning and Community Development Advisory Report (Hearing Examiner Exhibit A) are found by the Hearing Examiner to be supported by the evidence presented during the hearing and, by this reference, are adopted as part of the Hearing Examiner's findings of fact. A copy of said report is available in the Department of Planning and Community Development.
- B.** Staff indicated at the hearing that neighbors to the north and to the south of the subject property had signed landscape modifications. The neighbors to the north did not realize two buildings would be on the site, however. Also, site work eliminated some of the natural screening on the north. Therefore, U S West will need to meet the City's requirements for buffering on the north side of the property. This will mean that the U S West Building will need to be moved to the south to allow installation of the landscaping. This in turn will necessitate moving the joint pole closer to the Cellular One Building than originally proposed.
- C.** The applicant's representative testified at the hearing that the applicant concurred with the staff recommendations and indicated that the pole could be moved closer to the Cellular One Building to allow landscaping to be planted between the adjacent U S. West Building and the north property line.

II. CONCLUSIONS:

- A.** The conclusions recommended by the Department of Planning and Community Development, as set forth on pages 4 to 11 of the Department's Advisory Report (Exhibit A), accurately set forth the conclusions of the Hearing Examiner and, by this reference, are adopted as part of the Hearing Examiner's conclusions. A copy of said report is available in the Department of Planning and Community Development.
- B.** The shift of the pole to the south to allow installation of landscaping is viewed as a minor modification which should be reviewed and approved by the Department of Planning and Community Development.

III. RECOMMENDATIONS:

Based upon the foregoing findings of fact and conclusions, approval of this application is recommended subject to the following conditions

- 1 This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Exhibit A, Attachment 9, Development Standards, is provided to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Exhibit A, Attachment 9, the condition of approval shall be followed.
- 2 The Department of Planning and Community Development shall be authorized to approve modifications to the approved site plan, unless
 - a. There is a change in use and the Zoning Code establishes different or more rigorous standards for the new use than for the existing use, or
 - b. The Planning Director determines that there will be substantial changes in the impacts on the neighborhood or the City as a result of the change (see Exhibit A, Conclusion II D 9 b), and
- 3 The variance request for a 35-foot-high antenna is approved as shown in Exhibit A, Attachment 5 (see Exhibit A, Conclusion II D 15 b, 16 b, and 17 b).
- 4 The parking stall and driveway area immediately east of the accessory equipment building may be gravelled instead of paved (see Exhibit A, Conclusion II D 6 b).
- 5 The applicant is exempt from installing right-of-way improvements along NE 53rd Street and 116th Avenue NE under Section 110.10 of the Zoning Code (see Exhibit A, Conclusion II D 6 b).
- 6 As part of the application for a building permit for the new antenna height, the applicant shall submit, or at least within 60 days of final City approval.
 - a. Plans for a permanent and construction-phase storm water control system to be approved by the Department of Public Works (see Exhibit A, Conclusion II D.5 b).
 - b. Plans for installing 16 feet of pavement within a 20-foot unobstructed area on NE 53rd Street from 116th Avenue NE to the leased area and a 20-foot-wide vehicular turnaround on site per Fire Department approval (see Exhibit A, Conclusion II B 1 b).

- 7 Prior to use of the antenna, the applicant shall
- a Complete all site improvements indicated on the site plan approved by the Department of Planning and Community Development at the time of application for a Building Permit
 - b Complete installation of the 16-foot-wide pavement in NE 53rd Street and the 20-foot-wide paved vehicular turnaround on site (see Exhibit A, Conclusion II B 1 b)
 - c Install a fully-operational permanent storm water control system (see Exhibit A, Conclusion II D 5 b)
 - d Submit to the Department of Planning and Community Development a security device to ensure maintenance of the permanent storm water retention system (see Exhibit A, Conclusion II D 12 b)
 - e If the Department of Planning and Community Development staff determines that the antenna and/or accessory building is visible from the 16-foot-wide roadway in the NE 53rd Street right-of-way, the applicant shall install one row of evergreen trees and shrubs either along the south property line west of the new driveway accessing the facility, or adjacent to the accessory equipment building, depending on where the screening is needed. The landscaping shall be installed prior to use of the antenna (see Exhibit A, Conclusion II D 4 b)
- 8 Within seven (7) calendar days after the final public hearing, the applicant shall remove all public notice signs and return them to the Department of Planning and Community Development. The signs shall be disassembled with the posts, bolts, washer, and nuts separated from the sign board (see Exhibit A, Conclusion II D 10 b)

EXHIBITS: *

The following exhibits were offered and entered into the record

- A. Department of Planning and Community Development Staff Advisory Report
- B. Petition dated 1/23/91 concerning right-of-way improvements.
- C. Letter from the Olsens, Property Owners, dated 1/23/91
- D. Picture study of 116th Avenue NE.

PARTIES OF RECORD:


Carole Rohde, 617 E Lake Avenue East, P O Box 9159, Kirkland, WA 98033
 Olaf and Dorothy Olsen, 5325 116th Avenue NE, Kirkland, WA 98033
 Debra Ellertson and Frank Pampiks, 5425 116th NE, Kirkland, WA 98033
 Eleanor Moon, 12230 NE 61st, Kirkland, WA 98033
 Department of Planning and Community Development

* Exhibits and references can be found within File No IIB-90-108 maintained in the Department of Planning and Community Development

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Department of Public Works
Department of Building and Fire Services

Entered this 28th day of February, 1991, per authority granted by Section 152 70, Ordinance 2740 of the Zoning Code This recommendation is final unless a request for reconsideration is filed within five (5) working days as specified below A final decision on this application will be made by the City Council. My recommendation may be challenged to the City Council within ten (10) working days as specified below


Ronald L. McConnell
Hearing Examiner

RECONSIDERATIONS, APPEALS, CHALLENGES AND JUDICIAL REVIEW

The following is a summary of the deadline and procedures for filing reconsiderations and challenges Any person wishing to file or respond to a recommendation or challenge should contact the Planning Department for further procedural information

A. REQUEST FOR RECONSIDERATION

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Proof of such mail or personal delivery must be made by affidavit, attached to the request and response letters, and delivered to the Planning Department The affidavit form is available from the Planning Department

B CHALLENGE

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Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department.

The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

C JUDICIAL REVIEW (FOR ZONING PERMIT ONLY)

Section 152 110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within 30 days following the postmarked date when the City's final decision was distributed.

If issues under RCW 43 21C (the State Environmental Policy Act-SEPA) are to be raised in the judicial appeal, the "SEPA" appeal must be filed with the King County Superior Court within 30 days following the postmarked date when the City's final decision was distributed.

IV LAPSE OF APPROVAL

A. ZONING PERMIT

Under Section 152 115 1 of the Zoning Code, the applicant must submit to the City a complete building permit application within one year after the final decision on the matter, or the decision becomes void. In the event that judicial review proceedings are initiated pursuant to Section 152 110, the decision would be void one year after the termination of judicial review proceedings. Furthermore, the applicant must substantially complete construction of the development activity, use of land, or other actions approved under Chapter 152 and complete the applicable

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conditions listed on the Notice of Approval within five (5) years after the final decision on the matter, or the decision becomes void. Application and appeal procedures for a time extension are described in Section 152.115.2 and 152.115.3.