BEFORE THE LAND USE HEARINGS EXAMINER
FOR THE CITY OF CAMAS, WASHINGTON

Regarding an application by New Cingular Wireless PCS, LLC for conditional use approval to construct and operate a stealth-designed wireless communication facility disguised as a bell tower at 706 NE 14th Avenue, in the City of Camas, Washington	))))	**F I N A L O R D E R** **CUP23-03 (AT&T Tower)**

A. SUMMARY

1. The applicant, New Cingular Wireless PCS, LLC requests conditional use approval to construct and operate a 60-foot tall wireless communication tower inside of a 20- by 20-foot brick faced structure that is designed to mimic a bell tower. The structure will be topped with a church steeple and cross that will increase the total structure height to 88 feet. The bell tower structure will be attached to and reflect the design of the existing church located at 706 NE 14th Avenue, also known as Parcel Number 91010-000 (the "site"). The site and all surrounding properties are zoned R-7.5 (Low density residential, 7,500 square foot minimum lot size). Additional basic facts about the site and surrounding are and the applicable approval standards are provided in the Staff Report to the Hearing Examiner dated February 7, 2024 (the "Staff Report").[1]

2. City of Camas Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the application subject to conditions set out in the Staff Report. The applicant accepted those findings and conditions without exceptions. A representative of the property owner testified orally in support of the application. One other person testified orally and in writing (Exhibit 23) with questions and concerns about the application. Contested issues in the case include the following:

a. Whether the City can consider alleged human health impacts of RF energy from the proposed antennae;

b. Whether the tower facility will impact the value of surrounding properties; and

c. Whether noise from the facility will have a significant adverse impact on surrounding residents.

4. Based on the findings provided or incorporated herein, the examiner approves the application subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at a public hearing about this application on February 15, 2024. All exhibits and records of testimony are filed at the City of Camas. At the beginning of the hearing, the examiner described how the hearing would be

[1] The City initially issued a Staff Report dated December 6, 2024, which was replaced by the Staff Report dated February 7, 2024.

conducted and how interested persons could participate. The examiner disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Madeline Sutherland summarized the Staff Report.

a. She noted that the applicant proposed to locate the 60-foot tall wireless communication tower and associated equipment inside of a 20- by 20-foot brick faced structure that is designed to look like a bell tower attached to the existing church. A proposed church steeple and cross which will increase the height of the structure to 88 feet.

b. Mill Ditch, a City owned open space, abuts the south boundary of the site. The proposed tower is located within two feet of the south boundary of the site and the existing parking lot on the site currently encroaches onto the City's property. The City and the Church are in the process of recording a quit claim deed to resolve this encroachment and move the common boundary roughly 20 feet to the south. The revised boundary will eliminate the existing encroachment and ensure that the proposed structure complies with setback requirements of the Code.

c. The proposed tower is intended to replace an existing wireless tower located on the Garver Theater Building northeast of the site. The applicant conducted an alternative site analysis which demonstrates that the site is the best alternative to maintain the existing wireless service coverage in this area. All of the available alternative locations would result in reduce coverage.

e. The applicant submitted a noise study (Exhibit 17) demonstrating that the facility will not generate noise in excess of the limitations imposed by the Code and State law.

3. City Engineering Project Manager Anita Ashton noted that the existing parking lot will be restricted to one-way traffic.

4. Sharon Gretch appeared on behalf of the applicant, New Cingular Wireless PCS, LLC. She agreed with the findings and conditions in the Staff Report without exceptions. She summarized the applicant's alternative sites analysis and the City's siting hierarchy (Exhibit 1). The proposed wireless facility is intended to replace an existing wireless tower located on the Garver Theater Building which will be decommissioned soon. Removal of the Garver Theater tower will create a significant gap in wireless coverage in the area. The proposed facility will largely replace that existing coverage and allow calls to "hand off "to other existing towers in the area. It is not feasible to locate the facility on existing towers or buildings as the existing structures are too low to provide needed coverage. Available locations outside of residential zones would result in significant gaps in wireless coverage. The site is the best location to maintain existing wireless coverage.

5. Bonnie Jean Ione expressed concerns with potential health effects of non-ionizing radiation generated by the wireless facility, which may increase the risk of

cancer in children and can induce headaches in people near the facility. She also expressed concerns with potential noise impacts from compressors and other equipment associated with the facility and that the existence of the facility may reduce the value of her property, which is located roughly 65 yards west of the site.

6. Pastor Don Shipley pastor of the existing church on the site, testified in support of the proposal. The Church supports the tower as it is necessary to maintain wireless communication coverage in the surrounding area, including emergency communications, as well as generating funds for the church. The proposed stealth design will conceal the tower, allowing the facility to blend with the existing church and reducing its visual impact.

7. The examiner closed the record at the conclusion of the hearing the examiner and announced his intention to approve the application subject to the findings and conclusions in the Staff Report.

C. DISCUSSION

1. City staff recommended approval of the application, based on the affirmative findings in the Staff Report. The applicant accepted those findings without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the proposed use does or can comply with the applicable standards for approval of a conditional use permit. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the following findings.

3. Ms. Ione expressed concerns with potential health hazards of the facility. The examiner recognizes that the proposed antennas emit Radio Frequency ("RF") energy that could potentially have an impact on public health. However, there is no evidence that it does have such an impact, and the Federal Communications Act of 1996 expressly prohibits the City from considering such impacts when evaluating an application of this kind. *See* 47 U.S.C. §332(c)(7)(B)(iv).

4. The courts have interpreted 47 U.S.C. § 332(c)(7)(B)(iv) to prohibit local governments from considering potential impacts to property values that are based on concerns about such potential health effects. *AT&T v. City of Carlsbad*, 308 F. Supp. 2nd 1148, 1162 (2003) (concern over property value depreciation based on fear over RF emissions does not constitute a legitimate basis for an application denial under the Telecommunications Act). Therefore, the City cannot consider potential property value impacts that are based on potential health concerns. In addition, there is no substantial evidence in the record that the proposed stealth facility will have a materially detrimental impact on the value of surrounding properties due to its visual or other non-health related impacts. The tower and equipment will be located in and screened by the proposed faux bell tower and appear as part of the existing church. Casual observers will likely be unaware that the facility exists on the site.

5. Noise from the facility could cause significant adverse environmental impacts if it is excessive. The examiner finds that noise is excessive if it exceeds state standards.

WAC 173-60-040 limits noise to a maximum 57 dBA between 7:00 a.m. and 10:00 p.m. and 47 dBA between 10:00 p.m. and 7:00 a.m. Noise levels are measured at the property lines. The applicant's noise analysis (Exhibit 17) demonstrates that wireless communication equipment on the site will generate a maximum 56 dBA measured 3.3 feet from the facility. Noise levels will decrease to 11 dBA at the nearest residential property line. The applicant's acoustical engineer measured the average ambient noise level at 52 dBA. Therefore, the examiner finds that noise from the facility will likely be undetectable beyond the boundaries site and will not have a significant impact on surrounding properties or residents.

6. The examiner finds that the application complies with the remaining approval criteria based on the findings in the Staff Report. The examiner adopts those findings as his own and incorporates them into this Final Order.

D. CONCLUSION

Based on the above findings and discussion provided or incorporated herein, the examiner concludes that CUP23-03 (AT&T Tower) should be approved, because it does or can comply with the applicable standards of the Camas Municipal Code and the Revised Code of the State of Washington.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves CUP23-03 (AT&T Tower), subject to the following conditions of approval:

STANDARD CONDITIONS OF APPROVAL:

1. Final engineering site improvement plans shall be prepared in accordance with the Camas Design Standards Manual (CDSM) and CMC 17.19.040.
2. Community Development (CDEV) Engineering is responsible for plan review (PR) and construction inspection (CI) of all site improvements outside of building footprints, which includes construction of new driveway approaches, sidewalk removal and replacement, re-striping and signing improvements to the existing parking lot.
3. The engineering site plans shall be prepared by a licensed civil engineer in Washington State and submitted to the City's Community Development (CDEV) Engineering Department for review and approval. Submittal requirements for first review are as follows:
    a. Final engineering civil site improvement plans are not to be submitted until after the land-use decision is issued.
    b. Submit one (1) full size sets and one (1) half size set of plans.
    c. Stamped preliminary engineer's estimate.
4. CDEV shall collect a total 3% plan review and construction inspection (PR&CI) fee for the proposed development outside of the building footprints.

a. The 3% fee is based on a stamped engineer's estimate.

b. Payment of the 3% plan review (PR) and construction inspection (CI) fee is to be paid prior to release of approved construction drawings by CDEV Engineering Dept.

5. A building permit shall be required prior to commencement of proposed tenant improvements.

6. The applicant will be responsible for maintenance of all on-site private improvements.

SPECIAL CONDITIONS OF APPROVAL:

Planning:

7. There shall be no advertisement signage other than signage required by law per CMC 18.35.070.F.

8. Unless construction of the site improvements commences within two (2) years of issuance of this decision, this permit will expire.

Prior to Final Engineering Plan Approval:

Engineering:

[Roads]

9. The site plans shall include removal and replacement of the sidewalk along the frontage on NE 14th Avenue from the west driveway access to the eastern property line in accordance with the CDSM.

10. The site plans shall include removal and replacement of both the existing west and east driveway accesses onto NE 14th Avenue with commercial driveway accesses in accordance with the CDSM.

11. The site plans shall include a clearly delineated minimum 5-foot-wide pedestrian pathway from the front of the church, around the AT&T Tower, and ending at the sidewalk, ramp, and stairs at the rear of the church.

[Storm Sewer]

12. The site plans shall include provisions for the new roof downspouts for the wireless tower that do not impact either adjacent parcels or the church's daylight basement on the south side of the church that is accessed via the parking lot.

Planning:

13. The pedestrian pathway must not encroach city property.
14. The rear yard tower setback shall be no less than 22 feet.
15. Per CMC 18.35.070.E, all lighting shall meet the FAA requirements and motion detectors for security lighting are encouraged.
16. The development shall comply with the recommendations of the geotechnical report from Black Mountain Consulting dated September 27, 2023:
    a. All structures shall be located a minimum of 25-feet from the edge of the existing slopes adjacent to the canal.

b. Drainage and erosion control measures shall be provided during construction and no water be discharged over the moderately steep slope to the northeast of the site.
c. Ground cover on slopes shall be protected during construction and excavated materials should not be side cast onto slopes. Best Management Practices for erosion control should be utilized during construction, including covering stockpiles and preventing water from discharging on slopes. Disturbed areas shall be reseeded as soon as possible after construction.
d. Final site grades shall slope downward away from the structure at a minimum of two percent and runoff should be conveyed to a suitable drainage outlet. Additionally, the area surrounding the structure could be capped with concrete, asphalt or compacted, low-permeability soils to reduce surface water infiltration into the subsurface soils near the foundation.

Prior to Building Permit Approval:

17. Any work done within the city property will require an encroachment permit and shall be restored to its original state.

DATED this 20th day of February 2024.

Joe Turner, AICP
City of Camas Land Use Hearings Examiner