



CITY OF ARLINGTON

NOTICE OF DECISION

Smokey Point North CUP

Site Plan Review

The City of Arlington has issued a Notice of Decision for a Conditional Use Permit as required by Arlington Municipal Code. The following project has been **APPROVED**, with the conditions listed in the Hearing Examiner decision.

Project Name: Smokey Point North CUP

Proponent: Smartlink Group, on behalf of New Cingular Wireless PCS, LLC

Project Number: PLN #963

Description of Proposal: The applicant is proposing to construct a new wireless communications facility at 17306 Smokey Point Drive. The facility is a service coverage and capacity site intended to provide expanded 4G LTE and 5G coverage to the businesses around I-5 and Smokey Point Boulevard, Totem Park, the Arlington Airport, and the immediate surrounding residential and commercial areas and major roadways. The wireless communications facility includes a 130-foot monopole camouflaged as a 140-foot pine tree that will support up to three carriers, including AT&T. The tower and ground equipment will be within a 40' x 20' leased area. There will be a back-up generator to be used in the event of a power outage. The proposed compound will have security fencing. The site will be accessed by a 12-foot security gate on the north side of the facility.

Location: 17306 Smokey Point Drive

Permit Decision: Approved, with Conditions

Notice of Decision Date: October 11, 2022

End of Appeal Period: November 1, 2022

Conditional Use Permit Expiration Date: October 11, 2024

Appeals: This decision may be appealed pursuant to AMC 20.20.020. Any aggrieved party of record may file an appeal within 21 days of the Conditional Use Permit Decision. An appeal shall be considered filed when a written notice of appeal, specifying the grounds and arguments, therefore, is made to Snohomish County Superior Court pursuant to the Land Use Petition Act, Chapter 36.70C RCW by close of business on **November 1, 2022**, and the appeal filing fee as set by Snohomish County. An appeal application and filing fee must also be filed with the City of Arlington Community and Economic Development Department at 18204 59th Avenue NE, Arlington, WA 98223.

Staff Contact: Amy Rusko, Planning Manager, arusko@arlingtonwa.gov, 360-403-3550

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ARLINGTON**

In the Matter of the Application of) No. PLN#963
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)
Smartlink Group, on behalf of) Smokey Point North CUP
New Cingular Wireless PCS, LLC)
)
)
For a Conditional Use Permit) FINDINGS, CONCLUSIONS,
) AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to construct a wireless communication facility, including a 130-foot monopole camouflaged as a 140-foot pine tree, with associated ground equipment, on a 40-foot by 20-foot leased area of a 0.99-acre property at 17306 Smokey Point Drive, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on September 27, 2022, using remote access technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Amy Rusko, City Planning Manager
Nancy Sears, Applicant Representative

Exhibits:

1. Staff Report, undated
2. Conditional Use Permit Application, dated June 29, 2022, with Letter of Authorization, dated June 10, 2022
3. Project Narrative, undated
4. Title Sheet, undated
5. Signage Specifications, undated
6. Topographic and Boundary Survey, dated April 27, 2022
7. Topographic and Boundary Survey, dated April 27, 2022
8. Overall Site Plan, dated August 4, 2022
9. Enlarged Site Plan, dated August 4, 2022
10. Enlarged Compound Plan, dated August 4, 2022
11. Northwest Elevation, dated August 4, 2022
12. Photo Simulations (4 Sheets), undated

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13. Statement of Code Compliance, undated
14. SEPA Environmental Checklist, dated June 29, 2022, with attachments
15. Non-ionizing Electromagnetic Exposure Analysis and Engineering Certification, dated March 20, 2022
16. Noise Survey, dated June 7, 2022
17. Radio Frequency Compliance Letter, dated May 31, 2022
18. Statutory Warranty Deed, dated July 24, 2018
19. Vicinity Map, undated
20. Notice of Public Hearing Materials:
 - a. Notice of Public Hearing, dated September 9, 2022
 - b. Affidavit of Posting, dated September 9, 2022
 - c. Email Request for Publishing Notice in *The Everett Herald*, dated September 9, 2022
21. Neighborhood Meeting (August 16, 2022) Notes
22. Notice of Application Materials:
 - a. Notice of Application, Determination of Nonsignificance, and Neighborhood Meeting Documents, dated August 3, 2022,
 - b. Affidavit of Posting, dated August 3, 2022
 - c. Agency Routing Email, dated August 3, 2022
 - d. Email Request for Publishing Notice in *The Everett Herald*, dated August 1, 2022
23. Returned Notice Mailings, dated August 19, 2022
24. Notice of Complete Application, dated July 21, 2022
25. Notice of Incomplete Application, dated July 6, 2022

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

1. Smartlink Group, on behalf of New Cingular Wireless PCS, LLC (Applicant), requests a conditional use permit to allow construction of a wireless communications facility (WCF) on a 40-foot by 20-foot leased area of a 0.99-acre property owned by Ramaley Properties, Inc. The proposed WCF would consist of a 130-foot monopole with 12 panel antennas and 18 remote radio units, camouflaged as a 140-foot pine tree, and ancillary ground equipment including a diesel back-up generator, two surge protectors, and security fencing. The WCF would support up to three carriers, including AT&T. The WCF would be located within an existing parking lot of a shopping center that is accessed from Smokey Point Drive, with access to the proposed facility provided by existing drive aisles within the parking lot and a 12-foot security gate on the north side of the facility. The property is located at 17306 Smokey Point Drive.¹ *Exhibit 1, Staff Report, pages 1 through 3; Exhibits 2 through 12; Exhibit 18.*

¹ The property is identified by tax parcel number 00645300000700. *Exhibit 1, Staff Report, page 2.* A legal description of the property is included with the Topographic and Boundary Survey. *Exhibit 6.*

2. The City of Arlington (City) determined that the application was complete on July 21, 2022. On August 3, 2022, the City provided notice of the application and associated neighborhood meeting by mailing or emailing notice to property owners within 500 feet of the site and to reviewing departments and agencies, publishing notice in the *Everett Herald*, and posting notice on-site, with a comment deadline of August 17, 2022. A neighborhood meeting on the proposal was held on August 16, 2022. On September 9, 2022, the City provided notice of the open record hearing associated with the application by posting notice on-site, mailing or emailing notice to property owners within 500 feet of the site and to reviewing departments and agencies, and publishing notice in the *Everett Herald*. The City did not receive any comments on the proposal from members of the public or reviewing departments and agencies in response to its notice materials. *Exhibit 1, Staff Report, pages 2 and 5; Exhibits 20 through 25.*

State Environmental Policy Act

3. The City Department of Community and Economic Development (DCED) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). DCED reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, DCED issued a Determination of Nonsignificance (DNS) for the proposal on August 3, 2022. The same day, the City provided notice of the DNS by mailing or emailing notice to property owners within 500 feet of the site and to reviewing departments and agencies, publishing notice in the *Everett Herald*, and posting on-site, with a comment and appeal deadline of August 17, 2022. The City did not receive any comments on the DNS, and the DNS was not appealed. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 14; Exhibit 22.*

Comprehensive Plan and Zoning

4. The property is designated "Highway Commercial" by the City Comprehensive Plan and is within a designated "Mixed-Use Overlay" area. "The purpose of the Highway Commercial designation is to provide a setting for large-scale commercial uses that typically locate on major thoroughfares and attract a regional customer base." *Comprehensive Plan, page 5-6.* The Highway Commercial designation "consists primarily of a suburban commercial fabric with large format commercial uses." *Comprehensive Plan, page 5-6.* The City utilizes a Mixed-Use Overlay on commercially zoned areas throughout the city in order to "create neighborhoods that replicate the feeling, functionality and efficiencies of neo-traditional development." *Comprehensive Plan, page 5-6.* Mixed-Use Overlay development is intended to focus "on the integration of commercial, retail and residential uses in close proximity to one another" while "promoting the safety and mobility of both pedestrian and biker" and less emphasis on auto dependence, "thus creating a livable environment where residents have the ability to

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safely use alternate modes of transportation to commute to employment centers, complete their shopping and for their recreation.” *Comprehensive Plan, pages 5-6 and 5-7.*

City staff identified the following Comprehensive Plan goals and polices as relevant to the proposal:

- Goal GO-3: Work towards promoting and maintaining an urban environment within the City that enhances livability for its residents.
- Goal GE-3: Ensure adequate utility and transportation services to accommodate businesses providing jobs.

Exhibit 1, Staff Report, pages 3 and 5.

5. The site is zoned “Highway Commercial” with a “Mixed Use Overlay” (HC/MXD). Surrounding properties are also zoned HC/MXD. The HC zone is established “to accommodate the widest range of commercial activities.” *Arlington Municipal Code (AMC) 20.36.020(e).* Uses permitted in the HC zoning district “include those allowed in other commercial districts, but also those that require highway access or that should be separated from residential uses.” *AMC 20.36.020(e).* The Mixed Use Overlay (MXD) provides for “the efficient use of property by requiring the mixed use of properties in a manner that allows for residential development to co-exist with commercial, retail and specific light manufacturing uses.” *AMC 20.36.080.* City staff determined that the proposal to construct a 130-foot monopole with associated ground improvements would constitute a “wireless communication facility, monopole II” use, which is allowed in the HC zone with a conditional use permit.² *AMC Table 20.40.-1. Exhibit 1, Staff Report, pages 7 through 9.*
6. The HC zone does not have a minimum lot size requirement, requires a minimum lot width of 70 feet, and allows for 100 percent lot coverage. *AMC Table 20.48-5.* The subject property measures 43,124 square feet and is over 288 feet wide, in accordance with these requirements. Structures within the HC zone are required to be set back a minimum of 5 feet from lot boundary lines and 10 feet from non arterials rights-of-way. *AMC Table 20.48-5.* The proposed WCF would comply with applicable setback requirements by being located between 5 and 249 feet from all lot boundary lines and 179 feet from the Smokey Point Drive right-of-way. *Exhibit 1, Staff Report, pages 11 and 12; Exhibit 9.*
7. The HC zone generally requires a maximum building height of 50 feet. *AMC Table 20.48-5.* Certain wireless communication facilities, however, are exempt from building height restrictions for the underlying zoning district and, instead, are required to comply with the WCF height limitations of AMC 20.44.034. *AMC 20.48.060(c)(4).* *AMC*

² *Wireless communications facility, monopole II* means “a wireless communication facility that consists of a wireless communications support structure, up to a maximum of one hundred fifty feet in height erected to support wireless communication antennas and connecting appurtenances.” *AMC 20.08.010.*

20.44.034(g)(3) provides that the maximum height for a monopole facility support structure is 150 feet. The proposal is for a 130-foot monopole camouflaged as a 140-foot pine tree, satisfying this requirement. The Applicant submitted a Radio Frequency Justification report, which determined that the proposed height of the structure would be the minimum necessary to meet service objectives within the targeted service area.

Exhibit 1, Staff Report, page 12; Exhibit 17.

8. The property is located in Airport Protection Subdistrict C. *AMC 20.38.060*. The City's airport protection subdistrict regulations provide performance standards related to: increasing the likelihood of a bird impact problem; electrical interference with navigational signals or radio communications at the airport or with aircraft; emissions of fly ash, dust, vapor, or gases; penetration of natural growth into airspace surfaces; height; and avigation easements. *AMC 20.38.080*.

City staff reviewed the proposal and determined that, with conditions, it would comply with the applicable airport protection subdistrict standards, noting:

- The Applicant has stated that AT&T performs monthly inspections to their monopole towers and uses Best Management Practices to discourage nesting and increases in bird populations.
- The Applicant provided information through the Radio Frequency Noninterference Letter that shows compliance with Federal Aviation Administration (FAA) and Federal Communications Commission (FCC) regulations to ensure the WCF would not cause electrical interference with navigational signals or radio communications at the airport or with radio or electric communications between the airport and aircraft or aircraft to aircraft.
- The WCF is a passive, unmanned use that would not emit emissions of fly ash, dust, vapor, gases, or other forms of emissions.
- The Applicant has filed a Form 7460 with the FAA. The Applicant is required to receive approval prior to the issuance of the building permit.
- The WCF is located on property that is west of the airport and is approximately the same elevation as the airport. The proposed facility has a total height of 140 feet. The proposed height is below the maximum allowed height of 160 feet.
- The Applicant is required to obtain FAA approval for the height of the structure. The proposed monopole would be 140 feet in height on the top of the faux tree and would meet the obstruction standards of Part 77.17 of the Code of Federal Regulations.
- The Applicant is required to obtain an Avigation Easement with the Arlington Municipal Airport prior to project completion.

Exhibit 1, Staff Report, pages 8 and 9.

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Existing Site, Surrounding Uses and Proposed Development

9. The 40-foot by 20-foot leased area for the proposed WCF is located within the parking lot of an existing shopping center on a 0.99-acre lot. The property abuts Interstate 5 (I-5) on the west side and is surrounded to the north, east, and south by commercial development. As noted above, the Applicant requests a CUP to allow installation of a 130-foot monopole II wireless communications facility that would be camouflaged as a 140-foot tree. The proposed facility would provide service coverage and capacity intended to expand 4G LTE and 5G coverage to businesses around I-5 and Smokey Point Boulevard, Totem Park, the Arlington Airport, and immediate surrounding residential and commercial areas. All proposed utilities to and on the site would be located underground, and all utility lines would be required to be shown on the site civil plans and approved by the City prior to construction. The proposed WCF would not require regular on-site staff and would not create additional traffic trips requiring the payment of traffic impact fees. The site would be accessed monthly during normal working hours for maintenance, and the Applicant would not be required to provide parking spaces to support the proposed WCF use because the existing parking lot would be sufficient to support staff performing inspections and/or maintenance of the WCF monopole and ancillary equipment. Screening for the equipment would be provided by a black vinyl coated chain-link fence with an interior metal screening to create the look of a solid fence. City staff determined that the property does not contain any environmentally critical areas. *Exhibit 1, Staff Report, pages 1, 4, 12, and 13; Exhibits 2 through 11; Exhibit 13.*

Conditional Use Permit

10. City staff reviewed the proposal and determined that, with conditions, it would meet the specific criteria for a CUP under AMC 20.16.140. Specifically, City staff determined:
- The proposed WCF is allowed per the city's zoning map and permissible use table.
 - The application was deemed complete on July 21, 2022.
 - The proposal complies with all required sections of AMC Title 20.
 - The proposed project complies with SEPA, and the City issued a DNS on August 3, 2022. No comments were received. The DNS was not appealed.
 - The proposal complies with the City municipal code, Comprehensive Plan, and Transportation Plan.
 - The proposed WCF would not materially endanger public health or safety as demonstrated in the submitted Noise Report, Radio Frequency Non-Interference Letter, NIER Report and SEPA Environmental Checklist.
 - The proposal does not propose to cut, grade, or fill on the site and the facility would not emit any noxious emissions that would materially harm adjoining or abutting properties.

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- The WCF is proposed to be constructed as a “monopine” that camouflages the monopole to blend in with the surrounding area.

Exhibit 1, Staff Report, pages 14 and 15; Exhibit 12; Exhibits 14 through 17.

11. In addition to the criteria for a conditional use permit, wireless communication facilities are subject to supplemental regulations under the municipal code. These regulations provide development standards related to: compliance with Federal Communications Commission (FCC), Federal Aviation Administration (FAA), state, and city regulations and standards; accommodating the location of two or more wireless communications facilities; placing equipment facilities underground if feasible; designing facilities to blend in with existing characteristics of the site to the extent practicable; preserving or improving existing on-site vegetation; noise requirements; and location requirements. *AMC 20.44.034.*

City staff reviewed the proposal and determined that, with conditions, it would comply with the applicable development standards under AMC 20.44.034, noting:

- The proposed WCF has the capacity to accommodate up to two additional carriers.
- The facility would be screened by a six-foot chain link fence with interior metal screening and existing buildings, vegetation, and topography. The site is located in a parking lot at the back of an existing shopping center, between a tree and the approximate six-foot berm to the freeway entrance. Ground visibility of the site is minimal.
- The proposed WCF is a monopine, which is a monopole camouflaged as a pine tree to blend in with surrounding evergreen trees. The proposed site is in a parking lot at the back of an existing shopping center. Existing on-site vegetation would not be disturbed, and no grading would be required.
- The Applicant has filed for an FAA determination for the proposed WCF, and FAA approval is required prior to the issuance of the building permit for the project.
- The Applicant submitted a Noise Report, prepared by SSA Acoustics. The report concluded that at normal operating levels the noise from the WCF would be 57 dBA and meets the maximum noise threshold. WAC 173-60-040 provides that during any 1-hour period, the maximum permissible noise level may be exceeded by 5 dBA for a 15-minute period. Therefore, the generator must not exceed 65 dBA when running during daytime hours for maintenance testing. The report indicates that the generator would operate at 70 dBA. To mitigate for noise for the generator maintenance testing, the Applicant has proposed to install a noise barrier on the southeast side of the fenced enclosure.
- The Applicant submitted a Non-Ionizing Electromagnetic Exposure Analysis (NIER) Report, prepared by B.J. Thomas. The calculations show

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- that the maximum permissible exposure (MPE) at ground level at the base of the monopole and the power density is 0.003913 mW/cm^2 with an assumed worst-case power level of 10,000 watts effective radiated power (ERP) for the lowest antenna array. This is 0.8378 percent of the MPE limit for the general population, satisfying regulatory requirements.
- The proposed site is located in the Highway Commercial zone of the city and complies with location restrictions.
 - The proposed antennas are eight feet in height, which is below the maximum allowed height of 15 feet.
 - The proposed 130-foot monopole is a monopine tree with a total height of 140 feet to accommodate the crown of the tree and provide coverage for the antennas.
 - The proposed WCF is located approximately 3,500 feet from the nearest wireless tower.
 - The height is within the maximum allowed and complies with height regulations.
 - The proposed WCF is located approximately 1,000 feet from the nearest residentially zoned property.

Exhibit 1, Staff Report, pages 9 through 11; Exhibits 15 through 17.

Testimony

12. City Planning Manager Amy Rusko testified generally about the proposal and how, with conditions, it would comply with the Comprehensive Plan and applicable municipal code requirements. She explained that the proposal is for construction of a monopole II wireless communication facility that would accommodate up to three carriers, including AT&T. She noted that the City did not receive any comments in response to its notice materials and that the neighborhood meeting did not have any attendees. She commented that the Determination of Nonsignificance had not been appealed. Ms. Rusko clarified that the public hearing was advertised as remote-access only, but members of the public could request to attend the meeting in-person if they had access issues connecting to the hearing using remote access technology. *Testimony of Ms. Rusko.*
13. Applicant Representative Nancy Sears testified that she concurs with the City's analysis of the proposal, had the opportunity to review the recommended conditions of approval, and that the Applicant would comply with the recommended conditions. *Testimony of Ms. Sears.*

Staff Recommendation

14. Ms. Rusko testified that City staff determined the proposed development would comply with the City Comprehensive Plan and all applicable development regulations. Accordingly, staff recommends approval of the Applicant's request for a conditional use

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permit, with conditions. *Exhibit 1, Staff Report, pages 14 through 17; Testimony of Ms. Rusko.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has the authority to hear and decide the application for a conditional use permit. *Revised Code of Washington (RCW) Chapter 36.70.970; AMC 10.12.230; AMC 20.16.170.*

Criteria for Review Conditional Use Permit

In considering whether to approve an application for a conditional use permit, the hearing examiner shall proceed according to the following format:

- (1) The hearing examiner shall consider whether the application is complete. If no evidence is presented that the application is incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the hearing examiner that the application is complete.
- (2) The hearing examiner shall consider whether the application complies with all of the applicable requirements of this title. If a finding to this effect can be made, the hearing examiner need not make further findings concerning such requirements. If such a finding cannot be made, then a finding shall be made that the application be found not in compliance with one or more of the requirements of this title. Such a finding shall specify the particular requirements the application fails to meet. Separate findings may be made with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the hearing examiner to be unsatisfied through this process.
- (3) If the hearing examiner concludes that the application fails to comply with one or more requirements of this title, the application shall be denied. If the hearing examiner concludes that all such requirements are met, he shall issue the permit unless he denies the application for one or more of the reasons set forth in Section 20.16.140 (Special Use Permits and Conditional Use Permits). Specific findings for such a denial must be made, based upon the evidence submitted, justifying such a conclusion.

AMC 20.16.170(e).

Subject to Subsection (d) [of AMC 20.16.140], the designated decision-maker shall issue the requested permit unless it concludes, based upon the information submitted at a hearing if there is a hearing or by signed letter if there is not, that:

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- (1) The requested permit is not within its jurisdiction according to the table of permissible uses, or
- (2) The application is incomplete, or
- (3) If completed as proposed in the application, the development will not comply with one or more requirements of this title (not including those the applicant is not required to comply with under the circumstances specified in Chapter 20.32, Nonconforming Situations), or
- (4) The proposed project has not complied with SEPA, or
- (5) The proposed project is not in conformance with the comprehensive plan, transportation plan, or other adopted plans, regulations, or policies.

AMC 20.16.140(c).

Even if the permit-issuing authority finds that the application complies with all other provisions of this title, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (1) Will materially endanger the public health or safety, or
- (2) Will materially harm adjoining or abutting property,
- (3) In terms of design and use will not be compatible with the area in which it is located.

AMC 20.16.140(d).

*Supplemental Use Regulations – Wireless Communication Facilities
General Wireless Communication Development Standards*

Unless other[wise] modified by subsequent subsections, all wireless communication facilities shall be subject to the following standards and requirements:

- (1) Collocation on existing support structures shall be encouraged and shall comply with Chapter 20.102. All wireless communication facilities support structures shall be built to accommodate the location of two or more wireless communications facilities unless proved infeasible. It shall be a continuing condition on all land use permits issued for a wireless communication facility that the permit holder allows collocation for reasonable compensation. Collocation on existing support structures or base stations shall be exempt from zoning and development regulations, provided that an application for an “eligible facilities request” has been received and determined that there is no substantial change to the existing support structure or base station, per the criteria in Chapter 20.102.
- (2) Except for micro- and mini- facilities, shelters or cabinets used to house radio electronics equipment and the associated cabling connecting the equipment shelter or cabinet to the facility support structure shall be concealed, screened, camouflaged or placed underground.

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- (3) Wireless communication facilities shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practical. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.
- (4) Federal Aviation Administration Jurisdiction. All applications for telecommunications facilities regulated by this section must comply with all FAA requirements pertaining to operations of a telecommunications device on or near the Arlington Airport, including FAA Part 77 regulations. It is the responsibility of the applicant to be familiar with and meet relevant FAA regulations.
- (5) All wireless telecommunications facilities are subject to Section 20.44.210 (Noise).
- (6) Signals emanating to or from wireless communications equipment shall conform to current FCC regulations with regard to avoiding the creation of interference to neighboring electronic or other operating devices.
- (7) FCC Preemption. In any proceeding regarding the issuance of a permit under the terms of this section, federal law prohibits consideration of environmental effects of radio frequency emissions to the extent that the proposed facilities comply with the Federal Communications regulations concerning such emission.

AMC 20.44.034(b).

Development Standards for Monopole II

- (1) Monopole II facilities are only permitted in the portion of the general industrial (GI) district east of 67th Avenue NE and south of 204th Street NE, and the entire highway commercial (HC) zone.
- (2) Macro facilities are the largest permitted wireless communication facilities allowed on a monopole II facility.
- (3) The maximum height for a monopole II facility support structure shall be one hundred fifty feet. Antennas may extend above the monopole II wireless communications support structure another fifteen feet, making the maximum permitted height of the support structure and antennas one hundred sixty-five feet (one hundred fifty feet plus fifteen feet).
- (4) Monopole II facilities shall be separated from other wireless communications facilities by a distance of at least five hundred feet.
- (5) Monopole II facilities are not allowed within three hundred feet of a residential zone.
- (6) The facility shall also comply with the requirements of subsection (b).

AMC 20.44.034(g).

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The Federal Telecommunications Act of 1996

In addition to considering the criteria and guidance in the Arlington Municipal Code, the Hearing Examiner must be cognizant of federal statutes and court decisions that impact what authority a local government has over the siting of wireless communication facilities.

Federal law places certain limitations upon the power of local government to control the siting of personal wireless service facilities (wireless facilities). *47 U.S.C. 332(c)(7)(A)*. Chief among those limitations is the preemption of control over radio-frequency emissions. *47 U.S.C. 332(c)(7)(B)(iv)*. As long as the wireless facility emits radio energy within the Federal Communications Commission's guidelines, local jurisdictions are forbidden from considering the environmental effects of such emissions in decisions about placement, construction, or modification of wireless facilities.

Other restrictions include a ban on any regulations that prohibit or have the effect of prohibiting the provision of personal wireless services. *47 U.S.C. 332(c)(7)(B)(i)(II)*. When applying a zoning code to a specific wireless facility site proposal, the local authority retains most of its original discretion. Both the visual impact of a wireless facility and the facility's departure from the area's general character can be legitimate reasons for denial of a siting permit. *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 727 (9th Cir. 2005). The standard for evaluating the denial of a particular antenna site adopted is the "least intrusive" standard. *MetroPCS*, 400 F.3d, at 735. Under the "least intrusive" standard, the Applicant bears the burden of showing that a particular site is the least intrusive site. *See APT Pittsburgh Ltd. Partnership v. Penn Tp. Butler County of Pennsylvania*, 196 F.3d 469, 479-80 (3d Cir. 1999). If the proposed site is the least intrusive and the denial of that location would effectively prevent an applicant from providing its service in the area, then the permit must be issued. *Cingular Wireless, Inc. v. Thurston County*, 425 F.Supp.2d 1193, 1195-6 (W.D. Wash. 2006); *47 U.S.C. 332(c)(7)(B)(iv)*.

The criteria for review adopted by the Arlington City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

- 1. With conditions, the proposal would satisfy the requirements for approval of a conditional use permit.** The City determined that the application was complete on July 21, 2022. The City Department of Community and Economic Development (DCED) analyzed the environmental impacts of the proposal and determined that the proposed use would not have a probable significant adverse impact on the environment. Accordingly, DCED issued a DNS for the proposal on August 3, 2022. The City provided reasonable notice and opportunity to comment on the proposal and on the DNS. The City did not receive any comments on the proposed use from members of the public or reviewing

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departments and agencies in response to its notice materials, and the DNS was not appealed.

The proposed wireless telecommunication facility (WCF) would consist of a 130-foot monopole with up to 12 antennas and 18 remote radio units, camouflaged as a 140-foot pine tree, with ancillary ground equipment including surge protectors and a back-up diesel generator. The proposed antennas would be eight feet in height. The proposed WCF would have the capacity to accommodate up to two additional carriers. The facility would be located in a parking lot associated with a nearby shopping center. Existing site conditions, including site topography and existing vegetation would also ensure that the structure would be compatible with surrounding uses. The proposed ground equipment would be screened from view by a six-foot chain link fence with interior metal screening. The Applicant submitted a noise survey demonstrating that the proposed use would comply with City's noise ordinance, except for during maintenance testing. During monthly maintenance testing, noise would be 5 dBA above the permitted 65 dBA. To mitigate for noise impacts, the Applicant would install a noise barrier on the southeast side of the fenced enclosure. The Applicant submitted a Non-Ionizing Electromagnetic Exposure Analysis demonstrating that the proposed use would generate at a worse-case power level, 0.8378 percent of the maximum possible exposure limit for the general population, consistent with regulatory requirements.

The property does not contain any critical areas or associated buffers. The proposed development would not endanger the public health or safety, or adversely affect abutting properties. The proposed use would be unmanned and would not add additional traffic except for monthly inspections. The proposal would not include any cutting, grading, or filling and would not emit any noxious emissions that would materially harm adjoining or abutting properties. The property is designated Highway Commercial, with a Mixed Use Overlay, by the City Comprehensive Plan. The proposal would be consistent with goals and policies of the City Comprehensive Plan promoting and maintaining an urban environment within the City that enhances livability for its residents and ensuring adequate utility and transportation services to accommodate businesses providing jobs.

Monopole II wireless communications facilities are an allowed use in the "Highway Commercial" (HC) zone with a conditional use permit, subject to compliance with the City's supplemental development regulations for wireless communications facilities under AMC 20.44.034. The proposal to construct a 130-foot monopole camouflaged as a 140-foot pine tree and associated ground equipment is an appropriate use in the HC zone and compatible with neighboring commercial developments. The proposal would comply with dimensional standards applicable to the HC zone for maximum lot coverage, setbacks, lot size, and lot width. Monopole II WCFs are exempt from the 50-foot maximum building height for the HC zone. The proposal would comply with maximum height standards for monopole II WCFs. The Applicant submitted a Radio Frequency

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Justification Report, which also confirmed that the proposed monopole height would be the minimum necessary to meet service objections within the targeted service area.

The property is located in Airport Protection Subdistrict C. City staff analyzed the airport protection subdistrict criteria and determined that the proposal would comply with regulations related to bird population impacts; electrical interference; fly ash, dust, vapor or gases emissions; penetration into airspace surfaces; and aviation easements. The Hearing Examiner concurs with this assessment. AT&T would perform monthly inspections to discourage nesting and increases in bird populations. The Applicant submitted a Radio Frequency Noninterference letter which demonstrated that the proposed facility would not cause electrical interference with navigational signals or radio communications at the airport or with aircraft. The Applicant would be required to obtain an aviation easement prior to project completion. As addressed in the conclusions below, the proposal would meet WCF special use standards applicable to WCFs generally and specific to Monopole II facilities. Conditions, as detailed below, are necessary to ensure that the proposal meets the requirements for CUP approval and all other local, state, and federal code requirements. *Findings 1 – 14.*

- 2. With conditions, the proposal would meet the general wireless communication facilities development standards under AMC 20.44.034(b).** City staff reviewed the proposal and determined that it would comply with applicable FCC, FAA, state, and city regulations. The proposed WCF would accommodate AT&T and up to two additional carriers. The WCF would be located in a parking lot associated with a shopping center and would be approximately 1,000 feet from the nearest residentially zoned property. The 130-foot monopole would be camouflaged as a 140-foot pine tree to blend in with surrounding evergreen trees. In addition, the proposed ground equipment would be shielded by a six-foot chain link fence with interior metal screening and existing buildings, vegetation, and topography. The proposed antennas are eight feet in height, which is below the maximum allowed height of 15 feet. The Applicant submitted a noise report that determined that the proposed development would exceed the maximum permissible noise level by 5 dBA for a 15 minute period during maintenance testing. To mitigate for noise impacts, the Applicant would install a noise barrier on the southeast side of fenced enclosure. The Applicant submitted a Non-Ionizing Electromagnetic Exposure Analysis that determined that proposed development would generate effective radiated power (ERP) levels below maximum permissible exposure (MPE). As noted in Conclusion 1, the proposed development complies with regulations for Airport Protection Subdistrict C. The Applicant would be required to receive approval from the FAA prior to issuance of a building permit. Conditions, as detailed below, are necessary to ensure that the proposal meets the requirements for a general WCF and all other local, state, and federal code requirements. *Findings 1, 8, and 11.*
- 3. With conditions, the proposal would meet the development standards specific to monopole II wireless communication facilities under AMC 20.44.034(g).** As noted in

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Conclusion 1, the proposed development would be located in the HC zone. The Monopine would be 140 feet in height, including the eight-foot antennas, which is below the 150-foot maximum height for monopole II WCFs. The proposed development would be located approximately 1,000 feet from the nearest residential development and approximately 3,500 feet from the nearest wireless tower. As discussed in Conclusion 2, the proposed development would comply with the general WCF development standards under AMC 20.44.034(b). Conditions, as detailed below, are necessary to ensure that the proposal meets the requirements for a monopole II WCF and all other local, state, and federal code requirements. *Findings 1, 5, 7, 8, and 11.*

DECISION

Based upon the preceding findings and conclusions, the request for a conditional use permit to construct a 130-foot monopole, with associated ground equipment, on a 40-foot by 20-foot leased area at 17306 Smokey Point Drive, is **APPROVED**, subject to the following conditions:³

1. All development shall be in substantial conformance with the approved site plan received on August 4, 2022, subject to any conditions or modifications that may be required as part of the permit review.
2. The developer shall meet all local, state, or federal code requirements. Please refer to the Arlington Municipal Code for a complete list of code requirements for your project type.
3. The chain link security fence proposed to enclose the leased area shall be black vinyl coated with interior metal panel screening.
4. In order to mitigate for the noise created with the generator maintenance testing, the Applicant shall install a noise barrier per the Acoustical Report on the southeast side of the fenced enclosure.
5. The Applicant shall receive FAA approval of Part 77 Form 7460 prior to issuance of the building permit for the project.
6. The Applicant shall record an aviation easement over the property prior to final approval of the project.
7. The Applicant shall construct all existing, extended, and new power lines (not to include transformers or enclosures containing electrical equipment, including but not limited to, switches, meters, or capacitors which may be pad mounted), telephone, gas distribution, cable television, and other communication and utility lines in or adjacent to any land use or building permit approved after the effective date of this chapter shall be placed

³ Conditions include those required to reduce project impacts as well as those required to meet City codes.

underground in accordance with the specifications and policies of the respective utility service providers and located in accordance with the administrative guideline entitled "Public Works Construction Standards and Specification." Even in the event the distribution line originates from a point opposite any public roadway from the new construction the service lines shall be placed beneath said roadway by means of boring or surface excavation across said roadway.

8. A building permit application shall be reviewed and approved prior to building construction on the site.
9. All building permits shall meet the most current edition of the International Building Code.
10. Construction hours of operations are limited to 7:00 AM to 7:00 PM Monday through Saturday. No construction activity or use of heavy equipment may occur on Sundays or holidays observed by the City.
11. All contractors working on the subject site shall obtain a City of Arlington Business License through the Washington State Department of Licensing.

DECIDED this 11th day of October 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

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