



Development Services Department  
55 E. Moore Street  
Walla Walla, WA 99362  
(509) 524-4710

## NOTICE OF FINAL DECISION

FILE# CUP-22-0002, SEP-22-0020

Notice is hereby given on **November 1, 2023**, of issuance of a decision per City of Walla Walla Municipal Code (WWMC) Section 20.14.090 for File No. CUP-22-0002 and SEP-22-0020. A copy of the City of Walla Walla Hearing Examiner decision is attached hereto.

1. Applicant: J5IP, on behalf of New Cingular Wireless PCS, LLC  
23035 SE 263rd Street, Maple Valley, WA 98038
2. Property Owner: The First Church of God of Walla Walla/Blue Mountain Church,  
928 Sturm Avenue, Walla Walla, WA 99362
3. Application filing date: November 7, 2022
4. Date that application was determined to be substantially complete: November 28,  
2022
5. Location and description of proposed action: 928 Sturm Avenue, APN 36072814121  
The applicant requested a Conditional Use Permit for construction of a new wireless communication facility (cellular tower) to include a 65-foot monopine (stealth technology).
6. WA State Environmental Policy Act (SEPA) Lead Agency: City of Walla Walla.  
A Mitigated Determination of Non-Significance (MDNS) was issued on August 31, 2023.

### APPEAL:

This decision may be appealed as provided in the Revised Code of Washington (RCW) 36.70C Judicial Review of Land Use Decisions/Land Use Petition Act (LUPA), per Walla Walla Municipal Code 20.38.

Appeals must be filed with Walla Walla County Superior Court within 21 days of the issuance of this decision.

#### *AFFECTED PROPERTY VALUATION:*

*Under Walla Walla Municipal Code Section 20.14.090, affected property owners may submit to the Walla Walla County Assessor request to change their property's valuation for property tax purposes notwithstanding any program for revaluation.*

Jonathan D. Maland  
Senior Planner

Enc. City of Walla Walla Hearing Examiner Decision

cc: Parties of Record, Applicant and Walla Walla County Assessor



**CITY OF WALLA WALLA  
LAND USE HEARING EXAMINER**

IN THE MATTER OF	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
	)	DECISION
<b>CUP-22-0002</b>	)	
<b>New Cingular Wireless</b>	)	

THIS application having come on for hearing in front of the City of Walla Walla Hearing Examiner on September 21, 2023, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, and Decision:

**I. FINDINGS OF FACT**

1. The applicant is requesting a Conditional Use Permit for the construction of a new wireless communication facility (cellular tower) to include a 65-foot monopine (with attempted stealth technology) and accessory equipment, on the property located at 928 Sturm Avenue. Blue Mountain Church has authorized New Cingular Wireless PCS, LLC to serve as their agent for the Conditional Use Permit application process.
2. The Applicant is J5IP, on behalf of New Cingular Wireless PCS, LLC, 23035 SE 263rd Street, Maple Valley, WA 98038. The property owner is First Church of God/Blue Mountain Church, 928 Sturm Avenue, Walla Walla, WA 99362.
3. Property Location and Parcel Number: 928 Sturm Avenue, Walla Walla, Washington. Parcel Number: APN 36072814121. The subject property is the location of the existing Blue Mountain Church, (First Church of God). The subject property includes a sanctuary building, education building and parking lot improvements. The western area of the property is an undeveloped lawn area, with trees and grass.
4. Adjacent Property Zoning and Land Use:

	Comprehensive Plan	Zoning	Current Land Use
Project Site	Residential	Neighborhood Residential	Church and associated uses
North	Residential	Neighborhood Residential	Residences
South	Residential	Neighborhood Residential	Field and Residences
East	Residential	R-72 (County)	Residences

West	Residential	R-96 (County)	Residences
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5. The applicant prepared a State Environmental Policy Act (SEPA) Environmental Checklist for review under the provisions of Walla Walla Municipal Code (WWMC) Chapter 21.08. The City of Walla Walla SEPA Responsible Official issued a final SEPA threshold of a Mitigated Determination of Non-Significance (MDNS) on August 31, 2023. This MDNS was not appealed.
6. The facility as proposed includes a monopine (with attempted stealth technology) with six panel antennas, ground equipment boxes and emergency backup generator within a fenced compound. The fenced compound will be accessible from Sturm Avenue via the existing parking lot and proposed service lane. The Applicant proposes to attempt to disguise the pole as a pine tree.
7. The applicant is requesting a Level III (3) review/ Conditional Use Permit for a concealment canister and an antenna mounting platform on a new cellular tower.
7. Walla Walla 2040, the City's Comprehensive Plan, assigns a Residential land use designation to the subject property. As noted above, the property is located within the Neighborhood Residential zone.
8. The Development regulations/standards of Walla Walla Municipal Code 20.170 – Wireless Communication Facilities, pertain to this siting application.
9. The application is subject to a Level III review by the City of Walla Walla Hearing Examiner. The application was filed on November 7, 2022, and determined to be a complete application on November 28, 2022.
10. A Notice of Application was issued on December 1, 2022, with a comment period that concluded on December 20, 2022. The Notice of Application was mailed to property owners within 300 feet of the subject property, posted on the City's website, published in the Union Bulletin, and posted on-site, as required by WWMC 20.14.065 and provided to parties that requested special notice per WWMC 20.14.015.
11. The Notice of Application was also sent to members of the city of Walla Walla Site Plan Review Committee (SPRC) for comment. The one comment received from SPRC members was from the Fire Department affirming they reviewed the proposed site plan and have no issue with accessing the tower location, if improvements (driveway, gate/fence access) are constructed as depicted in the application materials.
12. Public comments were accepted in writing by the Development Services Department until December 20, 2022, as part of the formal public notice comment period. Upon the City making requests for additional application information, revisions and clarifications, the applicant produced this additional application material on February 21, 2023, and July 28, 2023. This additional application material substantially added to, clarified and modified the application materials and project scope and work. Given the significant additions, revisions and clarifications provided by the applicant, the City extended the comment period on this application to allow for additional written public comment up until the Public Hearing before

the Hearing Examiner. Public comments received by 5:00 P.M. on September 12, 2023, are referred to in this decision. Comments received by staff after 5:00 P.M. on September 12, 2023, were provided to the Hearing Examiner at the time of the public hearing for inclusion in the record. Additionally, following the hearing, the Hearing Examiner left the record open for additional public and Applicant comments.

13. On December 8, 2022, city staff requested the submittal of revised documents. The subject documents were received on February 21, 2023, and additional revised documents were received on July 28, 2023. Parties identified on the notification list were sent a letter notifying them of the documents and also that the documents were posted on the Development Services public notices web page. All documents pertaining to this conditional use permit request were made available for public viewing at the Development Services office, located at 55 E Moore Street, Walla Walla, WA.
14. A Notice of Public Hearing was issued on August 24, 2023, as required by Walla Walla Municipal Code Chapter 20.14, at least 15 days prior to the public hearing date of September 21, 2023. The Notice of Public Hearing was mailed to property owners within 300 feet of the subject property, parties requesting special notice, posted on the website, posted on-site at the subject location, and published on August 31, 2023, in the Walla Walla Union-Bulletin.
15. The SEPA Mitigated Determination of Non-Significance was issued on August 31, 2023, at least fifteen days prior to the public hearing on the proposal per RCW 36.70B.110(6)(b). This Mitigated Determination of Non-Significance reaffirmed the public hearing date, location, and manner for participating in the public hearing and affirmed that the public hearing shall be open to consideration of the environmental impacts of the proposal. This MDNS was not appealed.
16. Walla Walla Municipal Code 20.216 - Conditional Use, provides the procedure and process and criteria for reviewing Conditional Use applications for uses, while generally appropriate to an area or zone, require special consideration prior to them being permitted at any particular location. (See WWMC 20.216.010).
17. Walla Walla Municipal Code 20.36.070 Burden and nature of proof:
  - 17.1 "A. [...] the burden of proof for demonstrating by substantial evidence that the application is consistent with the applicable regulations is on the proponent. The application must be supported by proof that it:
    - 17.1.1 Conforms to the applicable standards and criteria of this code;
    - 17.1.2 Conforms to the policies adopted by reference in Section 21.08.160;
    - 17.1.3 Has adequately addressed environmental impacts under SEPA (when required).
  - 17.2 The appellant(s) shall have the burden of proof in administrative appeals as provided in Section [20.38.060](#)."
18. Walla Walla Municipal Code 20.216.040 General review criteria, decision process.
  - 18.1 "A. The Hearing Examiner shall make findings of fact and state reasons for granting the Conditional Use Permit. The findings of fact to include:

- 18.1.1 That the use will not endanger the public health or safety if located and developed where proposed, and that the use will not allow conditions which will tend to generate nuisance conditions to adjoining properties.
  - 18.1.2 That the location and character of the use, if developed according to the plan as submitted and approved or conditionally approved, will be compatible and in harmony with the area in which it is to be located.
  - 18.1.3 That Conditional Use Permit approval would be in general conformity with the Walla Walla Urban Area Comprehensive Plan as amended;
  - 18.1.4 That the use meets all required conditions and specifications set forth in the zone where it proposes to locate.
  - 18.2 To ensure the establishment of the above conditions, the Hearing Examiner shall have the authority to require and approve specific plans, to increase the requirements set forth above, and the requirements specified elsewhere in this code. But in no case shall the Hearing Examiner have the authority to decrease the requirements of this code through the Conditional Use Permit process. Any such decrease in the requirements of this code shall only be granted upon the approval of a Variance request.
  - 18.3 If the potential adverse impact of permit approval cannot be mitigated through imposition of conditions to a degree which assures that adjacent properties will not be unreasonably impacted, this shall constitute grounds for denial of the Conditional Use Permit.”
19. Walla Walla Municipal Code - Tables of Permitted Land Uses, 20.100.040.I Utilities. Wireless Communication Facilities and Related Structures are permitted via Conditional Use Permit in the neighborhood residential zone and subject to the criteria for siting under Walla Walla Municipal Code 20.170.
  20. Walla Walla Municipal Code 20.26 - Level III Review. The Conditional Use Permit requires a Level III review under WWMC 20.26. The Purpose of Level III procedures is to handle applications which require a quasi-judicial public hearing before a final decision by the hearing examiner.
  21. Level III land use applications are required for Conditional uses. (See WWMC 20.26.020(A). The hearing examiner shall approve, deny, or approve the application with such conditions as are necessary to bring the proposal into conformance with the standards of the code and policies of the Comprehensive Plan. (See WWMC 20.26.040(D).
  22. Walla Walla Municipal Code 20.170 – Wireless Communication Facilities. The purpose of this Chapter 20.170 is to establish appropriate locations, site development standards, and permit requirements to allow for wireless communication services to the residents of the City, in a manner which will facilitate the location of various types of wireless communication facilities in permitted locations so that they are consistent with the character of the City in general and the land use zones within which they are located. (See WWMC 20.170.010).
  23. The Walla Walla City Council adopted Walla Walla Municipal Ordinance 2022-26, on October 12, 2022, amending Walla Walla Municipal Code Chapter 20.170. This ordinance authorized the placement of Wireless Communication Facilities in residentially zoned districts on non-residential lands (houses of worship or offices) or on top of buildings that are taller than 35 feet, so long as they use effective stealth design and technology, and comply

with required setbacks from residences, height requirements, and other development regulations.

24. Comprehensive Plan. The Wireless Communication Facility development regulations of Walla Walla Municipal Code Chapter 20.170 allow for and regulate the placement of Wireless Communication Facilities. These and ancillary development regulations are consistent with and implement the Walla Walla Comprehensive Plan as evidence by Ordinance 2022-26, Section 11 which reads as follows and hereby adopted by the Hearing Examiner:
- 24.1 Section 11: The Walla Walla City Council finds that the development regulation amendments adopted by this Ordinance and the Comprehensive Plan as adopted by Ordinance No. 2018-15 conform to the requirements of Chapter 36.70A RCW and are consistent with and implement the Walla Walla Comprehensive Plan Update 2040. The Walla Walla City Council finds that the amendments adopted herein advance state interests which are stated in RCW 36.70A.010 and in the policies, goals, and other provisions of the City of Walla Walla's comprehensive plan, as amended. The specific policies supporting the amendments are as follows:
  - 24.2 Economic Development Goal 2: Walla Walla has high quality infrastructure to support economic development.
  - 24.3 Economic Development Policy 2.1: Provide the infrastructure needed for business and industries to locate in Walla Walla, including utilities, transportation connections, and suitable land capacity.
  - 24.4 Economic Development Goal 4: Walla Walla has a supportive environment for entrepreneurial opportunities and startup businesses.
  - 24.5 Economic Development Policy 4.1: Support home-based businesses and occupations by reviewing and implementing rules that are current and adaptive to new technologies.
  - 24.6 Economic Development Goal 5: Development standards and regulations are aligned with the needs of new and technology-based businesses.
  - 24.7 Economic Development Policy 5.1: Regularly review development regulations, evaluate the impact of regulations, and the needs of local businesses.
  - 24.8 Land Use Goal 3: There are a variety of uses allowed throughout Walla Walla that encourage options for housing and businesses.
  - 24.9 Land Use Policy 1.4: Review new development proposals to ensure they support the objectives of the Comprehensive Plan such as land use, transportation, community character, historic preservation, and sustainability.
  - 24.10 Environment and Natural Resources Policy 1.6 - Preserve and protect healthy mature trees in the community to the greatest extent possible, and promptly plant replacements when they cannot be saved.
  - 24.11 Capital Facilities and Utilities Policy 1.3: Ensure that the City's wireless communication facilities ordinance is updated to account for new technology, so it remains consistent with the community's vision and needs.
  - 24.12 Capital Facilities and Utilities Policy 1.4: Ensure that telecommunications services are provided at a level that enables residents and businesses to compete in the global marketplace while minimizing negative impacts on the aesthetic character of the community.

- 24.13 Capital Facilities and Utilities Policy 2.7: Ensure that facilities and infrastructure are designed and located with consideration of their impacts on community character
25. The applicant provided an application with supporting materials which are identified below.
26. The application with supporting materials was attached to the staff report and identified collectively as Exhibit I (Exhibit Pages 1-237) with individual submissions marked as attachments:
- 26.1 Attachment A- Resubmittal letter dated July 28, 2023
  - 26.2 Attachment 1 - Project Narrative resubmitted with revisions - July 28, 2023
  - 26.3 Attachment 2 - Statement of Code Compliance resubmitted with revisions - July 28, 2023
  - 26.4 Attachment 3 – Conditional Use Permit Application original submittal - November 7, 2022
  - 26.5 Attachment 4 - Owner’s Letter of Authorization original submittal - November 7, 2022
  - 26.6 Attachment 5 - SEPA Checklist resubmitted with revisions - February 21, 2023
  - 26.7 Attachment 6 - Environmental Technical Memo original submittal - February 21, 2023
  - 26.8 Attachment 7 - Geotechnical Report resubmitted with revisions - July 28, 2023
  - 26.9 Attachment 8 - NIER Report resubmitted with revisions - February 21, 2023
  - 26.10 Attachment 9 - Environmental Phase One Report original submittal - November 7, 2022
  - 26.11 Attachment 10 - Soil Resistivity Report original submittal - November 7, 2022
  - 26.12 Attachment 11 – Acoustical (Noise) Report resubmitted with revisions - July 28, 2023
  - 26.13 Attachment 12 - Title Report original submittal - November 7, 2022
  - 26.14 Attachment 13 - FCC License original submittal - November 7, 2022
  - 26.15 Attachment 14 – Photo-Simulations original submittal - November 7, 2022
  - 26.16 Attachment 15 - RF Justification resubmitted with revisions - July 28, 2023
  - 26.17 Attachment 16 - ATT Compliancy Statement original submittal - November 7, 2022
  - 26.18 Attachment 17 – Zoning Plan Set resubmitted with revisions - July 28, 2023
  - 26.19 Attachment 18 – Alternative Site Analysis resubmitted with revisions - July 28, 2023
  - 26.20 Attachment 19 – AT&T RF Information resubmitted with revisions - July 28, 2023
27. The applicant prepared a State Environmental Policy Act (SEPA) Environmental Checklist for review under the provisions of Walla Walla Municipal Code (WWMC) Chapter 21.08. The City of Walla Walla SEPA Responsible Official issued a final SEPA threshold of a Mitigated Determination of Non-Significance (MDNS) on August 31, 2023, which is attached hereto as Exhibit II, Attachment 13 (Exhibit Pages 262-265).
28. The following public comments were received during the formal comment period as well as those received up until 5:00 P.M., September 12, 2023. Comments received by staff after this date were provided to the hearing examiner at the time of the hearing for inclusion in the record.
- 28.1. Leroy G Wade Jr. Dated December 5, 2022
  - 28.2. Pamela Culbreth Dated December 7, 2022

28.3.	Dan Preas/George Hofer	Dated December 4, 2022
28.4.	Russel Brooks	Dated December 13, 2022
28.5.	Leroy G Wade Jr.	Dated December 12, 2022
28.6.	Barbara Knudson	Dated December 8, 2022
28.7.	Barbara Knudson and Everett Knudson (Date Stamped December 19, 2022)	
28.8.	Graycen Duffy	Dated December 18, 2022
28.9.	Alan Ashmore and Sheri Ashmore	Dated December 18, 2022 11:21
28.10.	Jon, Jen and Caleb Hein	Dated December 18, 2022
28.11.	Molly Batte	Dated December 18, 2022
28.12.	Kimi Schroeder	Dated December 18, 2022
28.13.	Dino Lucas	Dated December 18, 2022
28.14.	Michele Lucas	Dated December 18, 2022
28.15.	Amy Heinzman	Dated December 18, 2022
28.16.	Holly Harris	Dated December 17, 2022
28.17.	Mary Luckstead	Dated December 17, 2022
28.18.	Alan Ashmore and Sheri Ashmore	Dated December 18, 2022
28.19.	Pamela Culbreth	Dated December 19, 2022
28.20.	Connie DeMers and Douglas E. DeMers	Dated December 15, 2022
28.21.	Mark Bohnet and Laurie Bohnet	Dated December 19, 2022
28.22.	Barbara Knudson	Dated December 19, 2022
28.23.	Susan Pascual	Dated December 19, 2022
28.24.	Susan Pascual	Dated December 19, 2022
28.25.	Joe Turcotte and Anita Lavine	Dated December 19, 2022
28.26.	Molly Batte	Dated December 19, 2022
28.27.	Susan Matley	Dated December 20, 2022
28.28.	Barbara Knudson and Everett Knudson	
28.29.	Scott Krika (Janis Hart)	Dated December 19, 2022
28.30.	Barbara Knudson and Everett Knudson	
28.31.	Barbara Knudson	Dated December 20, 2022
28.32.	Washington State Department of Ecology	Dated December 21, 2022
28.33.	Barbara Knudson	Dated December 8, 2022
28.34.	Carl Feldhusen	Dated December 16, 2022
28.35.	Susan Wickham	Dated December 14, 2022
28.36.	Parker and Major Nancy Powell	Dated December 6, 2022
28.37.	Dave and Mary Gibson	Dated December 22, 2022
28.38.	Dan Preas	Dated December 21, 2022
28.39.	Everett and Barbara Knudson	
28.40.	Glynis McClellan	Dated January 30, 2023
28.41.	Victoria McClellan	Dated January 30, 2023
28.42.	Hannah McIntyre	Dated January 30, 2023
28.43.	Connie and Douglas DeMers	Dated February 4, 2023
28.44.	Ray and Pamela Culbreth	Dated February 5, 2023
28.45.	Vicky and Casey McClellan	Dated February 5, 2023
28.46.	Everett and Barbara Knudson	Dated February 26, 2023
28.47.	Douglas DeMers	Dated July 17, 2023
28.48.	Douglas DeMers	Dated July 15, 2023
28.49.	Russel Brooks	Dated August 27, 2023

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| 28.50. | Carma Carlile                   | Dated August 27, 2023           |
| 28.51. | Mary Fleenor-Moss               | Dated August 27, 2023           |
| 28.52. | Heidi Brigham                   | Dated August 27, 2023           |
| 28.53. | Jessica Portas                  | Dated August 28, 2023           |
| 28.54. | Sandra Cannon                   | Dated August 29, 2023           |
| 28.55. | Dino and Michele Lucas          | Dated August 30, 2023           |
| 28.56. | Jean Dolling                    | Dated July 12 and Aug. 29, 2023 |
| 28.57. | Jane Hashimoto<br>Aug 29, 2023) | Dated April 6, 2023 (post stamp |
| 28.58. | Mike Smith                      | Dated September 4, 2023         |
| 28.59. | Cindy Widmer                    | Dated September 4, 2023         |
| 28.60. | Scott and Renee Krivoshein      | Dated September 7, 2023         |
| 28.61. | Dan and Linda Johnson           | Dated September 7, 2023         |
| 28.62. | Vicky McClellan                 | Dated September 9, 2023         |
| 28.63. | Maeve McClellan                 | Dated September 10, 2023        |
| 28.64. | Robert D. Adams                 |                                 |
29. The Walla Walla Hearing Examiner conducted an open record public hearing on September 21, 2023.
30. The following exhibits were considered in rendering this decision:
- 30.1 Ex. 1 Application materials (pages 1-237)
  - 30.2 Ex. 2 Procedural documents (pages 238-270)
  - 30.3 Ex. 3 Ordinance 2022-26 adopted October 12, 2022 (pages 271-293)
  - 30.4 Ex. 4 Written public comments (pages 294-507)
  - 30.5 Ex. 5 Staff report.
  - 30.6 Ex. 6 Applicant's Powerpoint presentation
  - 30.7 Ex. 7 Applicant's Prehearing Memo
  - 30.8 Ex. 8 RF Emissions Compliance Report
  - 30.9 Ex. 9 Satellite image with overlay of other towers
  - 30.10 Ex. 10 Article entitled "Wireless Facilities impact on Property Values" dated November, 2012.
  - 30.11 Ex. 11 Valbridge Property Advisors Market Study dated May 17, 2018
  - 30.12 Ex. 12 Zachary Griefen letter dated September 21, 2023
  - 30.13 Ex. 13 Legal brief and attached documents presented by Dan Preas.
  - 30.14 Ex. 14 Timeline submitted by Douglas DeMers
  - 30.15 Ex. 15 Document regarding character of cell tower with vicinity submitted by Jennifer Knudson-Feinstein.
31. Exhibit 41A, page 2 of the SEPA checklist, was admitted into the record.
32. The City of Walla Walla Hearing Examiner considered all evidence within the record in rendering this decision.
33. Appearing and testifying was Richard Busch. Mr. Busch is the attorney and agent of the Applicant and property owner. Mr. Busch indicated that he agreed with all representations set forth within the staff report and had no objection to any of the proposed Conditions of

Approval. Mr. Busch submitted into the records Exhibits 6-11, which were all admitted into the record. Mr. Busch provided argument and testimony consistent with his written materials.

34. The following members of the public testified at the hearing:
- 34.1 Zachary Griefen. Mr. Griefen was the attorney for Mr. and Mrs. Knudson and other individuals. He submitted Exhibit 12 which was admitted into the record. Mr. Griefen provided argument and testimony consistent with the written materials that he had submitted into the record.
  - 34.2 Jim Piensiero
  - 34.3 Mary Gibson
  - 34.3 David Gibson
  - 34.4 George Hofer
  - 34.5 Ann Culbreth
  - 34.6 Marva Preas
  - 34.7 Dan Preas
  - 34.8 Bruce Aumack
  - 34.9 Douglas DeMers
  - 34.10 Leonard Norling
  - 34.11 Ray Culbreth
  - 34.12 Nancy Powell
  - 34.13 Parker Powell
  - 34.14 Jennifer Knudson-Feinstein
  - 34.15 Vicky McClellan
  - 34.16 Theresa Wilcox
  - 34.17 Jean Daling
  - 34.18 Amy May.
35. At the conclusion of the hearing, the Hearing Examiner kept the record open until the following times for the following purposes:
- 35.1 September 29, 2023, for the public to submit additional written comments. The public was given a five-page limit and Mr. Griefen was given a ten-page limit. Multiple submissions by the same person were not authorized.
  - 35.2 October 13, 2023, for the Applicant rebuttal argument and materials.
  - 35.3 The Hearing Examiner indicated that his decision would be made on or before November 10, 2023. The Appellant, the City, and Mr. Griefen all agreed to allow the Hearing Examiner additional time to render this decision.
36. The following additional comments were submitted and are admitted into the record:
- 36.1 September 18, 2023, email from Tracii Hickman;
  - 36.2 September 21, 2023, email from Kathleen Casteel Bassett with September 20, 2023 letter attached;
  - 36.3 September 28, 2023, email from Carlie Douglas;
  - 36.4 September 22, 2023, email from Casey McClellan;
  - 36.5 September 29, 2023, email from Marva Preas with attached September 26, 2023 letter and photograph with purported cell tower depiction;
  - 36.6 September 29, 2023, email from Dave Gibson with attached September 29, 2023, letter from Mr. Gibson with attached photo excerpted from the staff report and overhead diagram

- 36.7 September 27, 2023, email from Douglas DeMers with attached letter and portion of a document from AT&T
- 36.8 September 24, 2023, email from Janis Barten
- 36.9 September 21, 2023, email from Jennifer Feinstein
- 36.10 Second letter and email dated September 29, 2023, from Jennifer Feinstein. The Hearing Examiner did not allow multiple submissions by the same person and this comment is hereby deleted from the record and was not considered by the Hearing Examiner
- 36.11 September 24, 2023, email from Jim Pensiero
- 36.12 Second comment from Jim Pensiero dated September 28, 2023. Again, the Hearing Examiner did not allow for multiple comments from the same person when the record was left open and therefore, the September 28 email is hereby deleted from the record and was not considered by the Hearing Examiner
- 36.13 September 27, 2023, email from Jim Kolterman with attached letter from Laura and Jim Kolterman
- 36.14 September 29, 2023, email from Dan Preas with attached letter and overhead photograph of the area with an overlay of the subdivision approved in that depicted area
- 36.15 September 29, 2023, email from Mary Gibson
- 36.16 September 26, 2023, email from Nick Walsh
- 36.17 September 26, 2023, email from Richard Best
- 36.18 September 29, 2023, email from Vicky McClellan
- 36.19 September 29, 2023, email from Zachary Griefen with attached letter dated September 29, 2023
- 36.20 September 27, 2023, email from Marva Preas submitting an email comment from Sharon and Franklin Ordelheide. Even though this was submitted by Ms. Preas, this document is admitted into the record because it is essentially conveying a comment from Mr. and Mrs. Ordelheide
- 36.21 Undated letter from Reverend James Snyder of Blue Mountain Community Church received by the city of Walla Walla on September 28, 2023, with three photographs attached
- 36.22 October 13, 2023, letter from Richard Busch with attachments 1, 2, 3, 4, 5, 6, and 7.
37. Walla Walla Municipal Code 20.170.040 was amended by Ordinance 2022-26 setting forth the preference, so long as determined feasible and available, of the location of wireless communication facilities. See WWMC 20.170.040(C)(1)-(7).
38. In this amendment, there are seven potential locations referenced in the order of preference. Neighborhood Residential, Multi-Family Residential are rated six out of seven in the preference order.
39. Walla Walla Municipal Code 20.170.050 and 20.170.070 as amended by Ordinance 2022-26 sets forth additional requirements for the siting of telecommunication facilities within residentially zoned property.
40. As applicable to this decision, WWMC 20.170.050(A)(1) as amended is relied upon by the Applicants. This allows wireless communication facilities, antenna support structures, and all related structures that are designed using stealth technology. WWMC 20.170.050(A)(1)(a) sets forth examples of stealth design.

41. The Hearing Examiner finds, based upon the overwhelming evidence presented not only by the Applicant, but also by members of the public, that the attempt to disguise this particular wireless communication facility as a pine tree is not effective in disguising the wireless communication facility so that this facility blends into the surrounding environment. The proposed “pine tree” stealth technology is clearly out of place, not only due to its height, but also the lack of surrounding vegetation to further block the view of this wireless facility with natural vegetation. In reviewing the proposed “pine tree” stealth technology as proposed, it may not immediately look like a wireless communication facility, but it certainly does not look like a natural tree that blends in with the surrounding environment.
42. WWMC 20.170.020 defines “stealth” as meaning the “design and technology that minimizes the aesthetic and visual impact of wireless communication facilities by disguising, camouflaging, screening, architecturally integrating, and/or the incorporation of colors and design features to blend into the surrounding environment.”
43. Once again, the Applicants’ proposed wireless communication facility does not meet this definition of “stealth” because the proposed facility, which the Applicant will attempt to make look like a tree, does not “blend” into the surrounding environment, and is not otherwise effectively disguised. This is due to its height, the fact it doesn’t look like a natural tree in the application materials, and the fact that it stands out as an unnatural 65 foot tall tree in an area where no other natural tree is close to that height.
44. There are no Conditions of Approval that the Hearing Examiner can impose to create a “stealth” design. It is not within the Hearing Examiner’s authority to materially change the proposal submitted by an Applicant. WWMC 20.216.040(C) requires that if adverse impacts cannot be mitigated to assure that adjacent properties will not be unreasonably impacted, that this alone may be grounds for denial of the application.
45. It is true that the farther away you are from the proposed tower, the less obvious it is. However, the adjacent properties are unreasonably impacted by the proposed wireless communication facility, due to its location, visibility, and ineffectiveness of the proposed stealth technology. (See photo on right of page 180 of exhibit 1).
46. The Hearing Examiner finds and concludes, as a matter of law, that based upon the above analysis, the fact that the proposed “stealth” technology is not sufficient to mitigate the adverse impacts, and this fact is sufficient in and of itself to deny this proposal.
47. In addition, WWMC 20.170.070(A)(1) provides that the Applicant “shall be required to provide documentation that comprehensive efforts to identify alternative locations were made.”
48. The Hearing Examiner finds that while there was some effort to find a suitable alternative location, certainly there was not a “comprehensive” effort to identify alternative locations. This is because:
  - 48.1 The Applicant sent letters to 11 property owners that the Applicant thought might have a suitable location. No further follow up was made by the Applicant if there was no response from the letter recipient. On this basis alone, the Hearing Examiner finds that the effort to find an alternative location was not comprehensive.
  - 48.2 The City requested additional information as to the efforts made to find an alternative location by a request for additional information dated July 7, 2023. The Applicant’s

- revised Alternative Sites Analysis failed to provide all the information that was requested.
- 48.3 It is clear to the Hearing Examiner that after the Applicant received a positive response from Blue Mountain Church, the Applicant essentially ended any efforts, let alone comprehensive efforts, to find and comprehensively evaluate, other suitable locations.
- 48.4 The Applicant did not satisfy its burden of proof to show that a comprehensive review of potential locations, identified in and consistent with WWMC 20-170.040(C)(1-5), had been made.
- 48.5 The Applicant has failed to satisfy its burden of proof that the Applicant made comprehensive efforts to identify alternative locations as required by WWMC 20.170.070(A)(1).
49. Additionally, the Applicant is required to prove that there is a need for a wireless telecommunication facility at this location. AT&T has presented evidence that was admitted into the record that they claim demonstrates this need. However, members of the public and their attorneys have submitted evidence, that was admitted into the record, that the coverage in this area for AT&T customers is entirely adequate and is not suffering in any way. There is advertising from AT&T that was provided to the Hearing Examiner that was admitted into the record where AT&T appears to indicate that there is full coverage for AT&T wireless services in this area. This conflicting information from the Applicant is significant. The Hearing Examiner assumes that the Applicant's advertising is accurate.
50. Even if the Hearing Examiner were to accept the Applicant's position that there are gaps in service, which the Hearing Examiner rejects, there still has been no evidence that this is the only site that would eliminate all alleged gaps of coverage.
51. Therefore, the Hearing Examiner cannot find that the Applicant has satisfied their burden of proof to demonstrate by a preponderance of the evidence that there is a need for a wireless communications facility at this specific location.
52. The Hearing Examiner finds that there is insufficient information to make a finding that there is a radio frequency danger caused by the existence of a wireless communication tower.
53. The Hearing Examiner finds that there is insufficient evidence to make a finding that there is, in all cases, a decrease in home values for homes that are neighbors to a wireless communication facility. This is not to say that in specific indications there may be such association, but there has been no association proven in this matter.
54. The Hearing Examiner is aware that he is finding that this wireless communication facility is out of character with the surrounding environment and that the proposed stealth technology fails to disguise the tower, and that this might impact a particular home value. However, the Hearing Examiner is unable to make a general finding that home values decrease when homes are in the vicinity of a wireless communication facility.
55. The Hearing Examiner certainly has concerns raised by Mr. Griefen that pursuant to federal law, towers may be expanded to a height of 85 feet. Of course, a tower of this height would be inconsistent with the Walla Walla Municipal Code and would be a significant alteration to

this wireless communication facility if the height were to be increased to 85 feet. However, the Hearing Examiner finds that this issue is not before the Hearing Examiner. The Applicant is requesting a 65-foot-tall wireless facility, not a 85 foot tall facility. Nevertheless, the Hearing Examiner does have concerns that federal law may preempt local regulations regarding wireless communication facilities and their height, and that, despite a prohibition within the Walla Walla Municipal Code regarding a wireless communication facility having a height of 85 feet that this may be allowed pursuant to federal regulations. However, again expanding the height to 85 feet is not before the Hearing Examiner and the Hearing Examiner makes no finding that federal law would require the City to accommodate a wireless communication facility up to the height of 85 feet.

56. The Hearing Examiner below addresses the conditional use permit criteria set forth in WWMC 20.216.040.
  - 56.1 Regarding WWMC 20.216.040(A)(1), based on the Findings of Fact above, the Hearing Examiner finds that the height and appearance of this wireless communication facility does generate nuisance conditions to the adjoining the properties. The evidence is overwhelming from neighboring property owners as to the adverse impacts they will experience as a result of the construction of this wireless communication facility. The Hearing Examiner finds that the Applicant has not proven this criteria.
  - 56.2 Regarding WWMC 20.216.040(A)(2), based on the Findings of Fact above, the Hearing Examiner finds that the location and character of the use, as proposed, is not compatible with and in harmony with the area in which it is located. Once again, the height of the wireless communication facility, along with the ineffective attempt to disguise the facility as a tree, all within a residential zone, is not compatible with nor in harmony with this particular area where the facility is proposed to be built.
  - 56.3 Reviewing the Walla Walla Urban Area Comprehensive Plan, which are not zoning regulations, but are simply guidelines for development, based on the Findings of Fact above, the Hearing Examiner finds that the project would generally be inconsistent with the Walla Walla Urban Area Comprehensive Plan.
  - 56.4 The Hearing Examiner finds, based on the Findings of Fact above, that the proposed use does not meet all of the criteria set forth in the Walla Walla Municipal Code. This finding relates to findings that the use does not meet the criteria set forth in WWMC 20.170, as well as with the conditional use permit criteria discussed herein.
57. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

## **II. CONCLUSIONS OF LAW**

1. The City of Walla Walla Hearing Examiner has been granted the authority to render this decision.
2. The proposed Conditional Use Permit is not consistent with the Walla Walla Municipal Code.
3. The Applicant has failed to prove that all the required criteria have been met.

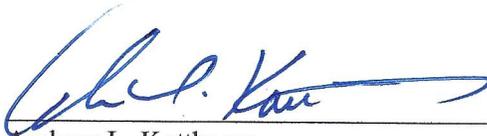
4. The proposed CUP is not consistent with the Goals and Policies of the Comprehensive Plan pertaining to Land Use and Housing and the Walla Walla Municipal Code.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

### III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Hearing Examiner hereby **DENIES** CUP 22-0002.

Dated this 31<sup>st</sup> day of October, 2023.

CITY OF WALLA WALLA HEARING EXAMINER



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Andrew L. Kottkamp

This decision is subject to appeal pursuant to the provisions set forth in the Walla Walla Municipal Code.