

January 3, 2024

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

ORDER OF DISMISSAL

SUBJECT: Department of Local Services file no. **CDUP230001**

NEW AT&T TOWER

Conditional Use Permit Appeal

Location: off the north end of 434th Ave SE on the southern portion of the King County Solid Waste Division site at 16925 Cedar Falls Rd SE, North Bend, WA 98054

Applicant: New Cingular Wireless PCS, LLC (AT&T)
represented by Kim Allen
Wireless Policy Group, LLC

[REDACTED]
Issaquah, WA 98027

Telephone: [REDACTED]

Email: [REDACTED]

Appellant: **George Learned**

[REDACTED]
North Bend, WA 98045

Telephone: [REDACTED]

Email: [REDACTED]

King County: Department of Local Services
represented by Warren Clauss
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 263-3377
Email: wclauss@kingcounty.gov

Overview

George Learned appealed a Department of Local Services (Local Services) approval of AT&T's application to construct a cell tower. Mr. Learned asserts that the facility's electromagnetic radiation would cause potential health problems. Because Mr. Learned's challenge is preempted by federal law, we dismiss his appeal.

Background

Federal law bars state and local governments from regulating personal wireless service facility placement, construction, and modification based on the environmental effects of radio frequency emissions, so long as such facilities comply with the Federal Communication Commission's (FCC's) emissions regulations. 47 USC 332.c.7.B.iv.

During the application process, AT&T submitted a report showing its project would, in a worst-case scenario, emit 0.1739% the FCC's maximum permissible exposure level. Local Services reviewed that report and concluded that AT&T had demonstrated its project would meet the federal standard, writing:

NIER: The applicant has provided a Non-Ionizing Electromagnetic Exposure Analysis & Engineering Certification to demonstrate that the proposed tower will comply with applicable health and safety regulations per the Federal Communication Commission NIER standards. The facility will be enclosed with fencing and access will be secured by a locked security gate. The proposed tower is designed to allow for collocation, so space will be available for additional carriers. It is noted that under the provisions in *The Telecommunications Act of 1996* dated February 8, 1996, King County no longer has authority to regulate placement of this facility on the basis of the environmental effects of radio frequency emissions. See the Other Considerations section in this Report for further discussion.

and


Under the provisions in *The Telecommunications Act of 1996* dated February 8, 1996, King County no longer has authority to regulate placement of this facility on the basis of the environmental effects of radio frequency emissions. The Federal Communications Commission (FCC) has stated in Section 704 (B)(1v) 'No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on to the extent that such facilities comply with the Commission's regulations concerning such emissions.' The applicant has provided calculations for radio frequency emission levels. The total radio frequency emissions are within the limits allowed under FCC regulations.

Mr. Learned's basis for appeal was that the facilities' electromagnetic radiation would cause potential health problems. We set a briefing schedule on AT&T motion to dismiss the appeal as preempted by federal law, along with a potential hearing date if there were unresolved issues related to federal preemption. Mr. Learned elected not to file a response.

Analysis and Conclusion

Mr. Learned has not submitted anything refuting Local Services' above quoted analysis, nor AT&T's underlying findings that the proposed cell tower would emit less than two-tenth of one percent of the FCC's maximum permissible exposure level. Because AT&T has shown that its proposal complies with federal emissions standards, Local Services had no authority to deny, or even to require modifications to, AT&T's proposal based on the concerns Mr. Learned raised. The examiner is also a local government entity with no such authority. Therefore, we grant AT&T's motion, dismiss Mr. Learned's appeal, and cancel the January 23 hearing.

DATED January 3, 2024.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **CDUP230001**

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I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 3, 2024.



Lauren Olson
Legislative Secretary

Allen, Kim

Wireless Policy Group, LLC
Hardcopy

Butler, Stephanie

Hardcopy

Carlsen, Greg/Connie

Hardcopy

Clauss, Warren

Department of Local Services

Cui, Tracy

Department of Local Services

Gretch, Sharon

Smartlink LLC (AT&T)
Hardcopy

Johnston, Kelly/Vince

Hardcopy

Learned, George

Hardcopy

Lousberg, Randy

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New Cingular Wireless PCS, LLC (AT&T)

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Peterson, Ty

Department of Local Services

Thomas, Cherie/Jesse

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