

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Timothy Donaldson
Walla Walla City Attorney
15 N. Third Ave.
Walla Walla, WA 99362
(509) 522-2843

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON
RICHLAND DIVISION

NEW CINGULAR WIRELESS
PCS, LLC, D/B/A AT&T
MOBILITY, a Delaware limited
liability company,

Plaintiff.

v.

CITY OF WALLA WALLA,

Defendant.

No. 4:23-cv-05162-SAB

AFFIDAVIT OF TIM DONALDSON IN
SUPPORT OF MOTION TO
INTERVENE

1. I am at least twenty-one (21) years of age, competent to make this affidavit and make it on my personal knowledge.
2. I have been the Walla Walla City Attorney since May 1, 1996 and represent the City of Walla Walla (“City”) in the above-entitled proceeding.
3. The above-entitled proceeding arises out of the City’s denial of an application made on behalf of New Cingular Wireless, LLC (“AT&T”) to erect a wireless communications facility (“cellular tower”) in a residential neighborhood.
4. Intervenors, Everett and Barbara Knudson, live in the residential

1 neighborhood in which the cellular tower would be located. According to the
2 City's GIS mapping system, the Knudson's property is located approximately 445
3 feet from the site of the proposed tower.
4

5 The City gave public notice of AT&T's application on December 1, 2022, and
6 the Knudsons timely commented on the application and participated throughout
7 the City's permitting process in opposition to the proposed tower. The Knudsons,
8 in my opinion, consistently expressed a significant protectable interest relating to
9 the cellular tower proposed by AT&T due its proximity to their property.
10
11

12 A. Barbara Knudson first submitted a comment letter expressing concerns
13 about the proposed tower on December 8, 2022. She also submitted a letter
14 to the Walla Walla City Council on that date opposing the proposed tower.
15

16 B. Barbara and Everett Knudson submitted comment letters opposing the
17 proposed tower on December 19, 2022.
18

19 C. The Knudsons submitted letters opposing the proposed tower to the
20 Walla Walla County Commissioners and the County Planning Department
21 on December 19, 2022 which were copied to the City.
22

23 D. The Knudsons submitted additional letters to the City opposing the
24 proposed tower on or about December 20, 2022.
25

26 E. The Knudsons submitted a letter to the Walla Walla City Manager on
27

1 December 2022 opposing the proposed tower.

2 F. Barbara Knudson submitted an email opposing the proposed tower on
3 February 26, 2023.
4

5 G. Attorney Zachary Griefen of Bricklin & Newman, LLP submitted a
6 letter on behalf of the Knudsons on September 21, 2023 opposing the
7 proposed tower.
8

9 H. Attorney Zachary Griefen appeared on behalf of the Knudsons at the
10 September 21, 2023 hearing before the Walla Walla Hearing Examiner and
11 made a presentation on their behalf.
12

13 I. Attorney Zachary Griefen submitted an additional letter on behalf of the
14 Knudsons on September 29, 2023 opposing the proposed tower.
15

16 In summary, the Knudsons raised many concerns about how the proposed
17 cellular tower would negatively affect their property and their neighborhood. The
18 Knudsons' concerns were representative of concerns expressed by their neighbors
19 about negative impacts that they believed would occur if a conditional use permit
20 was issued by the City to allow the tower in their neighborhood.
21
22

23 It is my opinion based on personal observation that Barbara Knudson was her
24 neighborhood's recognized leader and spokesperson in opposition to the proposed
25 cellular tower. The Walla Walla Hearing Examiner issued his initial decision
26
27

1 denying a permit for the proposed tower on October 31, 2023. (The decision was
2 later corrected by the Walla Walla Hearing Examiner on November 2, 2023).
3
4 Many of the neighbors who had opposed the tower appeared at the November 1,
5 2023 Walla Walla City Council meeting. I observed neighbors thanking Barbara
6 Knudson for leading the opposition to the proposed tower. One neighbor
7 appreciatively referred to Barbara Knudson as the “tip of the spear” for
8 neighborhood opposition.
9

10
11 6. It is my opinion that the disposition of this matter could as a practical matter
12 impair or impede the Knudsons’ ability to protect the interests that they expressed
13 throughout the City’s administrative hearing process.
14

15 A. The Walla Walla Hearing Examiner denied a permit for the proposed
16 cellular tower after considering a substantial amount of public input in the
17 matter (which included the input provided by the Knudsons referenced
18 above).
19

20 B. AT&T has not requested remand to the Walla Walla Hearing Examiner
21 in the above-entitled action for further action, and has instead asked this
22 Court for a “declaration and judgment that AT&T is entitled to approval of
23 the Proposed Facility pursuant to its Application” and that this Court enter
24 an order “mandating (a) that the City grant forthwith AT&T’s Conditional
25
26
27

1 Use Permit consistent with AT&T's Application; and (b) that the City grant
2 forthwith all other authorizations necessary for construction of the Proposed
3 Facility[.]”
4

5 If AT&T's prayer for relief is granted by this Court, the Knudsons would
6 therefore have no further opportunity to be heard regarding their opposition to
7 construction of the proposed cellular tower near their property, and they would be
8 deprived of any ability to protect their interests as they see fit if their motion to
9 intervene is denied.
10
11

12 7. The City is defending the November 2, 2023 denial of AT&T's application in
13 the above-entitled matter, but it will not be arguing all of the concerns raised by
14 the Knudsons.
15

16 A. The City adopted Ordinance 2022-26 (Oct. 12, 2022) to allow cellular
17 towers to be sited in residential zones of the City on certain conditions. The
18 City asserts that the ordinance properly balances its sometimes competing
19 land use policy goals of ensuring that “telecommunications services are
20 provided at a level that enables residents and businesses to compete in the
21 global marketplace while minimizing negative impacts on the aesthetic
22 character of the community” and providing “the infrastructure needed for
23 business and industries to locate in Walla Walla” while at the same time
24
25
26
27

1 ensuring that “facilities and infrastructure are designed and located with
2 consideration of their impacts on community character.” The City will only
3 make arguments in the above-entitled proceeding that are consistent with
4 City policies.
5

6 B. I am familiar with the arguments made by the Knudsons and on their
7 behalf by attorney Zachary Griefen. The City will not be advancing all of
8 those arguments in the above-entitled proceeding.
9

10 C. The Knudsons have argued not only that the proposed AT&T cellular
11 tower fails to meet City requirements, but also that the requirements should
12 be more strict. The Knudsons also expressed concerns about the particular
13 tower proposed by AT&T that were not raised by City planning staff.
14

15
16 The interests of the City and the Knudsons coalesce only insofar as both seek
17 to have this Court affirm the permit denial by the Walla Walla Hearing Examiner,
18 but the City does not share all of the objections made by the Knudsons about the
19 proposed cellular tower and will not be representing the Knudsons’ interests in
20 those regards.
21

22
23 8. It is my opinion that the Court will benefit from participation by the Knudsons
24 as intervenors in the above-entitled matter when deciding this matter.
25

26 A. I was present at the September 21, 2023 hearing before the Walla Walla
27

1 Hearing Examiner and I am familiar with the Hearing Examiner's
2 November 2, 2023 decision. The Hearing Examiner found the arguments
3 made by the Knudsons and on their behalf by attorney Zachary Griefen
4 helpful.
5

6 B. The Knudsons bring a personal perspective to the matter that differs
7 from the City's. They would be personally and directly affected by the
8 construction of the proposed cellular tower, and they provide a
9 neighborhood perspective that is more intimate than the City's regulatory
10 perspective.
11
12

13 9. It is my opinion that the Court will benefit from participation by the Knudsons
14 as intervenors in the above-entitled matter if potential settlement is desired.
15

16 A. This matter is essentially an appeal from a permit denial for a proposed
17 cellular tower. The City Code required public participation during the
18 permitting process.
19

20 B. It has been the policy of the City since early in my tenure as City
21 Attorney that the City will not agree to settle a matter in a land use appeal
22 with a party who has been denied a permit application without first
23 providing an opportunity for public input from those who were entitled to
24 participate during the administrative process and opposed the issuance of
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the permit.

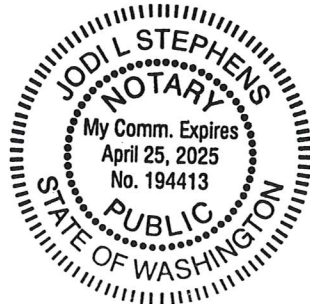
C. For reasons previously stated herein, it is my opinion that the Knudsons are a good representative for the neighborhood in which they live, and I believe that they would be an important contributor to any settlement discussions.


DATED: February 5, 2024


TIMOTHY J. DONALDSON

State of Washington)
) ss.
County of Walla Walla)

Signed and sworn to (or affirmed) before me on February 5, 2024 by Timothy J. Donaldson.




NOTARY PUBLIC
My commission expires:
April 25, 2025