

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 E. MALCOLM GREENLEES and SUZANNE)
5 R. GREENLEES,)
6)
7 Petitioners,)
8)
9 vs.) LUBA No. 91-109
10)
11 YAMHILL COUNTY,) FINAL OPINION
12)
13 Respondent,)
14)
15 and)
16)
17 CELLULAR ONE COMMUNICATIONS,)
18)
19 Intervenor-Respondent.)

20
21
22 Appeal from Yamhill County.

23
24 Wallace W. Lien, Salem, filed the petition for review
25 and argued on behalf of petitioners.

26
27 No appearance by respondent.

28
29 Timothy V. Ramis and Michael C. Robinson, Portland,
30 filed the response brief. Timothy V. Ramis argued on behalf
31 of intervenor-respondent.

32
33 HOLSTUN, Chief Referee; SHERTON, Referee; KELLINGTON,
34 Referee, participated in the decision.

35
36 AFFIRMED 02/04/92

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county decision granting site
4 design review approval for a mobile telephone communication
5 facility in the Public Works/Safety (PWS) zoning district.

6 **MOTION TO INTERVENE**

7 Cellular One Communications moves to intervene on the
8 side of respondent in this appeal. There is no objection to
9 the motion, and it is allowed.

10 **FACTS**

11 The approved facility includes (1) a concrete building
12 to house electronic telecommunications equipment, (2) a 130
13 foot high monopole tower, and (3) antennae and transmitter
14 devices (hereafter antennae) attached to the monopole tower.
15 Intervenor-respondent refers to the facility as a cell site.
16 The cell site is surrounded by a six foot high chain link
17 fence.

18 **ASSIGNMENT OF ERROR**

19 "Respondent improperly construed the Ordinance by
20 allowing a structure in excess of the height
21 limitation imposed by the zone."

22 The PWS district allows "telephone * * * transmitter
23 facilities of any kind * * *." Yamhill County Zoning
24 Ordinance (YCZO) 802.02(A). However, the YCZO imposes
25 height limitations within the PWS district, as follows:

26 "Height.

27 "1. The maximum building height for any dwelling

1 shall be thirty-five (35) feet;

2 "2. The maximum building height for all other
3 structures shall be sixty (60) feet; and

4 "3. Appurtenances usually required to be placed
5 above the roof level and not intended for
6 human occupancy such as spires, belfries,
7 cupolas, antennas, water tanks, ventilators,
8 chimneys and wind generators are not subject
9 to the height limitations of this Ordinance."
10 YCZO 802.06(G).

11 Petitioners contend the challenged 130 foot high tower
12 is a "structure," as that term is used in YCZO 802.06(G)(2),
13 and that the county erred by approving the challenged
14 facility without also approving a variance from the 60 foot
15 building height limit imposed by that section.

16 Intervenor-respondent contends the challenged 130 foot
17 high tower is properly viewed as an "appurtenance," as that
18 term is used in YCZO 802.06(G)(3).

19 YCZO Section 202 defines "structure" as follows:

20 "Construction of any kind, permanent or temporary,
21 fixed to, supported by or sunk into land or water,
22 and includes buildings, fences, signs and portable
23 devices including, but not limited to, travel
24 trailers and stored motor vehicles."

25 We agree with petitioners that the challenged 130 foot high
26 tower comes within the very broad definition of "structure"
27 in the YCZO. Therefore, the critical question is whether
28 the tower is also an "appurtenance," as that term is used in
29 YCZO 802.06(G)(3). If so, the height limitation of
30 YCZO 802.06(G)(2) does not apply, and the county committed
31 no error by approving the challenged facility without

1 requiring a variance to the height requirement of
2 YCZO 802.06(G)(2).

3 The term "appurtenance" is not defined in the YCZO.¹
4 The term "appurtenance" is defined in Websters Third New
5 International Dictionary 107 (1981), as follows:

6 "[A]n incidental property right or privilege * * *
7 belonging to a principal right and passing in
8 possession with it * * *: a subordinate part,
9 adjunct or accessory * * *: accessory objects used
10 in any function * * *." (Emphasis added.)

11 In the challenged decision the county explained as
12 follows:

13 "The proposed mobile telephone communications
14 facility includes a monopole antenna tower which
15 is not intended for human occupancy. The function
16 of the monopole antenna tower is to raise the
17 transmitter's signal to a height necessary for
18 acceptable regional and local cellular telephone
19 operations. This function dictates that such a
20 facility is usually required to be placed above
21 the roof level. For these reasons, the proposed
22 use is not subject to the height limitations in
23 the PWS district pursuant to this section."
24 Record 328.

25 Applying the above quoted definition of "appurtenance" in
26 this context, we agree with the county's apparent
27 interpretation that the tower is properly viewed as an
28 appurtenance.

¹YCZO 201.01(F) provides as follows:

"Any word or term not defined herein shall be used with a meaning of common standard [usage]. Any word, terms or phrases, not defined herein, shall be construed according to their common, ordinary and accepted meaning."

1 The primary functions of the challenged facility are
2 sending, receiving and processing telecommunication signals.
3 The antennae send and receive the signals. The equipment
4 housed on the ground processes those signals. YCZO
5 802.06(G)(3) explicitly recognizes that antennae are usually
6 required to be above the roof level to perform the sending
7 and receiving function.² The only function the tower serves
8 is to elevate the antennae sufficiently above the roof level
9 so that they may receive and transmit signals in conjunction
10 with the ground based switching and processing equipment.
11 We understand the county to have determined that the
12 proposed tower is therefore properly viewed as
13 "subordinate," "adjunct" or "accessory" and, therefore, an
14 "appurtenance." We believe that construction of the code is
15 both reasonable and correct.

16 The assignment of error is denied.

17 The county's decision is affirmed.

²To the extent the requirement for antennae to be located above the roof level is not resolved legislatively for all antennae by YCZO 802.06(G)(3), the evidentiary record is adequate to establish that the antennae at issue in this appeal must be above the roof level to perform their function.