

PLANNING & ECONOMIC DEVELOPMENT COMMITTEE

11-0338R

RESOLUTION REVERSING THE DECISION OF THE PLANNING COMMISSION REQUIRING T-MOBILE CENTRAL, LLC. TO OBTAIN SPECIAL USE PERMITS FOR EQUIPMENT UPGRADES AT VARIOUS TELECOMMUNICATIONS FACILITIES (PLANNING FILE NO. 11-046).

CITY PROPOSAL:

RESOLVED, that the city council finds as follows:

WHEREAS, T-Mobile Central, LLC. ("T-Mobile") has applied for building permits necessary to make equipment upgrades at the following locations where the applicant currently maintains wireless telecommunications facilities, and which were in existence prior to July 25, 2010:

- a. 815 West 9th Street;
- b. 2021 West 2nd Street;
- c. 222 North 2nd Avenue East;
- d. 4901 Grand Avenue;
- e. 3800 London Avenue;
- f. 1120 East 8th Street;
- g. 4901 Skyline Parkway;
- h. 100 Elizabeth Street;
- i. 1408 Maple Grove Road; and

WHEREAS, on March 25, 2011, the city notified T-Mobile that the land use supervisor had determined that a special use permit or amendment to an existing special use permit was required for each site and that building permits could not be issued until T-Mobile applied for and received special use permits; and

WHEREAS, pursuant to Section 50-37.1.0 of the Duluth City Code, 1959, as amended, T-Mobile appealed the decision of the land use supervisor to the Duluth planning commission ("commission") and the appeal was received by the city on April 5, 2011; and

WHEREAS, on April 11, 2011, the city notified T-Mobile that it was extending the action review deadline to 120 days as authorized by Minnesota Statutes Section 15.99 and the action deadline for the city's final decision is

August 3, 2011; and

WHEREAS, the appeal was heard by the commission at its May 10, 2011, meeting; and

WHEREAS, the commission voted to affirm the decision of the land use supervisor; and

WHEREAS, the basis for the commission's decision was its conclusion that the work, which T-Mobile represented as upgrades of equipment at existing sites, came within the definition of "modify or modification" as provided in Section 50-41-194 of the Code; and

WHEREAS, T-Mobile was provided written notice of the commission's action on May 13, 2011; and

WHEREAS, T-Mobile filed an appeal of the commission's decision to the city council on May 20, 2011, and pursuant to Section 50-37.1.0(4) of the Code; and

WHEREAS, the city council heard the appeal at the council's June 27, 2011, meeting of the committee of the whole, and the matter was on the agenda of the June 27, 2011, council meeting.

FURTHER RESOLVED, that the decision of the commission, which affirmed the decision of the land use supervisor to require T-Mobile to obtain special use permits for each site, is reversed on the following grounds:

- a. Section 50-20.4.E-2 of the Code provides in relevant part as follows:
All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before [July 25, 2010] shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this Section 50-20.4.E. Any repair and maintenance of a wireless facility does not require an application for a special use permit.
- b. Section 50-41-194 defines the phrase "modify or modification" in the

context of wireless telecommunications facilities as follows in relevant part:

the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access parking and/or an upgrade or changeout of equipment for better or more modern equipment. . . . A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component

c. The work proposed by T-Mobile consists of equipment upgrades and the work does not include the replacement of identical components nor is the work normal repair and maintenance.

d. The equipment upgrades are visually discernable and come within the definition of "modify or modification."

e. Although the modifications will result in visible changes to the sites, those changes are so minor that they are insignificant and not the type intended to implicate the provisions of Section 50-20.4.E-2.

f. The modifications do not implicate the requirement for a special use permit or modification to an existing special use permit as provided in Section 50-20.4.E-2.

Approved:



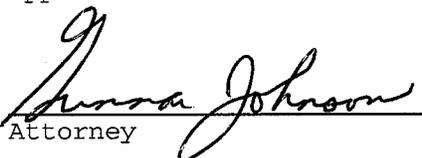
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PLNG/ATTY 06/16/2011 06/16/2011

STATEMENT OF PURPOSE: This resolution reverses the decision of the Land Use Supervisor and the Duluth Planning Commission and will allow T-Mobile Central, LLC. to obtain building permits without obtaining special use permits for each site that is the subject of this appeal.