

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0530R

RESOLUTION AFFIRMING THE DECISION OF THE PLANNING COMMISSION TO GRANT THE APPLICATION FOR A SPECIAL USE PERMIT BY AT&T/NEW CINGULAR WIRELESS FOR A WIRELESS TELECOMMUNICATIONS FACILITY (PLANNING FILE NO. 11-100).

CITY PROPOSAL:

RESOLVED, that the city council finds as follows:

1. On July 12, 2011, AT&T/New Cingular Wireless ("Applicant") applied for a special use permit to construct a telecommunications facility consisting in principal part of a 75 foot monopole for cellular antennas and a 12 foot by 28 foot ground equipment shelter.

2. Pursuant to Minnesota Statutes Section 15.99 the Applicant waived the final action deadline mandated by the statute.

3. The proposed facility will be located at 2120 Jean Duluth Road. This location is zoned RR-1 and presently includes residential and commercial use. The commercial use is the Amity Valley Kennels.

4. A public hearing was held by the planning commission at its September 13, 2011, meeting. The commission voted to approve the location of a 70 foot tower at the site rather than the 75 foot applied for and concluded that the Applicant had satisfied the use specific standards provided in Section 50-20.4E of the City Code. In reaching its decision the planning commission reviewed the city consultant's report. The consultant reviewed the application pursuant to Section 50-20.4E5 of the City Code. The consultant issued a report dated September 1, 2011, a copy of which is on file with the city clerk as Public Document No. \_\_\_\_\_.

5. On September 23, 2011, Brad Rauzi ("Rauzi") filed an appeal of the planning commission action to the city council pursuant to Section 50-37.10-4 of the City Code. The appeal asserts four objections to the planning commission action. They are: (1) The Applicant did not satisfy the location priority standards of Section 50-20.4E-3(e) of the City Code; (2) The subject parcel is partly designated preservation land in the comprehensive plan; (3) Placement of

the tower, a commercial venture, will have a negative effect on the nature and character of the neighborhood and on the area of wildlife; and (4) The Applicant has not established a need for the facility at the proposed location.

6. The appeal was heard at the October 10, 2011, meeting of the planning and economic development committee, and the matter was considered at the city council's October 10, 2011, meeting.

RESOLVED FURTHER, that the decision of the planning commission to approve the application for special use permit is affirmed on the following grounds:

A. The consultant's report contained the following information that is relevant to the four grounds asserted as the basis for this appeal:

1. Location priority. Rauzi objects to the use of the subject site and asserts that the proposal does not meet the standard provided for in Section 50-20.4E-3(e).

(a) The site location is a lowest priority site as provided in Section 50-20.4E-3(a). The consultant identified an alternative city-owned site that would satisfy the Applicant's operational needs; however, the city rejected the proposal to locate the facility at the city location. The Code does not require the city to allow placement of a wireless telecommunications facility on a city-owned site. The Applicant provided sufficient information that no other site with a higher priority and located within their search ring was available.

(b) Pursuant to 47 U.S.C. §332(c)(7)(B)(iii), "any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." No evidence has been offered that satisfies the substantial evidence standard mandated by the federal law and demonstrates that the location of the telecommunications facility at the proposed location will harm the health, safety and welfare of the city and its inhabitants and will have a deleterious effect on the nature and character of the community and neighborhood.

(c) Pursuant to 47 U.S.C. §332(c)(7)(B)(iv), "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulation concerning such emissions." Rauzi has not identified the nature of the health effects allegedly negatively impacted by the proposed facility.

B. Compliance with the comprehensive plan. Planning staff concluded in the report to the planning commission that the proposed use was consistent with the comprehensive land use plan. Pursuant to Duluth City Code Section 50-19.8 (Permitted Use Table) a telecommunications facility is an allowable special use in the RR-1 zone. Zoning of land takes priority over the provisions of a comprehensive plan.

C. Negative neighborhood effects. No evidence has been offered that satisfies the substantial evidence standard and demonstrates that the location of the telecommunications facility at the proposed location, presently used, in part, for commercial activity, will have a negative effect on the neighborhood or the area wildlife.

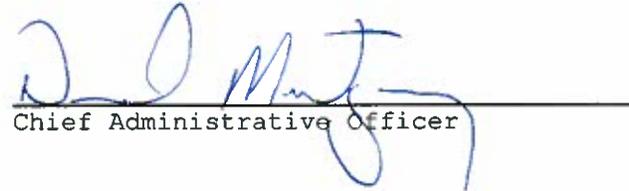
D. Demonstration of need. The consultant reviewed the Applicant's proof of need and reported to the planning commission that the Applicant provided sufficient propagation studies indicating a loss of coverage of critical areas that will be targeted by the proposed site. No evidence has been offered that

satisfies the substantial evidence standard and demonstrates that the consultant's evaluation of the propagation studies is inaccurate.

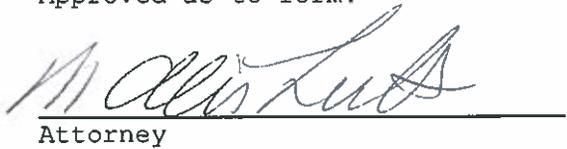
Approved:

  
Department Director

Approved for presentation to council:

  
Chief Administrative Officer

Approved as to form:

  
Attorney

PLNG/ATTY MAL:dma 10/05/2011

STATEMENT OF PURPOSE: This resolution affirms the decision of the Planning Commission to approve the application for a special use permit to construct a 70 foot monopole wireless telecommunications facility on a site located at 2120 Jean Duluth Road.

**CMS Application Review 9.1.11  
Duluth, MN ATT/New Cingular Wireless 2120 Jean Duluth Road**

**Proposed project is for a new 75' monopole with antennas mounted inside the pole.**

**Section 50-20.4 E Major Utility or Wireless Telecommunications Facility**

Only items of note have been mentioned in this review of the information provided by AT&T as compared to the requirements of the ordinance. The balance of the ordinance not mentioned in this review document remains fully applicable and required. Comments in red reflect comments made in this review. The black text is from previous comments.

**Policy:**

**Section a)** Requires a special use permit for any new, co-location, or modification of a wireless telecommunications facility.

**Applicability and Exemptions:**

**Section a)** Requires the complete facility and any new installation to comply with this Section 50-20.4.E. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Location Standards:** This site is proposed new 75' monopole. Therefore this section is applicable. The applicant has not provided information required by the ordinance to document and justify the location selected. The proposed site is the lowest priority for the City of Duluth; Residential. The applicant indicates in the application that they looked for existing towers within a 2 mile radius. The applicant stated they evaluated potential sites within their search ring, which we assume was 2 miles, but did not provide the detailed documentation of these sites to justify why this site has been selected. This information is critical to determine if the selected site has not bypassed sites with higher priorities. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information. CMS had suggested the tower be located on the City parcel of ground located just south of the proposed site. It would have generated non tax revenue for the community. This option was rejected by the City. A tower located on City property is a higher priority per the City ordinances.

**Other Standards and Requirements:**

**Section a & b)** The applicants are to include a statement of compliance with ordinance and checklist typically using the language indicated in these two sections. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Section c)** Address need for stealth or concealment technology for this location. The applicant has considered mounting the antennas inside the pole however since this is a residential location additional stealth may be required if this site is the best priority. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Section d)** Confirm all proposed utilities will be or are underground. Drawings indicate all utilities are underground.

**Section e)** Address existing or proposed turn around for emergency service. Drawings indicate a proposed turnaround.

**Section f)** Applicant shall confirm compliance with applicable codes. This was not addressed in the application. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

- Section g)** Holder shall obtain all permits, etc... Applicant shall confirm. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.
- Section h)** Confirm notification requirements. The City requests the applicant confirm. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.
- Section i)** Tower additional capacity for expansion is a requirement for new towers. Therefore this section is applicable. The applicant has not proposed a facility that has documented any additional capacity for future co-location. The ordinance requires capacity for 4 additional providers. Applicant has shown future capacity on the tower for three sets of antennas similar to the three sets of antennas they are utilizing. This appears to provide for one more carrier who would require a similar antenna configuration. Locating the antennas inside the pole does limit the future capacity for collocation. We support the concept for mounting the antennas inside the pole at this location. We do recommend that the applicant's antennas be located as close as possible together near the top of this structure to leave more space for additional carriers. We suggest the antennas proposed at 70', 60' and 50' be revised to 68', 62', and 56' with a 70' tower rather than a 75' tower. The antennas are 4.25' long per the drawings.
- Section j)** This section applies to proposed new guy towers. Therefore this section is not applicable.
- Section k)** An inspection report is only required for existing towers that are older than 5 years for a self support or 3 years for a guyed tower. Therefore this section is not applicable for this proposed monopole.
- Section l)** This negotiation section applies to owners of proposed new towers. Therefore this section is applicable. Applicant has not addressed this section. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.
- Section m)** This section addresses height of proposed new towers and lighting. Therefore this section is applicable.
- Section n)** This section addresses Migratory Bird Flight Path for new towers. Therefore this section is applicable. Proposed tower height is 75'.
- Section o)** Lighting requirements. Applicant has stated that no FAA lighting is required.
- Section p)** This section addresses coatings and tower maintenance. No response is required.
- Section q)** Security of site requirements. Applicant shall acknowledge compliance with security. Fence needs to be a total of 8' in height not 6' as proposed. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.
- Section r)** Signage requirements. Applicant has acknowledged compliance with signage.
- Section s)** Setback requirements for new towers and structures. Therefore this section is applicable. Setbacks from all property lines are not shown on the site plan. It should be noted that the applicant states the parcel is 1.5 acres but the documentation provided by the applicant indicates only 1.25 acres. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.
- Section t)** Removal bond requirements. Bond is required per ordinance. Applicant has requested temporary relief for this item. We would support the request for relief but require the bond be on file with the City prior to the issuance of a building permit. Bond for a new tower and the first set of antennas is \$75,000.
- Section u)** Insurance requirements. Applicant provided a copy of insurance certificate.
- Section v)** Indemnification requirements for towers on city property. This monopole is not located on City property.

**Additional Provisions for Special Use Permit Review:**

- Section a & b)** City wireless consultant clause and deposit. The deposit for this application did not occur in a manner that allowed the City consultant to preside over a preapplication meeting with the applicant. The purpose of this is to confirm all of the requirements of the ordinance and to streamline the

application process. Applicant was advised on multiple occasions to coordinate with the City Consultant prior to the submission of this application.

**Section c)** Administrative approval of co-location or modification. No response required.

**Section d)** Additional information statement. No response required.

**Section e)** Additional recommendations from advisory, etc... No response required.

**Section f)** Additional approval items. No response required.

**Section g)** Zoning approval item. No response required.

**Section h)** City right to inspect facilities. Applicant shall acknowledge this right. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Relief and Appeal:** Relief requests and justification / proof of need for relief. Relief must be requested if desired for either permanent or temporary relief.

**3.8 Checklist:** Applicants statement of compliance with the ordinance will include compliance with this checklist. See attached checklist.

**Documentation of right to proceed.** Applicant has not shown that a lease has been executed for the site or an option executed. Landowner has indicated that they are in negotiations. Duluth prefers not to issue a special use permit for a project that does not have authorization to proceed if approved. A redacted copy of the lease is required. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Written statements: Maintained and legally permissible.** Not included. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Description of project.** Included / Satisfactory.

**Proof of need / Propagation studies.** Applicant has not provided propagation maps for existing coverage and proposed antennas at various elevations at maximum ERP for justification of need. Applicant has not documented that a tower height of 75' is required or that a shorter tower would not provide the coverage required. Applicant has provided additional propagation studies at lower tower elevations indicating a loss of coverage of critical areas targeted with this site. The Applicant has stated in an email on 9/1/11 that they can live with a 70' tower height. Therefore it appears the tower height of 70 feet is justified and offers a slight reduction from the 75' tower proposed.

**Ownership / applicant information.** Included / Satisfactory.

**Zoning.** Included / Satisfactory.

**Survey of site.** No survey was provided, this is needed to verify required setbacks of monopole. Also a distance to the overhead power from the pole is required. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Nearest residence.** Not provided in plan view. The applicant did state that it is 400' from neighboring residences.

**Existing structures.** Not provided. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Existing / proposed landscaping / fencing.** Addressed in the drawings but conflicting information on fence height was provided. Clarification is required. Applicant has responded satisfactorily in the 8/26/11 & 8/28/11 submittal information.

**Antenna locations.** Included / Satisfactory.

**Model of antennas.** Included / Satisfactory.

**Tower information.** Not Included and is required. Applicant has requested temporary relief for this item. We would support the request for relief but require the information be reviewed and approved by CMS prior to the issuance of a building permit.

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**Site plan.** Not satisfactory. Applicant has responded satisfactorily in the § 26-11 & § 28-11 submittal information.

**Frequency information.** Not included and is required. Applicant has responded satisfactorily in the § 26-11 & § 28-11 submittal information.

**ERP.** Not included. Applicant has responded satisfactorily in the § 26-11 & § 28-11 submittal information.

**RF Emission checklist.** Included / Satisfactory.

**Signed RF statement.** Not provided. Applicant should provide the following statement as a condition of approval of the CUP.

“(Legal name of carrier) is aware of the interference issues that can arise while co-locating with other carriers; therefore, careful isolation studies have been performed to determine the correct vertical and horizontal separation between \_\_\_\_\_ antennas and any other carrier. This avoids any possibility of our frequency interfering with other equipment. In addition, \_\_\_\_\_ has acquired an FCC license, which exclusively entitles the company to operate within an assigned frequency range. This in turn eliminates any interference issues from CB radios, electronic appliances, pacemakers, fire and police equipment as well as other carriers. In the highly unlikely event that interference does occur, \_\_\_\_\_ agrees to fully cooperate with the entity experiencing interference to identify and correct, to the extent reasonably possible, any issues caused by its installation.

**FCC license.** Included / Satisfactory.

**Geotechnical information.** Not provided. Applicant requested temporary relief. Applicant has requested temporary relief for this item. We would support the request for relief but require the certified geotechnical report be reviewed and approved by CMS prior to the issuance of a building permit.

**Certified structural analysis.** A structural analysis was not provided for this proposed monopole. The applicable code is TIA – 222 –F. Please submit a structural analysis using the TIA -222-F code. Applicant has requested temporary relief for this item. We would support the request for relief but require the certified structural analysis be reviewed and approved by CMS prior to the issuance of a building permit.

**FAA new tower lighting.** Applicant stated no lighting is required.

**ANSI inspection report.** Not provided or required for a new tower.

**Adverse visual impact.** Partially addressed.

**Visual impacts of new tower.** Partially addressed.

**Professional certifications.** Structural was not provided. Site survey not provided. Applicant has requested temporary relief for this item. We would support the request for relief but require the certified structural analysis be reviewed and approved by CMS prior to the issuance of a building permit.